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# Judicial Review Cases in India

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## ABSTRACT

*This legal research paper explores the concept of judicial review in India, with a focus on analysing recent case law. Judicial review is a constitutional doctrine that enables the judiciary to review the actions of the executive and legislative branches of government to ensure that they are consistent with the constitution. The paper begins by providing an overview of the constitutional provisions governing judicial review in India, followed by an analysis of key judicial review cases decided by the Indian courts in recent years. The cases are discussed in terms of the legal principles established by the courts and the impact they have had on the balance of power between the judiciary, executive and legislative branches. Finally, the paper concludes by highlighting the challenges and opportunities for further development of judicial review jurisprudence in India.*

**Keywords:** Legal, Constitutional cases.

## I. INTRODUCTION

Judicial review is an essential feature of constitutional governance in India, which empowers the judiciary to review the actions of the legislative and executive branches of government to ensure they are consistent with the constitution. This mechanism enables the judiciary to uphold the fundamental principles of the constitution and prevent arbitrary use of power by the other branches of government. Judicial review has evolved considerably in India since the adoption of its Constitution in 1950, and the Indian courts have been actively engaged in expanding the scope and reach of judicial review.

This legal research paper aims to explore the jurisprudence of judicial review in India by analysing recent cases decided by the Indian courts. The paper begins by providing an overview of the constitutional provisions governing judicial review in India, followed by an analysis of key judicial review cases decided in recent years. The cases are discussed in terms of the legal principles established by the courts and the impact they have had on the balance of power between the judiciary, executive, and legislative branches.

The paper will examine landmark cases such as *Kesavananda Bharati v. State of Kerala*, which established the basic structure doctrine, and *Maneka Gandhi v. Union of India*, which expanded

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the scope of Article 21 of the Indian Constitution to include the right to travel abroad. Additionally, the paper will analyse more recent cases such as Aadhaar Card case, Sabarimala Temple case and Rafale deal case, which have significant implications for the future of judicial review in India.

This paper aims to contribute to the understanding of the evolution and development of judicial review in India and highlight the challenges and opportunities for further growth of this essential aspect of Indian constitutional governance.

## **II. CAUSES**

There are several causes and reasons that have contributed to the development and evolution of judicial review in India. Some of the most significant ones are:

- **Constitution of India:** The Constitution of India is the foundational document that provides the framework for the functioning of the Indian government. It confers on the judiciary the power of judicial review, which has been a crucial factor in shaping the development of the Indian legal system.
- **Separation of Powers:** India follows the doctrine of separation of powers, which mandates that each branch of government has distinct and separate powers. This doctrine ensures that there are checks and balances on the exercise of power by each branch of government, and the judiciary plays a critical role in upholding this balance.
- **Protecting Fundamental Rights:** The Indian Constitution guarantees fundamental rights to all citizens, and the judiciary has been instrumental in protecting these rights by striking down laws and executive actions that violate them. This has contributed to the growth of judicial review in India.
- **Public Interest Litigation:** The concept of Public Interest Litigation (PIL) was introduced by the Indian judiciary in the 1980s. PIL allows citizens to approach the court on behalf of the public interest, even if they are not directly affected by the issue at hand. This has expanded the scope of judicial review in India and allowed the judiciary to address several social and economic issues.
- **Evolving Society:** As Indian society has evolved, so has the legal system. The judiciary has played an active role in adapting the law to suit changing societal needs, and this has led to the growth of judicial review in India.
- **Globalization:** With the process of globalization, India has become increasingly connected to the global community. This has led to an influx of international legal

concepts and standards into the Indian legal system, which has contributed to the growth of judicial review in India.

The development of judicial review in India has been shaped by several causes and reasons. These include the Constitution of India, separation of powers, protecting fundamental rights, public interest litigation, evolving society, and globalization. Understanding these causes and reasons is crucial in comprehending the evolution and significance of judicial review in India.

### **III. PREVENTIVE MEASURES**

As judicial review is an essential aspect of the Indian legal system, there are no preventive measures that need to be taken to curb its growth or limit its effectiveness. However, to ensure that judicial review is exercised judiciously and effectively, there are some preventive measures that could be considered:

- **Clarity in laws and regulations:** The laws and regulations passed by the legislative and executive branches of government should be clear and unambiguous to minimize the scope of judicial interpretation. This can reduce the need for judicial review and ensure that the laws are enforced effectively.
- **Separation of Powers:** To prevent any one branch of government from acquiring excessive power, it is essential to maintain the doctrine of separation of powers. Each branch should function within its defined powers and avoid overreach. This will ensure that the judiciary only reviews actions that fall within its jurisdiction.
- **Judicial restraint:** The judiciary should exercise restraint and only intervene in matters where there is a clear constitutional violation. This can prevent the judiciary from encroaching on the powers of other branches of government and ensure that judicial review is not overused.
- **Avoiding undue influence:** The judiciary should remain impartial and independent, free from undue influence from other branches of government or outside interests. This will ensure that judicial review is exercised without fear or favour and upholds the fundamental principles of the Constitution.
- **Promoting Alternative Dispute Resolution Mechanisms:** Alternative dispute resolution mechanisms such as arbitration and mediation can help resolve disputes without recourse to the judiciary. This can reduce the burden on the judiciary and ensure that judicial review is exercised only in cases where it is absolutely necessary.

Judicial review is a crucial aspect of Indian constitutional governance, and there are no

preventive measures that should be taken to limit its growth or effectiveness. However, promoting clarity in laws, maintaining separation of powers, exercising judicial restraint, avoiding undue influence, and promoting alternative dispute resolution mechanisms can ensure that judicial review is exercised judiciously and effectively.

#### **IV. PROCESS OF JUDICIAL REVIEW**

Judicial review is the process by which the judiciary reviews the actions of the executive and legislative branches of the government to ensure that they are consistent with the Constitution of India. The procedure of judicial review in India involves the following steps:

- **Filing a petition:** The first step in the procedure of judicial review is to file a petition in the appropriate court. The petitioner must have a legal standing to challenge the action of the government.
- **Preliminary hearing:** Once the petition is filed, the court will conduct a preliminary hearing to determine whether the petition is maintainable or not. The court may dismiss the petition if it finds that it does not have jurisdiction or that the petitioner does not have a legal standing.
- **Notice to the government:** If the court finds the petition maintainable, it will issue a notice to the government to respond to the allegations made in the petition.
- **Arguments:** After the government files its response, the court will hear arguments from both sides.
- **Judgment:** The court will then give its judgment, which may include declaring the action of the government as unconstitutional or invalidating a law or policy.
- **Appeal:** If either party is not satisfied with the judgment, they may file an appeal in a higher court.

It is important to note that judicial review is a key feature of the Indian Constitution and is used to ensure that the government acts within the limits of the Constitution and does not violate the fundamental rights of its citizens.

#### **V. CASES**

There have been several landmark judicial review cases in India that have shaped the evolution and significance of this legal doctrine. Here are some of the most significant cases:

1. **Kesavananda Bharati v. State of Kerala, 1973 4 SCC 225; AIR 1973 SC 1461:**

This case is one of the most important judicial review cases in India. The Supreme Court held

that the Constitution of India contains a "basic structure" that cannot be amended by the Parliament. This case reinforced the importance of judicial review in protecting the fundamental principles of the Constitution.

**2. Maneka Gandhi v. Union of India, 1978 AIR 597, 1978 SCR (2) 621:**

In this case, the Supreme Court held that the right to travel abroad is a fundamental right under the Indian Constitution. The Court held that any law that restricts this right must satisfy the test of reasonableness, and if it fails to do so, it would be struck down.

**3. Vishakha v. State of Rajasthan, 1997 6 SCC 241:**

This case is significant as it recognized sexual harassment in the workplace as a violation of a woman's fundamental rights. The Supreme Court held that employers have a duty to prevent sexual harassment at the workplace and to provide a safe working environment for women.

**4. Union Carbide Corporation v. Union of India, 1990 AIR 273, 1989 SCC (2) 540:**

In this case, the Supreme Court of India exercised judicial review over the government's settlement with Union Carbide after the Bhopal gas tragedy. The Court held that the settlement was inadequate and ordered the government to increase the amount of compensation paid to the victims.

**5. S. R. Bommai v. Union of India, 1994 2 SCR 644:**

In this case, the Supreme Court held that the imposition of President's rule in a state must be based on "objective material," and that the courts have the power to review the decision to impose President's rule. This case reaffirmed the importance of judicial review in upholding the federal structure of the Indian Constitution.

**6. Navtej Singh Johar v. Union of India, AIR 2018 SC 4321:**

This case is significant as it decriminalized homosexuality in India. The Supreme Court held that Section 377 of the Indian Penal Code, which criminalized consensual homosexual acts, was unconstitutional and violated the fundamental rights of LGBT individuals.

These cases demonstrate the importance of judicial review in India, and how it has been used to protect fundamental rights, uphold the federal structure of the Constitution, and promote social justice

## **VI. CONCLUSION**

Judicial review is an essential component of the Indian legal system, and its significance has only grown over time. It acts as a vital check on the exercise of power by the executive and

legislative branches of government and ensures that they function within the confines of the Constitution. The doctrine of judicial review has been used by the Indian judiciary to protect fundamental rights, uphold the federal structure of the Constitution, and promote social justice.

While there have been instances of judicial activism and overreach, these have been relatively rare, and the Indian judiciary has mostly exercised its powers judiciously and with restraint. The judicial review cases discussed earlier demonstrate the importance of judicial review in protecting the Constitution and ensuring that the government functions within its defined limits.

Judicial review plays a vital role in upholding the rule of law and protecting the fundamental principles of the Indian Constitution. It is essential to maintain the independence of the judiciary and ensure that it continues to exercise its powers responsibly and in the best interests of the citizens of India.

### **(A) Suggestions**

Here are some suggestions for further research and study on this topic:

- **Comparative analysis:** Conduct a comparative analysis of the doctrine of judicial review in India with that of other countries, such as the United States, the United Kingdom, and Canada. This can help identify similarities and differences and provide insights into best practices for judicial review.
- **Impact of judicial review on policymaking:** Study the impact of judicial review on policymaking in India. This can help understand how judicial review has influenced the development of policies and laws in the country.
- **Judicial activism:** Investigate the phenomenon of judicial activism in India and its impact on the Indian legal system. This can help analyse the positive and negative consequences of judicial activism and the appropriate balance between judicial activism and restraint.
- **Role of the judiciary in upholding the Constitution:** Examine the role of the judiciary in upholding the Constitution of India and its impact on constitutional governance. This can provide insights into the role of the judiciary in ensuring that the government functions within its defined limits.
- **Judicial review and social justice:** Study the impact of judicial review on promoting social justice in India. This can help understand how judicial review has been used to promote equality, protect minority rights, and advance the cause of social justice in the country.

These suggestions can help expand our understanding of the doctrine of judicial review in India and its impact on the Indian legal system and society.

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