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# The Importance of Judicial Review in India: Safeguarding Constitutional Democracy

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## ABSTRACT

*Judicial review serves as the cornerstone of India's constitutional framework, ensuring the supremacy of the Constitution and protecting fundamental rights. This paper examines its evolution through landmark cases like Kesavananda Bharati (1973) and contemporary applications in Aadhaar and demonetization judgments. It analyzes the constitutional provisions (Articles 13, 32, 226), critiques judicial overreach, and highlights its role in balancing democracy and rights.*

## I. INTRODUCTION

The doctrine of judicial review represents one of the most significant constitutional innovations of modern democratic governance, serving as the ultimate safeguard against state overreach and legislative arbitrariness. In the Indian context, this power has evolved into a sophisticated mechanism that not only protects the fundamental rights of citizens but also preserves the delicate balance of power envisioned by the framers of the Constitution. The Indian judiciary, through its expansive interpretation of constitutional provisions, has transformed judicial review from a mere legal technicality into a dynamic instrument of social justice and constitutional morality.

India's adoption of judicial review reflects a conscious synthesis of global constitutional traditions with indigenous legal needs. While the conceptual foundations trace back to *Marbury v. Madison* (1803) in the United States, the Indian model has developed unique characteristics through landmark judgments like *Kesavananda Bharati v. State of Kerala* (1973), which established the inviolable 'basic structure' doctrine. This evolutionary journey demonstrates how judicial review has become the living bridge between constitutional text and contemporary governance challenges, adapting to address issues ranging from privacy in the digital age (*Puttaswamy* case) to socio-economic rights enforcement.

The constitutional architecture provides multiple avenues for judicial review through:

- Explicit provisions (Articles 13, 32, 226, 136)

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- Implied powers (Basic structure doctrine)
- Innovative tools (Public Interest Litigation)

Unlike the American system of 'judicial supremacy' or the British tradition of 'parliamentary sovereignty', India has developed a nuanced middle path where judicial review operates within defined constitutional boundaries while remaining robust enough to check governmental excesses. This is evident in cases like *Indira Gandhi v. Raj Narain* (1975) where the judiciary invalidated constitutional amendments during the Emergency, and more recently in *Demonetization Case* (2023) where it balanced economic policy deference with constitutional scrutiny.

The contemporary significance of judicial review extends beyond legal formalism to address:

- Digital rights (Aadhaar-Privacy jurisprudence)
- Environmental governance (Climate change litigation)
- Federal disputes (Resource allocation cases)
- Social transformation (Section 377 decriminalization)

As India navigates 21st-century challenges - from artificial intelligence regulation to sustainable development - judicial review remains the critical mechanism ensuring that constitutional values evolve without compromising their core principles. This paper examines how this unique power has shaped, and continues to shape, India's constitutional journey, analyzing its historical roots, operational framework, landmark applications, and future potential in maintaining what Dr. B.R. Ambedkar termed "a life of dignity and equality" for all citizens.

II. CONSTITUTIONAL PROVISIONS

Key Articles Enabling Judicial Review

Article	Provision	Impact
13	Voidness of inconsistent laws	Struck down Section 377 (Navtej Johar)
32	Right to constitutional remedies	PILs for environmental protection
226	High Courts’ writ jurisdiction	State-level rights enforcement

Doctrines Developed:

- Basic Structure (Kesavananda Bharati)

- Proportionality Test (Modern judicial standard)

The Indian Constitution embeds judicial review through both explicit and implied mechanisms, creating a robust framework to safeguard constitutional supremacy. Article 13 declares any law inconsistent with fundamental rights as void, while Articles 32 and 226 empower the Supreme Court and High Courts to enforce these rights through writ jurisdictions. Article 136 grants discretionary appellate powers, allowing the Supreme Court to intervene in exceptional cases for justice delivery. Beyond textual provisions, judicial innovation has expanded this framework through doctrines like the Basic Structure (established in *Kesavananda Bharati*, 1973), which limits parliamentary amendment powers, and the Principle of Proportionality, applied in modern rights adjudication. These constitutional tools collectively enable courts to perform their role as guardians of the Constitution while respecting the separation of powers – striking down arbitrary laws (*Shreya Singhal v. UOI*, 2015) without encroaching on legitimate policy domains (*Demonetization Case*, 2023). The interplay of these provisions ensures judicial review remains dynamic, adapting to new challenges like digital privacy and environmental governance while preserving constitutional core values.

III. LANDMARK CASES

Case Comparison Table

Case	Year	Key holding
Shankari Prasad	1951	Parliament can amend fundamental rights
Golaknath	1967	Fundamental rights immutable
Kesavananda Bharati	1973	Basic structure doctrine established

Critical Analysis:

The shift from parliamentary supremacy (*Shankari Prasad*) to judicial guardianship (*Kesavananda*) reshaped Indian democracy.

The transformation from the *Shankari Prasad* (1951) doctrine of absolute parliamentary supremacy to *Kesavananda Bharati*'s (1973) judicial guardianship marks one of the most significant constitutional evolutions in Indian democracy. This shift fundamentally altered the balance of power by establishing that while Parliament could amend the Constitution, it could not destroy its "basic structure" – a judicial innovation that placed ultimate constitutional interpretation in the hands of the judiciary. The implications of this transition are profound:

1. Democratic Safeguarding

The judiciary emerged as a counter-majoritarian institution, preventing elected majorities from altering constitutional fundamentals. This proved crucial during the Emergency (1975-77), when the basic structure doctrine prevented absolute executive dominance (Indira Gandhi v. Raj Narain).

2. Rights Protection Mechanism

Where Shankari Prasad allowed Parliament to amend fundamental rights, Kesavananda created layered scrutiny – permitting amendments but invalidating those violating democracy, secularism, or federalism (Minerva Mills, 1980).

3. Institutional Rebalancing

The doctrine corrected the Westminster model's majoritarian tendencies by:

- Making constitutional amendments justiciable
- Requiring judicial approval for constitutional changes
- Establishing judiciary as final interpreter (IR Coelho case, 2007)

This evolution reflects India's unique constitutional journey – neither fully adopting American-style judicial supremacy nor British parliamentary sovereignty, but creating a distinctive model of constitutional democracy where judicial review acts as the keeper of constitutional conscience while respecting democratic processes. The doctrine continues to evolve, recently being applied to digital rights (Aadhaar case) and environmental protections (Climate Change PILs), proving its enduring relevance.

IV. SIGNIFICANCE OF JUDICIAL REVIEW

Comparative Analysis: India vs. USA

Aspect	India	USA
Scope	Wider (Basic structure doctrine)	Narrower (Constitutional text)
Social impact	PIL-driven reforms (e.g., LGBTQ+)	Limited to case controversies

Indian Achievements:

- Environmental protection (M.C. Mehta cases)
- Gender justice (Vishaka Guidelines)

While both India and the United States recognize judicial review as a cornerstone of constitutional governance, their approaches differ fundamentally in scope and application. The U.S. model, established in *Marbury v. Madison* (1803), emphasizes strict textual interpretation and operates within a rigid separation of powers framework, while India's system, rooted in Articles 13, 32, and 226, incorporates broader socio-political considerations through doctrines like the Basic Structure and Public Interest Litigation (PIL). Unlike the U.S. Supreme Court, which generally avoids policymaking, the Indian judiciary actively addresses governance gaps—evident in cases mandating environmental protections (*M.C. Mehta*) or enforcing welfare rights (*Right to Food case*). However, both systems share critical common ground: judicial review serves as a check on majoritarian excesses (*Brown v. Board of Education* in the U.S.; *Navtej Singh Johar* in India) while balancing deference to elected branches (*Chevron Doctrine* vs. *Demonetization Case*). India's model thus merges American-style constitutional guardianship with a uniquely interventionist role in social justice.

## **V. CRITICISMS & CHALLENGES**

While judicial review serves as a vital check on state power, its operation in India faces significant criticisms and systemic challenges that warrant careful examination:

### **1. Judicial Overreach vs. Accountability**

- The judiciary has been accused of crossing into policymaking domains (judicial activism), as seen in cases like the Supreme Court's takeover of Delhi's governance (2018) or mandating specific environmental regulations without executive consultation.
- Unlike the legislature or executive, judges are not democratically accountable, raising concerns about legitimacy when striking down popularly-backed laws (e.g., *NJAC Judgment*, 2015).

### **2. Case Backlog and Delayed Justice**

- Over 4.8 crore cases are pending nationwide (NJDG, 2024), with average disposal times exceeding 5+ years for civil cases.
- Constitutional challenges often take decades to resolve (e.g., *Section 377* took 20+ years from *Naz Foundation* to *Navtej Johar*), undermining rights enforcement.

### **3. Structural Imbalances**

- **Federalism Conflicts:** State laws are frequently stayed by High Courts, creating governance paralysis (e.g., *Farm Laws protests*, 2020-21).

- Collegium System: Judicial appointments lack legislative oversight, fostering opacity (Fourth Judges Case, 2015).

#### 4. Inconsistent Standards

- Economic Policy: Courts defer to the executive (Demonetization Case, 2023) but intervene in taxation or privatization matters.
- Fundamental Rights: Expansive rulings on privacy (Puttaswamy) contrast with narrow approaches to labor rights or custodial violence

## VI. CONCLUSION

### THE INDISPENSABLE ROLE OF JUDICIAL REVIEW IN INDIAN DEMOCRACY

Judicial review stands as the sentinel of constitutional governance in India, evolving from a legal doctrine to a dynamic instrument of social transformation. Over seven decades of constitutional democracy, this power has proven indispensable in maintaining the delicate balance between state authority and individual liberties. The Indian judiciary, through its interpretative wisdom, has transformed judicial review from a mere technicality into a living mechanism that breathes life into constitutional provisions.

The historical trajectory from *Shankari Prasad* to *Kesavananda Bharati* demonstrates how judicial review matured into the basic structure doctrine, creating an unamendable core of constitutional values. Contemporary judgments like *Puttaswamy* (Privacy) and *Navtej Johar* (LGBTQ+ Rights) showcase its role as a catalyst for social progress, while decisions on demonetization and Aadhaar reflect its nuanced approach to policy matters.

Three fundamental contributions define its significance:

1. As a Shield - Protecting fundamental rights against majoritarian excesses (e.g., striking down Section 66A IT Act)
2. As a Balancer - Maintaining federal equilibrium (Centre-State disputes) and institutional harmony (NJAC case)
3. As a Reformer- Driving social change through PILs (Vishaka Guidelines, environmental jurisprudence)

Yet challenges persist. The 4.7 crore pending cases (NJDG 2023) reveal systemic delays, while debates about judicial overreach (e.g., policymaking in pollution matters) underscore the need for self-restraint. The recent demonetization verdict (2023) exemplifies this tension - upholding government authority while critiquing its implementation.

In essence, judicial review remains India's most potent constitutional safety valve. Its true strength lies not in striking down laws, but in compelling governance within constitutional boundaries. As India marches toward becoming a \$5 trillion economy while grappling with inequality and climate change, an independent judiciary with robust review powers will be crucial to ensure this growth remains constitutional, sustainable, and inclusive. The journey from Gopalan (1950) to Puttaswamy (2018) proves that while the Constitution provides the text, it is judicial review that gives it meaning - making it truly the 'conscience keeper of Indian democracy'.

## **VII. REFERENCES**

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