



BEYOND JUDICIAL REVIEW: THE EXPANDING DOMAIN OF JUDICIAL OVERSIGHT IN INDIA

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Judicial Review signifies the authority of a court to determine whether a legislative provision, executive directive, or any governmental action aligns with the constitutional framework. If the court finds any inconsistency, it possesses the power to render such measures invalid. This doctrine is a cornerstone of federal governance. In a federal setup, the judiciary is rightly considered the guardian of the Constitution and the defender of individual freedoms. Judicial Review serves as a crucial instrument in upholding constitutional supremacy by ensuring that legislative and executive actions do not transgress the boundaries set by the Constitution. This doctrine empowers the judiciary to act as a safeguard against arbitrary governance, preventing the misuse of power by any member of the state. By striking down unconstitutional laws or executive orders, Judicial Review reinforces the principles of democracy, federalism, and the rule of law, thereby preserving the rights and liberties of individuals. The doctrine of judicial review was established in the United States through the landmark case *Marbury v. Madison*¹ in 1803. This case granted courts the authority to assess the constitutionality of laws and governmental actions, ensuring they align with the Constitution. By affirming this power, the judiciary became a crucial check on the legislative and executive branches, reinforcing the principles of constitutional governance. ‘Judicial Review is the cornerstone of constitutionalism, which implies limited government.’² Judicial Review is not a distinct authority explicitly assigned to the judiciary. Instead, it naturally arises from the court’s inherent function of interpreting legal provisions, including the Constitution, while resolving disputes. “From the authority to ascertain and determine the law in a given case, there necessarily results in cases of conflict, the duty to declare and enforce the rule of the supreme law and reject that of an inferior act of legislation which, transcending the Constitution, is of

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¹ *Marbury v. Madison*, 5 U.S. (1 Cranch) 137 (1803)

² S.C. Dash, *The Constitution of India: A Comparative Study*, p. 334

no effect, and binding on no one. This is not the exercise of a substantive power to review and nullify acts of Congress, for no such substantive power exists. It is simply a necessary concomitant of the power to hear and dispose of a case or controversy properly before the Court, to the determination of which must be brought the test and measure of the law.”³ The Constitution of India is based on a federal structure and serves as the supreme law of the land. It allocates legislative authority among the Union, Parliament, and State legislatures. As a result, the Supreme Court and High Courts ensure that no governing body exceeds its jurisdiction. If any legislative enactment contravenes a constitutional provision and is brought before a competent court, it may be declared unconstitutional. K. V. Rao writes: 'In a democracy, public opinion is passive, and in India, it is still worse, and that is all the reason why the judiciary must come to our rescue. Otherwise... the constitution becomes ill-balanced and leans heavily on executive supremacy and tyranny of the majority, and that was not the intention of the makers.'⁴ Four pivotal articles in the Constitution of India serve as guardians of fundamental rights. Article 13 fortifies the essence of Judicial Review, striking down any law that contravenes these rights. Articles 32 and 226 empower courts to issue Writs, ensuring swift redressal against violations. Even in times of national emergency under Article 359, the inviolability of Articles 20 and 21 remains intact, shielding individuals from state overreach. Through the lens of Judicial Review, the judiciary emerges as the unwavering sentinel of constitutional liberties, preserving the sanctity of fundamental rights against arbitrary encroachments. Judicial Review can be categorised into constitutional, statutory, administrative, procedural, and substantive review. Constitutional review assesses the validity of legislative, executive, and administrative actions against the Constitution. Statutory review ensures laws are correctly applied and consistent with legal provisions. Administrative review examines agency decisions for statutory compliance, procedural correctness, and reasonableness. Procedural review ensures due process and fair trial principles are followed. Substantive review evaluates the fairness and reasonableness of laws and decisions, focusing on their merits rather than just procedures. Judicial Review in India has evolved through landmark judgments that have shaped constitutional interpretation and fundamental rights. In *Kesavananda Bharati v State of Kerala* (1973),⁵ the Supreme Court established the Basic Structure Doctrine, asserting that Parliament cannot amend the Constitution's fundamental framework, reinforcing Judicial Review as a safeguard against arbitrary amendments. This was

³ Justice Sutherland in *Adkins v. The Children's Hospital*, 261 U.S. 525 (1923)

⁴ K.V. Rao, *Parliamentary Democracy in India*, p. 213

⁵ *Kesavananda Bharati v. State of Kerala*, (1973) 4 SCC 225

reaffirmed in *Indira Nehru Gandhi v. Raj Narain* (1975),⁶ where judicial review itself was declared a part of the Basic Structure. The case of *S. R. Bommai v. Union of India* (1994)⁷ further emphasised Judicial Review by holding that federalism, secularism, and democracy are essential features that cannot be altered, allowing courts to strike down laws violating these principles. In *Maneka Gandhi v. Union of India* (1978),⁸ the judiciary expanded the interpretation of personal liberty under Article 21, ensuring that restrictions must pass the test of reasonableness and fairness, thereby strengthening judicial oversight over executive actions. Similarly, in *Puttaswamy v. Union of India* (2017),⁹ the Supreme Court recognised the right to privacy as a fundamental right, demonstrating the Judicial Review's role in protecting individual freedoms. Earlier, in *Shankari Prasad v. Union of India* (1951)¹⁰ and *Sajjan Singh v. State of Rajasthan* (1965),¹¹ the Supreme Court upheld Parliament's power to amend fundamental rights, but in *Golaknath v. State of Punjab* (1967),¹² the Court overruled these decisions, declaring that Parliament could not amend fundamental rights, marking a turning point in Judicial Review. The *A. K. Gopalan v. State of Madras* (1950)¹³ case initially took a narrow view of Article 21, allowing restrictions on personal liberty based on procedure established by law, but this was later overturned in the *Maneka Gandhi Case*, expanding Judicial Review to ensure laws must be just, fair, and reasonable. The evolution of Judicial Review in India underscores the judiciary's role in preserving Constitutional supremacy, preventing Legislative and Executive excesses, and protecting Fundamental Rights.

Judicial Review, though a fundamental aspect of Constitutional Governance in India, has a limited scope in its application. It primarily functions as a scrutiny mechanism, ensuring that laws and executive actions conform to Constitutional provisions. However, Judicial Review does not extend to policy evaluation or determining the wisdom of legislative or executive decisions. The judiciary cannot interfere in matters of policy formulation unless Fundamental rights or Constitutional mandates are violated. This limitation often renders Judicial Review ineffective in ensuring full compliance with Constitutional Principles. Additionally, the judiciary's decisions, though binding, lack strong enforcement mechanisms, as seen in cases like *I.C. Golaknath v. State of Punjab*, where Article 13(4) was struck down, or *Minerva Mills*

⁶ *Indira Nehru Gandhi v. Raj Narain*, 1975 Supp SCC 1

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

⁸ *Maneka Gandhi v. Union of India*, (1978) 1 SCC 248

⁹ *Justice K. S. Puttaswamy (Retd.) v. Union of India*, (2017) 10 SCC 1

¹⁰ *Shankari Prasad v. Union of India*, AIR 1951 SC 458

¹¹ *Sajjan Singh v. State of Rajasthan*, (1965) 1 SCR 933

¹² *I. C. Golaknath v. State of Punjab*, (1967) 2 SCR 762

¹³ *A. K. Gopalan v. State of Madras*, AIR 1950 SC 27

v. Union of India,¹⁴ where Article 368(4) and (5) were invalidated, yet these provisions remain within the Constitution due to legislative inaction. Similarly, Supreme Court directives on same-sex marriage¹⁵ and sedition laws¹⁶ have faced parliamentary resistance, further highlighting the judiciary's limited capacity to enforce its decisions. Despite these limitations, Judicial Activism has emerged as a mechanism through which courts assert their authority in matters requiring Constitutional Intervention. Judicial Review, unlike Judicial Overreach, is a rational and necessary approach that strengthens democracy by compelling the legislature or executive to act within Constitutional Limits. However, when courts exceed their jurisdiction and intervene irrationally in legislative or executive matters, their actions amount to Judicial Overreach. Judicial Overreach disturbs the Doctrine of Separation of Powers and leads to an imbalance among the three branches of government. It is essential to distinguish between Judicial Review and Judicial Overreach. Judicial Review is limited to legal scrutiny, while Judicial Overreach signifies an unwarranted expansion of judicial power. To overcome the constraints of Judicial Review while avoiding Judicial Overreach, Judicial Oversight must replace the current model. Judicial Oversight refers to a structured framework where courts not only review laws but also ensure their implementation and compliance with Constitutional Principles. Unlike Judicial Review, which merely scrutinises and provides persuasive directives, Judicial Oversight would establish mechanisms for continued supervision over executive and legislative actions, ensuring that judicial pronouncements are not ignored or overridden. Judicial Oversight would not interfere with policy formulation but would ensure that policies are implemented in alignment with Constitutional mandates. Unlike Judicial Overreach, which represents irrational judicial interference, Judicial Oversight would function within the boundaries of Constitutionalism, ensuring accountability without disrupting the Separation of Powers.

The notion of Judicial review, which serves as a fundamental mechanism to uphold Constitutional Supremacy, has a notably narrow scope when it comes to personal laws in India. The precedent set in *State of Bombay v. Narasu Appa Mali*¹⁷ established that personal laws do not fall within the definition of "law" under Article 13 of the Constitution of India, thereby placing them beyond the purview of judicial scrutiny. This judicial position has created a

¹⁴ *Minerva Mills Ltd. & Ors. v. Union of India & Ors.*, AIR 1980 SC 1789

¹⁵ *Supriyo and Ors. vs. Union of India (UOI)* (17.10.2023 - SC): MANU/SC/1155/2023

¹⁶ *The Hindu*, 'SC Asks Centre, States to Not File Fresh FIRs in Sedition Cases' (*The Hindu*, 11 May 2022) <https://www.thehindu.com/news/national/sc-asks-centre-states-to-not-file-fresh-firs-in-sedition-cases/article65403622.ece> accessed 23 March 2025.

¹⁷ *State of Bombay v Narasu Appa Mali* AIR 1952 Bom 84

significant limitation, as it allows certain discriminatory practices within personal laws to persist unchecked, despite the progressive development of Constitutional Jurisprudence. However, this limitation is not absolute—when a personal law is codified through legislative enactments, such as the Hindu Marriage Act or the Hindu Succession Act, it becomes subject to Judicial Review. Since these codified laws qualify as "laws" under Article 13, they can be examined and invalidated if found to violate fundamental rights. This distinction between codified and uncoded personal laws has been widely criticised, as it results in an inconsistent application of Constitutional Principles. In this regard, if Judicial Review were to be replaced or substituted by a broader mechanism such as Judicial Oversight, it could address these inconsistencies more effectively. Unlike Judicial Review, which operates within certain Constitutional constraints, Judicial Oversight has a wider parameter, allowing scrutiny of every segment of law—whether statutory, personal, or customary—ensuring that no legal provision remains beyond Constitutional Examination. This broader mechanism would reinforce the judiciary's role in safeguarding fundamental rights and preventing any law, codified or uncoded, from evading constitutional scrutiny.

The necessity for Judicial Oversight arises from the judiciary's inability to enforce its decisions effectively under Judicial Review. In cases like *I.C. Golaknath* and *Minerva Mills*, Judicial Review led to striking down unconstitutional provisions, yet these provisions still exist due to legislative inaction. This highlights the lack of authoritative enforcement under Judicial Review. Similarly, Judicial Oversight would ensure that the Supreme Court's directives on matters like same-sex marriage and sedition laws are not disregarded by Parliament. Unlike Judicial Overreach, which results in the judiciary encroaching upon legislative functions irrationally, Judicial Oversight would function as a Constitutional check, ensuring compliance with judicial decisions without exceeding judicial authority. Therefore, Judicial Oversight must replace Judicial Review to address its shortcomings while preventing Judicial Overreach. It would create a balanced mechanism where courts act as Constitutional watchdogs, ensuring compliance with Constitutional mandates without unjustified interference in legislative or executive affairs. Judicial Oversight, if institutionalised, would bridge the gap between judicial authority and enforcement, ensuring that constitutional provisions and judicial directives are respected, upheld, and effectively implemented.