

Balancing National Security and Constitutional Rights- Judicial Review of Executive Actions in India

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ABSTRACT

National security is one of the primary responsibilities of every government. At the same time the constitution of India guarantees fundamental rights such as equality before law, freedom of speech and expression, personal liberty and the right to the constitutional remedies. During this time of emergencies internal disturbances, terrorism, public health crises or other security related situations the executive often exercises wide powers to maintain law and order. While these actions may be necessary to protect the nation they can also affect the constitutional rights of individuals. Therefore, maintaining a balance between national security and individual freedoms remains one of the most important challenges in the democratic society. This study examines the role of judicial review in evaluating executive actions taken in the name of national security in India. It explores how the judiciary has acted as a constitutional guardian by ensuring that executive decisions remain within the limits of the constitution. Through judicial decisions the court has developed principles such as legality, proportionality, reasonableness and procedural fairness to determine whether restrictions on fundamental rights are justified. The study highlights that judicial review does not prevent the government from taking necessary security measures but it ensures that such measures must be lawful, non-arbitrary, and consistent with constitutional values. The research also discusses the difficulties faced by the courts while reviewing matters involving national security, where sensitive information, public safety, and urgent decision making often limit judicial scrutiny. It analyses how Indian courts have attempted to strike a careful balance by respecting the executive expertise in security matters while protecting citizens from the misuse of power. The paper further considers the relevance of the constitutional morality, the rule of law, and the judicial independence in preserving democratic governance. The study concludes that national security and constitutional rights should not be viewed as opposing objectives. Rather they must complement each other within the framework of the constitution. Effective judicial review strengthens public confidence in democratic institutions by ensuring that executive authority is exercised responsibly, transparently, and in accordance with constitutional principles. A balanced judicial approach helps protect both the security of the nation and the dignity and freedoms of the citizens thereby reinforcing the ideals of justice, liberty, equality, and the rule of law in India.

Keywords: judicial review, national security, constitutional rights, executive actions, fundamental rights, rule of law.

INTRODUCTION-

India is the world's largest democracy and its constitution is built on the principles of justice, liberty, equality, and the rule of law.¹ It guarantees several fundamental rights to every individual including the right to equality, freedom of speech and expression, and the right to life and personal liberty. At the same time the constitution also recognizes that the state has a duty to protect the country from threats such as terrorism, armed conflict, cyber attacks, public disorder, and other challenges that may affect national security.² Balancing these two objectives- protecting the nation and safeguarding the individual rights- is one of the most significant responsibilities of a constitutional government.

In situations involving national security the executive branch often exercises special powers to maintain public order and ensure the safety of the citizens. These actions may include preventive detention, restrictions on movement, internet shutdowns, surveillance measures, or emergency regulations.³ While such measures may be necessary in certain circumstances they can also limit the exercise of fundamental rights. This raised an important constitutional question that is how far can the executive go in the name of national security without violating the rights guaranteed by the constitution?⁴

Judicial review plays an important role in answering this question. It empowers the judiciary to examine whether the executive actions are lawful, reasonable, and consistent with constitutional principles. The court does not interfere with every policy decision of the government, but they ensure that executive power is exercised fairly, without arbitrariness, and within the limits prescribed by the constitution. Through judicial review, the judiciary acts as the safeguard against misuse of power while also respecting the government's responsibility to protect national security.

Over the years Indian courts have decided several important cases involving preventive detention, internet restrictions, freedom of expressions, privacy, and emergency powers. These decisions have helped to define the relationship between executive authority and constitutional rights. They also demonstrate that national security and individual liberty are not mutually exclusive but must be balanced carefully in a democratic society.⁵

This study examines the constitutional framework governing executive actions related to national security and analyses the role of the judicial review in maintaining that balance. It explores relevant constitutional provisions, significant judicial decisions and the principles developed by the courts to ensure that national security measures remain lawful, proportionate and respectful of fundamental rights.⁶ This study aimed to highlight the continuing importance of judicial review in preserving constitutional governance, protecting individual freedoms and strengthening the rule of law in India.

This research is important because national security and individual liberty are not conflicting values but complementary objectives in a constitutional democracy. A secure nation can function effectively only when citizens have confidence that their rights are protected while constitutional freedoms can be meaningfully enjoyed only in a peaceful and secure society. Therefore achieving an appropriate

¹ Constitution of India, Arts-14, 19, 21.

² Constitution of India, Arts-19(2)-(6), 21 and 22.

³ M.P. Jain, Indian Constitutional Law (8th ed. LexisNexis, 2018)

⁴ H.M. Seetvai, Constitutional Law of India: A Critical commentary, 4th ed. (Universal Law Publishing).

⁵ Menka Gandhi vs Union of India, (1978) 1 SCC 248.

⁶ Justice K.S. Puttaswamy (Retd) vs Union of India, (2017) 10 SCC 1.

balancing between security and liberty is essential for preserving democracy, constitutional governance, and public trust. This study also explores the principles applied by the court while reviewing executive actions, including proportionality, procedural fairness, reasonableness, necessity, and protection of fundamental rights. At the same time, the judiciary recognizes that courts should not unnecessarily interfere with genuine policy decisions involving national security unless there is a clear violation of constitutional rights or legal procedures.

Judicial review serves as one of the strongest safeguards against arbitrary exercise of executive power in India. It ensures that national security measures remain consistent with constitutional values while allowing the government sufficient authority to protect the nation from genuine threats. As India continues to face evolving security challenges in the modern world, the role of the judiciary in maintaining this delicate balance will remain crucial. Through careful interpretation of the constitution and protection of fundamental rights, Indian courts continue to uphold the principles of justice, liberty, equality, and the rule of law, thereby strengthening the democratic foundation of the country.⁷

REVIEW OF LITERATURE-

The relationship between national security and constitutional rights has been one of the most debated issues in Indian constitutional law. Over the years, scholars, judges, and legal researchers have tried to understand how a democratic country like India can protect its citizens from external and internal threats while also safeguarding the fundamental rights guaranteed under the constitution. Existing literature shows that although national security is essential for maintaining peace and public order, it should not become a reason for unnecessary restrictions on individual freedoms.

One of the earliest and most influential contributions to this area comes from H.M. Seervai⁸, who explained that the constitution of India gives citizens several fundamental rights but these rights are not absolute. According to him, articles 19, 21, and 22 permit reasonable restrictions in the interest of the sovereignty, integrity, and security of the nation. However, he emphasized that such restrictions must always be reasonable, lawful, and subject to judicial review. His work highlights the importance of maintaining constitutional balance rather than giving unlimited powers to the executive.

Similarly, M.P. Jain⁹, in his writings on Indian constitutional law, examined the role of the judiciary in protecting democratic values. He observed that the Supreme Court has consistently acted as the guardian of the constitution by reviewing executive decisions that affect personal liberty. Jain argued that judicial review is an essential feature of the constitution because it prevents the misuse of executive power during emergencies or situations involving national security.

Another significant contribution comes from V.N. Shukla¹⁰, who discussed the constitutional framework governing executive actions. He explained that while the government has the responsibility to ensure national security, its actions must remain within constitutional limits. His analysis shows that judicial review helps to maintain accountability and prevents arbitrary exercise of power. This study also evaluates whether the existing legal framework adequately protects both national security and individual freedoms, and suggests measures to strengthen constitutional governance in India.

⁷ S.R. Bommai vs Union of India, (1994) 3 SCC 1.

⁸ H.M. Seervai, *Constitutional Law of India: A Critical Commentary*, 4th ed. (Universal Law Publishing).

⁹ M.P. Jain, *Indian Constitutional Law*, 8th ed. (LexisNexis, 2018).

¹⁰ Mahendra Pal Singh, V.N. Shukla's *Constitution of India*, 14th ed. (Eastern Book Company, 2022).

OBJECTIVES-

The main objectives of this study are

1. To examine the relationship between national security and constitutional rights in India and understand why maintaining a balance between two is essential in a democratic society.
2. To analyse the constitutional provisions that empower the govt to take executive actions in matters relating to national security while protecting the fundamental rights of citizens.
3. To study the role of judicial review in examining executive actions and ensuring that govt decisions are lawful, fair, reasonable, and consistent with the constitution.
4. To evaluate important judgement of the supreme court and high courts relating to national security , preventive detention, personal liberty, freedom of speech, privacy, and other fundamental rights.
5. To assess whether executive actions taken into in the name of national security have maintained a proper balance between public safety and individual freedoms.
6. To identify the challenges faced by the judiciary while reviewing the executive decisions in situations involving national security, terrorism, public emergencies, and digital surveillance.

RESEARCH METHODOLOGY-

This research adopts a doctrinal research methodology as the study mainly examines constitutional provisions, statutes, judicial decisions, and legal principles relating to national security and constitutional rights in India. The research is descriptive and analytical in nature, aiming to understand how Indian courts have balanced the exercise of executive power with the protection of the fundamental rights.

The study relies primarily on secondary sources of data. These include the constitution of India, relevant statutes such as the National Security Act 1980¹¹ and the Unlawful Activities (Prevention) Act, 1967¹² are the landmark judgement of the supreme court and the high courts, Law books, legal journals, research articles, government reports, law commission reports, and authentic online legal databases such as SCC online, Manupatra, and official government websites.

A detailed analysis of important judicial decisions has been carried out to understand the role of judicial review in ensuring that executive actions remain within constitutional limits. The study also examines the interpretation of fundamental rights particularly articles 14, 19, 22, 32 and 226 in matters involving national security and public interest.¹³

The research follows a qualitative approach, focusing on the interpretation of legal principles rather than statistical analysis. Relevant case laws, constitutional provisions, and scholarly opinions have been critically examined to identify the strengths and limitations of the existing legal framework.

The study also adopts a comparative and analytical approach whenever necessary by referring to the constitutional principles and judicial practices followed in other democratic countries. This helps in understanding how India can maintain an appropriate balance between national security and individual freedoms.

¹¹ The National Security Act, 1980, No. 65 of 1980, India Code.

¹² The Unlawful Activities (Prevention) Act, 1967, No. 37 of 1967, India Code.

¹³ Constitution of India, arts. 14, 19, 22, 32, and 226.

STATUTORY PROVISIONS-

1. Article 14-Right to Equality- it guarantees equality before the law and equal protection of the law. Any executive actions taken in the name of national security must not be arbitrary or discriminatory. Courts can strike down the actions that violate this principle.¹⁴
2. Article 19-Freedom of speech and other freedoms- it protects freedoms such as speech, expression, movement, and association. However, these rights can be reasonably restricted in the interest of the sovereignty and integrity of India, security of the state, public order, and friendly relations with foreign countries. The judiciary ensures that such restrictions are reasonable and not excessive.¹⁵
3. Article 21-Right to Life and Personal Liberty- it states that no person shall be deprived of life or personal liberty except according to the procedure established by law. The Supreme Court has interpreted this article broadly to include the right to live with dignity. Executive actions affecting personal liberty must be fair, just, and reasonable.¹⁶
4. Article 32 and Article 226-Judicial Review-Article 32 empowers the Supreme Court and Article 226 empowers the High Courts to protect fundamental rights through writ petitions. Citizens can approach these courts if executive actions violate their constitutional rights.¹⁷
5. Article 352-National Emergency-It allows the President to declare a National Emergency in cases of war, external aggression or armed rebellion. During an emergency certain fundamental rights may be restricted but such actions remain subject to constitutional safeguards and judicial scrutiny.¹⁸
6. National Security Act, 1980- it permits preventive detention to maintain public order and national security. Although the act grants wide powers to the executives, courts carefully examine its application to ensure compliance with constitutional rights.¹⁹
7. Unlawful Activities (Prevention) Act, 1967- it is India's primary anti-terrorism law. It empowers the govt to prevent unlawful and terrorist activities. Since the act affects personal liberty, courts carefully examined its application to ensure compliance with constitutional rights.²⁰
8. Code of Criminal Procedure/Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023- The executive has powers to maintain law and order under criminal procedure laws. These powers include preventive measures, arrests, and restrictions during emergencies. Courts ensure that such powers are exercised lawfully and do not unnecessarily violate individual rights.²¹

CASE LAWS-

1. A.K. Gopalan vs state of Madras (1950)²²

Facts- A.K. Gopalan was detained under the Preventive Detention Act, 1950. He challenged his detention claiming that it violated his fundamental rights.

¹⁴ Constitution of India, art-14.

¹⁵ Constitution of India, art- 19(1)(a)-(g), 19(2)-(6).

¹⁶ Constitution of India, art-21.

¹⁷ Constitution of India, arts-32 and 226.

¹⁸ Constitution of India, art.352.

¹⁹ The National Security Act, 1980, no.65 of 1980, SCC 3,8-13.

²⁰ The Unlawful Activities (Prevention) Act, 1967, no 37 of 1967 SCC 2,13,15,16 and 43D.

²¹ The Bharatiya Nagarik Suraksha Sanhita, 2023, no. 46 of 2023, Indian Code.

²² A.K. Gopalan vs state of Madras, AIR 1950SC 27(1950) SCR 88.

Judgement- The supreme court initially gave a narrow interpretation of fundamental rights and upheld the detention. Although the govt was given wide powers, this case laid the foundation for later debates on balancing national security and individual liberty.

2. Kesavananda Bharati vs State of Kerala (1973)

Facts- The case questioned whether parliament could amend any part of the constitution without limitation.

Judgement- The supreme court introduced the Basic Structure Doctrine holding that the Parliament can not alter the basic structure of the constitution. This decision ensures that even during national emergencies or security concerns, constitutional values such as rule of law, judicial review, and fundamental rights remain protected.²³

3. ADM Jabalpur vs Shivkant Shukla (1976)²⁴

Facts- during the emergency (1975-1977) many people were detained without trial. The issue was whether they could approach courts for protection.

Judgement- the supreme court held that during the emergency, citizens could not enforce the right to personal liberty. This judgement is widely regarded as one of the court's biggest mistakes because it gave excessive power to the executive and weakened fundamental rights.

4. Maneka Gandhi vs Union of India (1978)²⁵

Facts- the govt impounded Maneka Gandhi's passport giving proper reasons.

Judgement- the supreme court held that any law affecting personal liberty must be fair, just and reasonable. This landmark judgement greatly strengthened article 21 and expanded judicial review over executive actions.

5. S.R. Bommai vs Union of India (1994)²⁶

Facts- several state governments were dismissed under article 356, and the dismissals were challenged.

Judgement- the supreme court ruled that the president's Rule is subject to judicial review. The case confirmed that executive decisions even those taken for national governance are not beyond judicial scrutiny.

6. People's Union for Civil Liberties vs Union of India (1997)²⁷

Facts- the case challenged the government's power to intercept telephone conversations.

Judgement- The court framed strict safeguards to prevent misuse of surveillance powers. It balanced national security requirements with the citizen's right to privacy.

7. Justice K.S. Puttaswamy (Retd.) vs Union of India (2017)²⁸

Facts- the case examined whether privacy is a fundamental right.

Judgement- A nine judge bench unanimously held that the right to privacy is a fundamental right under article 21. the judgement clarified that government actions taken for national security must be lawful, necessary, and proportionate.

8. Anuradha Bhasin vs Union of India (2020)²⁹

Facts- following security concerns in jammu and kashmir, internet services were suspended for an extended period.

²³ Kesavananda Bharati vs State of kerala, (1973) 4SCC 225.

²⁴ ADM Jabalpur vs shivkant shukla, (1976) 2 SCC 248.

²⁵ Maneka Gandhi vs union of India, (1978) 1 SCC 248.

²⁶ S.R. Bommai vs union of India, (1994) 3 SCC 1.

²⁷ People union for civil liberties (PUCL) vs union of India, (1997) 1 SCC 301.

²⁸ Justice K.S. Puttaswamy (Retd.) vs union of India, (2017) 10 SCC 1.

²⁹ Anuradha Bhasin vs union of India, (2020) 3 SCC 637.

Judgement- The supreme court held that indefinite internet shutdowns are unconstitutional and that restrictions must be necessary, proportionate, and subject to regular review. The case emphasizes that national security measures can not unnecessarily restrict constitutional freedoms.

CONCLUSION

Balancing national security and constitutional rights is one of the most important responsibilities of a democratic nation like India. The constitution gives the government the power to take necessary actions to protect the country's sovereignty, integrity, and public order. At the same time it guarantees every citizen's fundamental rights such as equality, freedom of speech and expression, personal liberty, and protection against arbitrary state action. The real challenge lies in maintaining a fair balance between these two equally important objectives.

This study shows that national security and constitutional rights should not be viewed as opposing concepts. Instead, they should complement each other. While security measures are necessary to protect the from terrorism, internal disturbances, cyber threats, and other dangers and these measures must always remain within the limits of the constitution. Any executive action that unnecessarily restricts individual freedoms and exceeds legal authority can weaken public trust in democratic institutions.

Judicial review plays a vital role in maintaining this balance. The Indian judiciary, especially the supreme court and the high courts acts as the guardian of the constitution by examining whether executive actions are lawful, reasonable, and proportionate. Through several landmark judgments, the courts have made it clear that even during emergencies or situations involving national security, constitutional values can not be ignored. The judiciary has consistently emphasized that executive decisions must satisfy the principles of fairness, legality, necessity, and proportionality.³⁰

The research also highlights that while courts generally respect the government's expertise in matters of national security, they do not hesitate to intervene when there is misuse of power, violation of fundamental rights or lack of procedural fairness. This balanced approach helps to ensure that security concerns are addressed without compromising the dignity and liberty of the individuals. In recent years new challenges such as cyber crime, digital surveillance, mis-informations, and cross-border terrorism have made the relationship between national security and individual rights even more complex. Therefore, it is essential for the executive, legislative, and judiciary to work together to create law and policies that effectively protect both national interests and constitutional freedoms. Transparency, accountability, and respect for the rule of law should remain the guiding principles of the governance.

In conclusion, the strength of a democracy is measured not only by its ability to protect its borders but also by its commitments to protecting the rights of its people. National security is undoubtedly essential, but it should never become a reason for arbitrary or excessive restrictions on constitutional freedoms. Judicial review serves as an important safeguard that ensures executive power is exercised responsibly and in accordance with constitutional values. A balanced and rights based approach will strengthen democracy, enhance public confidence in institutions, and help India remain both a secure nation and a vibrant constitutional democracy.

This research also demonstrates that constitutional democracy requires cooperation among all organs of the state. The legislative must enact clear and balanced laws, the executive must implement those

³⁰ Constitution of India, arts-19 and 21; Justice K.S. Puttaswamy (Retd) vs Union of India, (2017) 10 SCC 1.

laws fairly and responsibly, and the judiciary must ensure that constitutional safeguards are respected. Each institution has its own responsibility, and together they help maintain the delicate balance between collective security and individual freedom.

Judicial review remains one of the strongest constitutional safeguards against the misuse of the executive power. It ensure that government actions are consistent with democratic principles, constitutional morality and the rule of law. As India continues to face evolving national and global security challenges, maintaining a careful balance between national security and constitutional rights will remain an ongoing responsibility. A legal system that protects both the nation and the rights of its people will strengthen democracy, promote justice, inspire public confidence, and ensure that the constitution continues to serve as the guiding force of the republic of India for generations to come.

RECOMMENDATION AND SUGGESTIONS-

1. Strengthen judicial review- the judiciary should continue to play an active and independent role in reviewing executive actions related to national security. Courts should ensure that government decisions are lawful, reasonable, and consistent with the constitution. Timely judicial intervention helps to prevent misuse of power and protects citizen's rights and judicial review acts as an important safeguard against the misuse of executive power.
2. Ensure Transparency and Accountability- government authorities should provide clear reasons for executive actions taken in the name of national security whenever possible. Greater transparency increases public trust and reduces the possibilities of arbitrary or unfair decisions.
3. Follow the Principle of Proportionality- any restriction on constitutional rights should be necessary, reasonable, and proportionate to the security threat. Blanket restrictions or excessive use of power should be avoided. The least restrictive measures should always be preferred.
4. Protect of Fundamental rights- National security measures should not unnecessarily interfere with the rights guaranteed under the constitution, especially the right to life, liberty, freedom of speech, privacy, and equality. These rights should remain protected even during emergencies, except where the constitution specifically permits restrictions.³¹
5. Regular review of Security Laws- Laws relating to national security should be reviewed periodically to ensure that they remain relevant, effective, and consistent with constitutional values. Outdated or overly broad provisions should be amended or repealed where necessary.³²
6. Improve Parliamentary oversight- parliament should play a stronger role in monitoring executive actions related to national security. Regular discussions, committee reviews and accountability mechanisms can help ensure that extraordinary powers are not misused.
7. Promote Human Rights awareness- government officials, police personnel and security agencies should receive regular training on constitutional rights and human rights principles. This will help them to perform their duties effectively while respecting the dignity and the rights of individuals.
8. Use Technology Responsibly- Modern technologies such as digital surveillance, artificial intelligence, and data collection should be used only with adequate legal safeguards. Citizens privacy must be protected through clear laws, judicial oversight, and independent monitoring.

³¹ Kshitij Sahu and Astha Srivastava, "Alternative Remedy rule vs article 226 of the Constitution of India: A judicial Balancing Act," Indian journal of Legal review, Vol. 6, no. 1, 2026.

³² The National Security Act, 1980, no. 65 of 1980, SCC 3, 8-13; The Unlawful Activities (Prevention) Act, 1967.

9. Encourage public participation and legal Awareness- Citizens should be educated about their constitutional rights and the importance of national security. Public awareness creates informed citizens who can support security measures while also safeguarding democratic values.
10. Develop clear guidelines for executive powers- the government should establish clear legal standards for the exercise of emergency and national security powers. Such guidelines should define the scope, duration, and limitations of executive actions to prevent misuse

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