

The Evolution of Judicial Review in India: Safeguarding the Constitution

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ABSTRACT

This paper explores the evolution of judicial review in India, a concept where courts like the Supreme Court and High Courts act as guardians of the Constitution. Judicial review, a cornerstone of the rule of law, originated in England and empowers courts to assess the validity of laws and actions by state agencies. Interestingly, the US Constitution doesn't explicitly mention judicial review, but it was established through a landmark decision by Chief Justice Lord Coke. In India, judicial review wasn't a sudden invention but developed gradually based on constitutional principles throughout its colonial history. Unlike the US, India's 1950 Constitution explicitly enshrines the doctrine of judicial review in various articles, forming a critical check on the power of the legislature and executive to ensure they function within the boundaries set by the Constitution.

Keyword: - Judicial review, checks and balances, separation of powers, rule of law, constitution

1. Introduction

In a system of checks and balances, judicial review empowers the judiciary to act as a safeguard against excesses by the legislative and executive branches. This process allows courts to examine the actions of these branches, including laws passed and decisions made, to ensure they comply with a higher authority, often a written constitution. Judicial review essentially upholds the rule of law by invalidating actions deemed incompatible with this higher authority. For instance, a law may be struck down for violating the constitution, or an executive decision may be nullified for being unlawful. This power of judicial review serves as a critical check on the power of the other branches, preventing them from overstepping their bounds and maintaining the separation of powers¹.

Rooted in the concept of separation of powers, judicial review empowers courts to act as a watchdog against excesses by the legislative and executive branches. It allows courts to examine the actions of these branches, ensuring they comply with the constitution, the supreme law of the land. Judicial review rests on two main principles: limited government, where government power is not absolute, and the supremacy of the constitution, to which all laws and actions must conform. In India, an independent judiciary wields this power to determine the validity of laws and executive actions. The Supreme Court has established various doctrines based on judicial review, like the doctrine of severability (striking down part of a law while upholding the rest) and the doctrine of eclipse (a new law superseding an older one). Judicial review in India operates in three key dimensions: legislative actions (examining the constitutionality of laws), administrative actions (examining the legality of executive decisions), and judicial decisions (examining the legality of lower court decisions). It serves to uphold the constitution's supremacy, safeguard citizens' fundamental rights, and maintain the federal balance between the central government and the states. By ensuring all government actions stay within constitutional boundaries, judicial review fosters the rule of law and holds those in power accountable².

2. The Guardian of Democracy's Promises

Judicial review is a cornerstone of modern democracies, empowering courts, particularly the highest court, to assess the legality of actions taken by the legislature and executive branches. This system acts as a check and balance,

ensuring these branches operate within the boundaries set by the constitution, the supreme law of the land. The European Union (EU) provides a prime example of a supranational system where judicial review plays a crucial role. The Court of Justice of the European Union (CJEU) holds the power of judicial review, ensuring that laws and decisions made by EU institutions comply with EU treaties. This ensures consistency and prevents any single member state from undermining the core principles of the union³.

Beyond the EU, judicial review carries a broader significance. The judiciary, through this power, acts as the guardian of fundamental values enshrined in the constitution. Imagine the constitution as a blueprint for a fair and just society, outlining the rights and limitations of both the government and its citizens. Judicial review empowers courts to step in when the legislature or executive branch enact laws or take actions that violate these core principles. Take, for instance, a law passed by the legislature that unfairly discriminates against a particular group. Through judicial review, the court can assess the law's compatibility with the constitution's guarantee of equality. If deemed unconstitutional, the court can strike down the law, preventing its harmful effects⁴.

Similarly, if the executive branch oversteps its authority by issuing an arbitrary or unlawful directive, judicial review empowers the court to intervene. This ensures that the executive branch functions within the constitutional framework, preventing the concentration of excessive power. Ultimately, judicial review allows the courts to uphold the promises made by the constitution. It safeguards the rights of citizens, prevents tyranny by any branch of government, and ensures a fair and just system for all. This power acts as a vital tool for maintaining the delicate balance of power within a democracy⁵.

3. The Guardian of the Constitution

Judicial review is a cornerstone of modern democracies, acting as a safeguard against potential abuses of power by the legislative and executive branches. Literally meaning "to review," it empowers courts, especially the highest court, to examine the validity of actions taken by these branches. This ensures they operate within the boundaries set by the constitution, the supreme law of the land. Imagine the constitution as a blueprint for a fair and just society, outlining the rights and limitations of both the government and its citizens. Judicial review allows the courts to step in when the legislature or executive branch enact laws or take actions that violate these core principles⁶.

Take, for instance, a law passed by the legislature that unfairly discriminates against a particular group. Through judicial review, the court can assess the law's compatibility with the constitution's guarantee of equality. If deemed unconstitutional, the court can strike down the law, preventing its harmful effects. Similarly, if the executive branch oversteps its authority by issuing an arbitrary or unlawful directive, judicial review empowers the court to intervene. This ensures the executive branch functions within the constitutional framework, preventing the concentration of excessive power⁷.

There are several strong arguments in favor of judicial review. Firstly, in a federal system like India's, the constitution serves as the foundation for the division of power between the central and state governments. The Supreme Court's power of judicial review ensures that both levels of government stay within their designated spheres, preventing conflict and maintaining a healthy balance. Secondly, the judiciary, unlike the legislature or executive, is not directly accountable to the public through elections. This relative insulation helps them to make impartial decisions based on the constitution, rather than political considerations. Thirdly, judicial review acts as a safety net against potential legislative or executive overreach. By scrutinizing laws and actions, the courts can prevent the erosion of fundamental rights or the concentration of power in any single branch⁸.

In conclusion, judicial review plays a vital role in upholding the constitution and its ideals. It safeguards the rights of citizens, prevents tyranny by any branch of government, and ensures a fair and just system for all. This power acts as a vital tool for maintaining the delicate balance of power within a democracy⁹.

4. The Scope of Judicial Review in Federal Systems

In federal systems like India and the United States, judicial review plays a crucial role in maintaining the delicate balance of power between the central government and the constituent states. This power empowers courts, particularly the Supreme Court, to act as impartial arbiters, ensuring both levels of government operate within their designated spheres as outlined in the constitution. The core function of judicial review in a federal system is to enforce the division of powers enshrined in the constitution. Imagine the constitution as a blueprint that defines the responsibilities of both

the central and state governments. Judicial review allows the courts to identify and strike down any laws or actions by either level of government that infringe upon the other's constitutional authority. For instance, a state law that attempts to regulate foreign trade, a power typically reserved for the central government, could be deemed unconstitutional through judicial review. This ensures that neither the central government nor the states overstep their boundaries, preventing conflict and maintaining a healthy balance within the federal structure¹⁰.

The concept of judicial supremacy, a hallmark of both the Indian and American judicial systems, further emphasizes the scope of judicial review. Unlike the legislature or executive, which are directly accountable to the public through elections, the judiciary occupies a relatively independent position. This insulation allows them to make impartial decisions based solely on the constitution, free from political pressures. This power of judicial review extends to scrutinizing the actions of both the legislative and executive branches within the federal system. Courts can declare laws passed by the central Parliament or state legislatures unconstitutional if they violate the constitution's principles. Similarly, they can invalidate arbitrary or unlawful actions taken by the executive branch of either the central government or the states. The principle of judicial review has become an essential feature of written constitutions in many federal systems. It ensures that the division of powers is not merely theoretical, but a practical reality that safeguards the federal structure. By holding both the central government and the states accountable to the constitution, judicial review upholds the delicate balance of power within a federal democracy¹¹.

5. Initiating Judicial Review in India: Safeguarding the Constitution

Judicial review, a cornerstone of Indian democracy, empowers courts to ensure all government actions comply with the constitution. While the concept of separation of powers inherently implies this power, specific articles in the constitution outline the procedures for initiating judicial review. These procedures vary depending on the nature of the challenge¹².

Article 32: The Soul of the Constitution

This fundamental right stands as a powerful shield for citizens. It allows individuals to directly approach the Supreme Court for violations of their fundamental rights enshrined in Part III of the constitution. Dr. B.R. Ambedkar aptly described Article 32 as the "soul of the constitution." By empowering citizens to seek remedies for infringements on their basic rights, it safeguards the very foundation of a just and equitable society.

Article 226: Seeking Justice Through Writs

This article empowers High Courts to issue writs, such as habeas corpus (to challenge unlawful detention) and mandamus (to compel a public official to perform a legal duty), for enforcing fundamental rights and other legal rights. If an individual believes a government action violates the constitution, but doesn't necessarily infringe on their fundamental rights, they must first approach the High Court under Article 226. Here, various writs act as powerful tools to hold the government accountable for adhering to the rule of law.

Article 136: Reaching the Highest Court

This article grants the Supreme Court the discretion to hear appeals from lower courts, including those arising from High Court decisions on matters of judicial review under Article 226. Essentially, it allows individuals to seek a final judgment from the highest court on issues of constitutionality. This ensures that even after navigating the High Court system, individuals have the opportunity to have their case heard by the Supreme Court, the ultimate arbiter of the constitution.

A Potential Gap in the System

While the current system provides a framework for judicial review, a potential limitation exists. Article 32 allows direct access to the Supreme Court for fundamental rights violations, but there's no specific provision for directly challenging the constitutionality of government actions that don't involve fundamental rights. This means individuals must first navigate the High Court system under Article 226 before potentially reaching the Supreme Court. Some argue that amending the constitution to allow direct Supreme Court access in such cases would streamline the process and create a more efficient system for challenging the constitutionality of government actions.

Judicial review plays a vital role in ensuring India's government functions within the boundaries set by the constitution. The specific articles outlined above provide citizens and courts with a framework to challenge actions that may be unconstitutional. While the current system is functional, a potential gap exists, and ongoing discussions on streamlining the process may lead to future amendments.

The Bedrock of a Democratic Society

Democracy, with its emphasis on majority rule, can be a powerful tool for progress. However, unchecked power can lead to the "tyranny of the majority," where the rights of minorities or individuals are trampled upon. Judicial review, the power of courts to assess the constitutionality of government actions, emerges as a critical safeguard within a democratic system. One of the core strengths of judicial review lies in its ability to prevent legislative overreach. Imagine a scenario where a newly-elected majority passes a law that blatantly discriminates against a particular religious group. Judicial review empowers courts to step in and declare such a law unconstitutional, protecting the rights of the targeted minority. This ensures that even in a democracy, the rights of all citizens are upheld, and no group is unfairly singled out¹³.

Furthermore, judicial review fosters a culture of fairness and equality within the democratic framework. The constitution often serves as a blueprint for a just society, outlining fundamental rights and limitations on government power. Judicial review empowers courts to act as impartial arbiters, ensuring that all laws passed by the legislature comply with these constitutional principles. This prevents the creation of discriminatory laws or the erosion of fundamental rights like freedom of speech or assembly. The rule of law, a cornerstone of any democracy, is significantly strengthened by judicial review. This principle dictates that everyone, including the government itself, operates within a framework of established legal principles. Judicial review ensures that all government actions, including laws passed by the legislature, adhere to the constitution, the supreme law of the land. This prevents the government from acting arbitrarily or exceeding its authority, upholding the principle that no one is above the law. The impartiality of the judiciary is another crucial factor in strengthening democracy through judicial review. Unlike elected officials who may be swayed by public opinion or special interests, judges are expected to make decisions based solely on the constitution and legal precedent. This insulation from political pressures ensures that judicial review decisions are not influenced by short-term political gains or losses, but rather by a commitment to upholding the constitution. A threat to democracy, but rather its bedrock. By ensuring the rule of law, protecting fundamental rights, and preventing the tyranny of the majority, judicial review strengthens the very foundations of a democratic society. It acts as a vital check on the power of the legislature and executive, safeguarding the rights of all citizens and fostering a culture of fairness and equality¹⁴.

6. Judicial Review vs. Parliamentary Sovereignty

The tension between judicial review and parliamentary sovereignty lies at the heart of many democracies. This section explores this complex relationship in the context of the United States.

Judicial Review: Guardian of the Constitution

In the American system, judicial review empowers courts, particularly the Supreme Court, to assess the constitutionality of laws and government actions. While not explicitly mentioned in the Constitution, this power emerged from the landmark case *Marbury v. Madison* (1803). Here, Chief Justice John Marshall established the principle that courts can declare laws unconstitutional, ensuring the supremacy of the Constitution over all other legal instruments.

American Political Culture: A Foundation of Belief

The legitimacy of judicial review in the US is deeply rooted in American political beliefs. Americans widely view the Constitution as the supreme law of the land. This necessitates courts, as legal interpreters, to have the authority to interpret the Constitution and identify any conflicts with laws or actions of the legislature and executive branches. If such a conflict arises, the court's duty is to uphold the Constitution, effectively nullifying the unconstitutional policy.

Ordinary Courts vs. Specialized Tribunals

Unlike some countries like Germany with a dedicated Constitutional Court, the US employs its existing court system for judicial review. This means ordinary courts, while handling regular legal disputes, can also assess the constitutionality of laws and actions during such proceedings. Essentially, they compare the relevant legal principles and the Constitution, striking down any policies that contradict the supreme law.

Beyond Common Law Functions

The scope of judicial review in the US extends beyond the traditional role of courts in other systems. While courts in places like Britain primarily focus on resolving disputes between private citizens and upholding existing laws, American courts can delve deeper. They have the authority to go beyond the surface of a law and examine whether the legislature even had the constitutional power to enact it in the first place¹⁵.

7. The Challenge to Parliamentary Sovereignty

The concept of parliamentary sovereignty, prevalent in countries like the UK, dictates that Parliament has supreme lawmaking power. Judicial review, by allowing courts to invalidate laws, appears to contradict this principle. This inherent tension creates an ongoing debate about the balance between the power of the legislature and the judiciary in upholding the Constitution¹⁶.

The power of judicial review in the US presents a fascinating case study. While it isn't explicitly mentioned in the Constitution, it has become an integral part of the system, rooted in American political beliefs about the supremacy of the Constitution. This power, however, challenges the concept of absolute parliamentary sovereignty. The ongoing dialogue about this balance ensures a dynamic system where the judiciary acts as a vital check on the legislature and executive, safeguarding the Constitution¹⁷.

8. Conclusion

Judicial review stands as a cornerstone of a healthy democracy. By empowering courts to assess the constitutionality of laws and government actions, it prevents the concentration of power and safeguards against legislative overreach. While limitations exist in India, such as the requirement for cases to be brought before courts and the avoidance of purely political matters, judicial review remains a critical instrument. The potential for judicial activism, where courts appear to create law through interpretation, is a concern. However, in India, the distinction is clear - the legislature holds the exclusive power to enact laws. Judicial review ensures these laws align with the Constitution, acting as a vital safety net. The benefits of judicial review are undeniable. It prevents the legislature from shirking its core responsibilities or enacting laws that violate fundamental rights. Furthermore, by exercising restraint and basing decisions on sound legal analysis, courts ensure responsible review. In federal systems, judicial review plays a crucial role in resolving disputes regarding power distribution and interstate commerce. By determining the constitutionality of laws in such cases, it fosters cooperation within the federal framework. The cornerstone of effective judicial review is an independent judiciary. This independence allows courts to make impartial decisions based on the Constitution, free from political influence. The potential for expanding judicial review globally, as suggested by the author, presents an interesting discussion, particularly in countries where such a mechanism is absent. In conclusion, judicial review serves a vital function in upholding the rule of law. By ensuring the constitutionality of laws, protecting individual rights, and maintaining a balance of power, it strengthens democracy and safeguards the liberties of the people. While some may criticize judicial review, its role remains indispensable in ensuring a just and well-functioning democratic society.

9. References

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