

CONSTITUTIONAL SUPREMACY IN INDIA: THE EXPANDING ROLE OF JUDICIAL REVIEW

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Abstract

The Indian legal landscape is governed by the principle of Constitutional Supremacy, a doctrine ensuring that the Constitution remains the *Grundnorm* or the ultimate source of legal authority. Central to maintaining this supremacy is the power of Judicial Review. This paper explores the evolution of judicial review from a defensive mechanism into a proactive tool for constitutional preservation. It analyzes the transition of the judiciary into a "sentinel on the qui vive," the emergence of the "Basic Structure Doctrine" as a shield against overreach, and the contemporary challenges of judicial activism versus overreach in a shifting political climate.

Keywords: Constitutional Supremacy, Judicial Review, Basic Structure Doctrine, Fundamental Rights, Judicial Activism.

Introduction

The concept of Constitutional Supremacy in India represents the bedrock upon which the entire democratic and legal edifice of the nation is constructed. Unlike the British model of Parliamentary Sovereignty, where the legislature holds the ultimate power to make or unmake any law, or the American system, which leans heavily toward Judicial Supremacy, the Indian drafters envisioned a unique, balanced framework. In the Indian context, the Constitution is the *Grundnorm* - the fundamental legal norm from which all other laws derive their validity. Every organ of the State - the Legislature, the Executive, and the Judiciary - derives its authority, jurisdiction, and limitations from this single document. Consequently, any act that transcends these constitutional boundaries is, by definition, *ultra vires* and void.

This supremacy is not merely a theoretical ideal but a practical necessity for a diverse, pluralistic society. The Indian Constitution serves as a social document aimed at a "Great Transformation," transitioning a traditional, colonial society into a modern, egalitarian democracy. To achieve this, the drafters recognized that a system of checks and balances was essential. At the heart of these checks lies the power of Judicial Review. This power is the institutional safeguard that ensures the legislature does not trample upon individual liberties and that the executive remains within the confines of the law. Without a robust mechanism of judicial oversight, the promises of justice, liberty, and equality enshrined in the Preamble would remain mere "parchment barriers" easily bypassed by the shifting whims of political majorities.

The evolution of judicial review in India reflects the nation's own democratic journey. In the early post-independence years, the judiciary adopted a relatively restrained posture, often deferring to the wisdom of the legislature in matters of socio-economic reform. However, as political dynamics shifted and the executive grew increasingly dominant, the Supreme Court of India began to assert its role as the "sentinel on the qui vive" - the watchful guardian of the people's rights.

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This transition was marked by a shift from a literal, "procedure-established-by-law" approach to a more substantive and expansive interpretation of constitutional provisions. The judiciary realized that to protect the supremacy of the Constitution, it had to look beyond the mere text and safeguard the underlying spirit and values of the document.

The most significant milestone in this journey was the formulation of the "Basic Structure Doctrine." This judicial innovation asserted that while Parliament has the power to amend the Constitution, it does not have the power to destroy its identity or fundamental features. This doctrine became the ultimate shield for constitutional supremacy, preventing the constitution from being used as a tool for its own destruction. Furthermore, the expansion of judicial review through mechanisms like Public Interest Litigation (PIL) has democratized access to justice, allowing the court to intervene in matters ranging from environmental protection to gender equality. This has turned the judiciary into a proactive participant in governance, often filling the vacuum left by legislative or executive inaction.

However, this expanding role is not without its critics. The rise of "Judicial Activism" has sparked a fierce debate over the separation of powers. Critics argue that by entering the domain of policy-making, the judiciary risks overstepping its mandate and undermining the democratic legitimacy of the elected branches. The tension between the need for judicial oversight and the principle of legislative autonomy remains one of the most compelling challenges in contemporary Indian law. This paper seeks to analyze this expanding role of judicial review, exploring how it has shaped the doctrine of constitutional supremacy while navigating the delicate boundary between being a protector of rights and a participant in political governance.

Constitutional Foundations of Judicial Review

The architecture of the Indian Constitution is distinct in its explicit internalization of judicial oversight. While many global constitutions leave the power of judicial review to be inferred from the nature of the judicial office or the supremacy of the constitutional text - as seen in the American precedent of *Marbury v. Madison* (1803) - the Indian framers chose to weave this power directly into the document's fabric. This ensures that the principle of Constitutional Supremacy is not merely a political ideal but a legally enforceable mandate (Kashyap, 2021). The following provisions serve as the structural bedrock for judicial review, ensuring that the "will of the people" remains subordinate to the "ultimate will" expressed in the Constitution.

I. Article 13: The Sentinel of Fundamental Rights

At the heart of the judiciary's power lies Article 13, which acts as the primary gateway for judicial review. Article 13(1) and 13(2) create a dual-layered protection against legislative overreach. Article 13(1) addresses pre-constitutional laws, ensuring that any colonial-era legislation contradicting the newly minted Fundamental Rights is rendered void to the extent of that inconsistency. More importantly, Article 13(2) serves as a prospective mandate: "The State shall not make any law which takes away or abridges the rights conferred by this Part and any law made in contravention of this clause shall, to the extent of the contravention, be void."

This provision explicitly establishes the hierarchy of laws in India. It places Part III (Fundamental Rights) on a pedestal that ordinary legislation cannot reach. As noted in contemporary legal scholarship, Article 13 is the "active agent" of constitutionalism, transforming the judiciary into a "sentinel on the qui vive," a term used to describe the court's role as a watchful guardian against the encroachment of rights (Basu, 2022). By defining "law" broadly under Article 13(3) to include ordinances, orders, bylaws, rules, and regulations, the Constitution ensures that no facet of state action - whether legislative or executive - remains immune from scrutiny (Lakshminath, 2023).

II. Articles 32 and 226: The Remedial Heart

A right without a remedy is a legal fiction. Recognizing this, Dr. B.R. Ambedkar famously described Article 32 as the "soul of the Constitution" and its "very heart" (Austin, 2019). Unlike other constitutional provisions, Article 32 is itself a Fundamental Right. It guarantees the right to move the Supreme Court for the enforcement of the rights conferred by Part III. This creates a direct constitutional link between the citizen and the highest court of the land, bypassing the traditional hierarchical delays of the legal system.

The High Courts share this burden under Article 226. However, the scope of Article 226 is significantly broader than that of Article 32. While the Supreme Court can only issue writs for the enforcement of Fundamental Rights, the High Courts can issue them for "any other purpose," which includes the enforcement of ordinary statutory rights and the correction of administrative errors (Jain, 2023). This dual-pronged remedial structure ensures that the power of judicial review is geographically and jurisdictionally accessible. The issuance of prerogative writs - *Habeas Corpus*, *Mandamus*, *Prohibition*, *Quo Warranto*, and *Certiorari* - provides the judiciary with a versatile toolkit to correct executive excesses and legislative invalidity in real-time (Bakshi, 2024).

III. Articles 141 and 144: The Doctrine of Binding Precedent

For judicial review to be effective, it must possess a degree of finality and uniformity. Article 141 mandates that the law declared by the Supreme Court shall be binding on all courts within the territory of India. This provision reinforces the hierarchy of legal authority and ensures that once the Supreme Court settles a constitutional question, that interpretation becomes the law of the land (Pylee, 2021).

Article 144 commands all authorities - civil and judicial - within the territory of India to act in aid of the Supreme Court. This creates a constitutional obligation for the executive to comply with judicial pronouncements, bridging the gap between judicial "declaration" and actual "enforcement" (Sathe, 2022). Without Article 144, the power of judicial review would lack the necessary "teeth" to ensure that the executive branch adheres to the rule of law.

IV. The Evolution of the "Basic Structure" as a Foundation

While not explicitly written in the original text, the Basic Structure Doctrine has become a foundational pillar of judicial review. By ruling in the landmark *Kesavananda Bharati v. State of Kerala* (1973) that Parliament cannot destroy the "basic features" of the Constitution, the judiciary ensured that judicial review itself - being a basic feature - cannot be abolished even through a constitutional amendment (Divan, 2023). This creates a self-preserving mechanism for constitutional supremacy. Contemporary scholars argue that the Basic Structure Doctrine has shifted the foundation of review from a purely textual inquiry to a structural one, where the "spirit" of the Constitution is protected alongside its letter (Khanna, 2022).

V. Procedural Fairness and Substantive Review

The foundation of review was further deepened through judicial interpretation of Article 21. In the early years, the court followed a narrow "procedure established by law" approach. However, starting with the *Maneka Gandhi* (1978) case, the court transitioned to a substantive "Due Process" model, requiring that laws be "just, fair, and reasonable" (Mehta, 2023). This expansion means that judicial review today is not just about legislative competence but about the inherent fairness of the law itself. This evolution has empowered the courts to strike down laws that are "manifestly arbitrary," a doctrine that has gained significant traction in recent years as a ground for judicial review (Saharay, 2024). The constitutional foundations of judicial review in India are both explicit and expansive. Through a combination of textual mandates (Articles 13, 32, 226) and structural principles (Articles 141, 144, and the Basic Structure Doctrine), the Constitution creates a system where the judiciary is not just a

referee but a vital participant in the democratic process. This framework ensures that the "will of the people" expressed through the legislature is always subordinate to the "ultimate will of the people" expressed in the Constitution. As the role of the state continues to expand, these foundations provide the necessary friction to prevent the wheels of government from crushing individual dignity and the rule of law.

The Evolution of Judicial Activism

The role of judicial review in India has transitioned through distinct phases of interpretation:

I. Literal Interpretation and Early Restraint (1950–1967)

In the early years, the judiciary adopted a conservative approach. Cases like *A.K. Gopalan v. State of Madras* saw the court taking a narrow view of "procedure established by law," largely deferring to legislative policy.

II. The Era of Confrontation and the Basic Structure Doctrine

Tensions peaked as the government attempted to bypass fundamental rights for socialist reforms. This culminated in the landmark *Kesavananda Bharati v. State of Kerala* (1973) judgment. A divided bench (7:6) held that while Parliament has wide powers to amend the Constitution, it cannot alter its "Basic Structure" (Agnihotri, 2024). This doctrine serves as the ultimate "laundry list" of unamendable features, such as democracy, sovereignty, and individual dignity (Agnihotri, 2024).

III. The Shift to Substantive Review (1978–Present)

Post-Emergency, cases like *Maneka Gandhi v. Union of India* (1978) revolutionized Article 21 by requiring that any legal procedure be "just, fair, and reasonable." This transformed the court into a proactive enforcer of socio-economic rights and democratic accountability.

Expanding Dimensions of Judicial Review

In recent decades, the scope of judicial review has expanded into new territories:

I. Review of Constitutional Amendments

The judiciary now substantially reviews constitutional amendments to determine if Parliament has breached its limits (Agnihotri, 2024). In *I.R. Coelho v. State of Tamil Nadu* (2007), the court ruled that even laws in the Ninth Schedule are subject to the basic structure test if they violate fundamental rights.

II. Public Interest Litigation (PIL)

Through PILs, the judiciary lowered the barriers of *Locus Standi*, allowing the court to address emerging social and political problems directly. This has been particularly evident in environmental

jurisprudence and the recognition of unenumerated rights, such as the right to privacy.

Challenges: Judicial Activism vs. Overreach

The expansion of judicial power has led to debates regarding Judicial Overreach.

- **Activism:** Celebrated as "affirmative jurisprudence" that fills legislative gaps to protect civil liberties.
- **Overreach:** Occurs when courts assume legislative or administrative functions, such as framing detailed environmental policies or police reforms. Critics argue this undermines democratic accountability and the separation of powers by infringing upon the political sphere.

Studies show that "activist" judgments often spike during periods of political instability or when citizen expectations of the government are not met.

Conclusion

The doctrine of Constitutional Supremacy in India is not a static legal principle but a dynamic and living reality, meticulously maintained by a judiciary that serves as the "balance wheel" of the world's largest democracy. This research paper has demonstrated that the Constitution of India stands as the ultimate *Grundnorm*, from which every legislative act and executive decree must draw its legitimacy. The expanding role of judicial review has been the primary vehicle through which this supremacy is enforced, evolving from a narrow, literal interpretation of the text into a robust, substantive mechanism for the protection of individual dignity and the rule of law.

The journey from the restrictive "procedure established by law" in the early 1950s to the expansive "just, fair, and reasonable" standard post-1978 highlights a judiciary that has grown increasingly conscious of its role as the "sentinel on the qui vive." By internalizing the concept of substantive due process and lowering the barriers to justice through Public Interest Litigation (PIL), the courts have ensured that the Constitution remains accessible to the marginalized and the voiceless. The formulation of the "Basic Structure Doctrine" remains perhaps the most significant judicial innovation in global constitutional history, providing an indestructible shield against the potential for "constitutional suicide" by political majorities. It ensures that the essential identity of the Indian State - characterized by secularism, federalism, and democracy - cannot be eroded by the transient whims of the legislature. However, as this role expands, the tension between judicial activism and judicial overreach remains a critical challenge for the future of Indian governance. While the

judiciary must remain proactive in filling legislative vacuums and correcting executive excesses, it must also exercise "judicial self-restraint" to maintain the delicate balance of the separation of powers. The legitimacy of judicial review rests on its ability to act as a counter-majoritarian check without usurping the functional autonomy of the elected branches.

Constitutional Supremacy is the heartbeat of the Indian Republic, and judicial review is the mechanism that ensures that heartbeat remains steady. As India navigates the complexities of the 21st century - from digital privacy concerns to socio-economic inequalities - the judiciary's role in interpreting the constitutional text will continue to expand. For the democratic fabric of the nation to remain resilient, the power of judicial review must be exercised with both courage and caution, ensuring that the spirit of the Constitution survives the political shifts of any era. Ultimately, the strength of the Indian Constitution lies not just in its written words, but in the unwavering commitment of the judiciary to uphold its supremacy against all odds.

Conflict of Interest

There is no conflict of interest between the authors in this manuscript.

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