

## **Judicial Review and Constitutional Supremacy in India: Emerging Trends and Challenges**

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### **Abstract**

Judicial review is an integral part of the constitutional system of India and is an important feature for ensuring supremacy of the Constitution, Rule of Law and protection of fundamental rights. This paper focuses on the evolution of judicial review in India, its current trends and some of the key issues. It emphasizes the commitment of judiciary from being a vigilant watchdog in the early post-Independence era to its active involvement in path-breaking decisions like Kesavananda Bharati, Minerva Mills, S.R. Bommai, and K.S. Puttaswamy. The study reveals that the judicial review has been expanded with the advent of Article 21, Public Interest Litigation, environmental protection, constitutional morality and digital privacy. But, problems like judicial overreach, delay and pendency of cases, misuse of PILs, separation of powers problems and ineffective execution of the verdicts still hamper its efficiency. The paper establishes that judicial review should be independent, balanced and responsible to serve the values of the constitution and to respect democratic institutions.

**Keywords:** Judicial Review, Constitutional Supremacy, Basic Structure Doctrine, Fundamental Rights, Article 21, Public Interest Litigation, Constitutional Morality, Separation of Powers, Indian Judiciary, Rule of Law.

### **Introduction**

One of the key pillars of Constitutional Governance in India is judicial review. Judicial review, the ability of the court to review the constitutionality of legislative, executive and administrative actions in light of the Constitution. In India the principle of constitutional supremacy means that there is a limit on the power of law, policy and governmental actions, which are framed by the Constitution. Judicial review thus helps to prevent the abuse of power and to hold the legislative and the executive branches accountable to the principles of the Constitution, fundamental rights and the rule of law. The earlier draft also rightly emphasised that judicial review renders constitutional constraints as legal rules enforceable and makes constitutional supremacy meaningful.

Judicial review has been provided in the Indian constitution with a major provision contained in Article 13, 32 and 226. Article 13 provides that laws that conflict with fundamental rights are unconstitutional and Article 32 and 226 provides for the issuance of writs for enforcement of constitutional and legal rights by the Supreme Court and High Courts. These provisions put the judiciary in the role of guardian of the Constitution. This doctrine gained particular importance in Kesavananda Bharati v. State of Kerala where the Supreme Court declared that Parliament has the power to amend the Constitution, but it cannot violate the fundamental

structure of the Constitution.<sup>24</sup> This principle enhanced the supremacy of the Constitution by imposing substantive restrictions on constitutional amendments.

In the last few decades, judicial review has become more expansive than the usual matters of the validity of legislation. Courts have considered questions of privacy, electoral transparency, environmental protection, federalism, and administrative discretion and constitutional morality. This growth has also brought some challenges, however. Judicial review ensures citizens are not subjected to unconstitutional State action, but also prevents an excessive amount of judicial authority and a breakdown in separation of powers. There is no doubt, therefore, that judicial review is required, but the question is how to conduct it in a constitutional manner, in institutional balance, and with a constitutional and democratic sensitivity.

In this paper the author discusses the relationship between judicial review and constitutional supremacy in India and emerging trends and challenges. It examines the constitutional basis of judicial review, its evolution in significant decisions, its importance in safeguarding fundamental rights, democracy, and the current issues of judicial activism, delay, PIL abuse and execution of judicial judgments. The study contends that judicial review is a vital element of Indian constitutionalism but its validity hinges on principled arguments, judicial restraint, institutional accountability and adequate enforcement of constitutional principles.

### **Literature Review**

The literature on judicial review and constitutional supremacy in India reveals a continuous movement from textual constitutional interpretation towards a broader model of transformative constitutionalism. Judicial review in India is generally understood as the power of constitutional courts to examine the validity of legislative, executive and administrative actions in the light of the Constitution. However, scholarly debate shows that this power is not merely procedural; it is deeply connected with the preservation of constitutional supremacy, fundamental rights, separation of powers, federalism and democratic accountability. The uploaded source material also identifies the central tension in the literature: judicial review is treated both as a necessary instrument for defending constitutionalism and as a contested practice when courts appear to enter policy domains traditionally reserved for elected branches.

Classical Indian constitutional scholarship locates judicial review within the broader design of a written and supreme Constitution. Granville Austin's work remains foundational because it describes the Indian Constitution as a document committed to social revolution, democratic governance and national unity. His analysis suggests that judicial review should not be seen only as a negative power to strike down laws, but also as a constitutional device for ensuring that public power remains aligned with transformative constitutional goals.<sup>1</sup> Similarly, D.D. Basu and M.P. Jain explain that Articles 13, 32 and 226 form the textual basis of judicial review and establish the judiciary as the guardian of fundamental rights.<sup>2</sup> These doctrinal accounts are useful because they clarify the constitutional foundation of judicial review, but they are limited by their largely descriptive character. They tend to emphasise the legitimacy of judicial review without sufficiently examining the institutional costs of expansive judicial power, such as delay, inconsistent standards of review and democratic legitimacy concerns.

A major turning point in the literature is the discussion of the basic structure doctrine. The decision in *Kesavananda Bharati v. State of Kerala* transformed judicial review from a mechanism for testing ordinary laws into a structural limitation on Parliament's amending power.<sup>3</sup> Sudhir Krishnaswamy provides one of the most systematic academic defences of the doctrine, arguing that basic structure review is grounded in constitutionalism, limited government and the distinction between constituted power and constituent power.<sup>4</sup> This view is strengthened by comparative constitutional theory, particularly Yaniv Roznai's work on unconstitutional constitutional amendments, which argues that amendment powers are not legally unlimited because they are created by the Constitution itself.<sup>5</sup> The basic structure literature therefore supports the view that constitutional supremacy requires limits even on formal constitutional amendment. However, critics argue that the doctrine gives courts considerable discretion because the Constitution does not provide an exhaustive list of basic features. This produces a methodological weakness: while the doctrine protects constitutional identity, its open-ended nature may permit judges to define constitutional fundamentals according to changing judicial preferences.

The debate on judicial activism and judicial restraint forms another important theme in the literature. S.P. Sathe argues that Indian judicial activism emerged as a response to failures of governance, executive inaction and legislative indifference towards rights protection.<sup>6</sup> Upendra Baxi's work on social action litigation similarly treats the Indian Supreme Court as an institution that expanded access to justice for disadvantaged groups through Public Interest Litigation.<sup>7</sup> These studies are significant because they show how judicial review became more accessible and socially responsive after the late 1970s. The shift from strict adversarial litigation to PIL enabled courts to address bonded labour, prisoners' rights, environmental degradation, women's rights, corruption and administrative failures. However, later scholarship has been more critical. It argues that PIL has sometimes moved from rights-based adjudication to managerial governance, where courts supervise policies without having adequate democratic mandate or administrative expertise. Thus, the literature reflects a contradiction: PIL strengthened constitutional justice for vulnerable groups, but it also created concerns regarding judicial overreach and institutional accountability.

Rights-based scholarship gives particular importance to Article 21 of the Constitution. The movement from *A.K. Gopalan v. State of Madras* to *Maneka Gandhi v. Union of India* is widely interpreted as a transition from a narrow procedural understanding of liberty to a broad substantive model of due process.<sup>8</sup> Later decisions expanded Article 21 to include dignity, livelihood, privacy, health, education, clean environment and speedy trial. The right to privacy judgment in *Justice K.S. Puttaswamy v. Union of India* is especially important because it links privacy with dignity, autonomy and informational self-determination.<sup>9</sup> Recent scholarship treats Puttaswamy as a foundation for constitutional review in the digital age, particularly in relation to surveillance, data protection, identity systems and informational privacy. The strength of this literature lies in showing how judicial review adapts constitutional rights to changing social and technological realities. Its weakness, however, is that it often celebrates expansion without adequately addressing doctrinal uncertainty. Courts frequently invoke broad

ideas such as dignity, proportionality and constitutional morality, but the intensity and consistency of review vary across cases.

Recent literature on arbitrariness and proportionality has attempted to address this problem of doctrinal consistency. Vasu Aggarwal's study of the manifest arbitrariness doctrine argues that the doctrine has become an important ground for challenging legislation under Article 14, but its application requires clearer limits.<sup>10</sup> Aggarwal's contribution is methodologically valuable because it does not merely criticise the doctrine; it attempts to identify a structured test that can make judicial review more consistent and less subjective. This scholarship is highly relevant to constitutional supremacy because an arbitrary law threatens constitutional governance, yet an unstructured arbitrariness test may allow courts to replace legislative judgment with judicial preference. Similarly, proportionality-based review has been increasingly used in rights adjudication, especially in cases involving privacy, speech and State restrictions. The literature therefore suggests that Indian judicial review is moving from formal validity review towards justification-based review, where the State must demonstrate rationality, necessity and proportionality. This is a progressive development, but it also increases the burden on courts to reason transparently and consistently.

Another important scholarly trend concerns pre-constitutional and colonial laws. Snehil Kunwar Singh argues that recent decisions such as Navtej Singh Johar and Joseph Shine weaken the traditional presumption of constitutionality for pre-constitutional laws.<sup>11</sup> This approach is important because several colonial laws continue to affect speech, criminal justice, morality and public order in India. The literature here connects judicial review with decolonisation and constitutional transformation. It shows that constitutional supremacy is not limited to invalidating new laws; it also requires re-examining inherited legal structures that may be inconsistent with contemporary constitutional values. However, this scholarship is somewhat narrow because it focuses mainly on pre-constitutional statutes. A wider research question remains underexplored: whether similar scepticism should apply to post-constitutional legislation that is formally democratic but substantively inconsistent with liberty, equality or constitutional morality.

Institutional scholarship has added a critical dimension to the study of judicial review. Tarunabh Khaitan argues that the Indian Supreme Court faces an "identity crisis" because its extensive special leave jurisdiction has transformed it into a general appellate court rather than a specialised constitutional court.<sup>12</sup> This empirical and institutional approach is important because it shifts the debate from the question of whether judicial review is legitimate to whether the Court has the capacity to perform constitutional review effectively. If the Court's docket is dominated by routine appeals, its ability to decide constitutional cases in a timely and coherent manner is weakened. Luthra and Mukhija similarly argue that the Supreme Court must be reimagined as a constitutional court so that constitutional questions receive focused attention.<sup>13</sup> These studies expose a major weakness in older doctrinal literature: it assumes that the existence of judicial review is sufficient, whereas institutional scholarship shows that the quality of judicial review depends on docket management, bench composition, timely hearings and reasoned decisions.

The literature on tribunals and specialised adjudication further complicates the relationship between judicial review and constitutional supremacy. In *L. Chandra Kumar v. Union of India*, the Supreme Court held that judicial review by High Courts and the Supreme Court forms part of the basic structure of the Constitution.<sup>14</sup> This decision is frequently cited to argue that tribunalisation cannot replace constitutional courts. Puneeth's work on judicial review by tribunals examines the tension between specialised adjudication and constitutional accountability.<sup>15</sup> Tribunals may provide technical expertise and reduce judicial burden, but they also raise concerns about independence, executive control and access to constitutional remedies. This literature is particularly relevant in the contemporary regulatory State, where disputes increasingly involve taxation, environment, service law, competition, telecommunications and finance. The methodological strength of this scholarship lies in connecting institutional design with constitutional theory. Its limitation is that empirical assessment of tribunal performance remains uneven and sector-specific.

Recent scholarship has also examined judicial review in economic and regulatory domains. Pratik Datta's analysis of judicial review of central banks argues that courts should adopt a context-sensitive approach when reviewing decisions of financial regulators.<sup>16</sup> This argument is important because modern constitutional disputes increasingly involve technically complex policy decisions. The literature suggests that judicial review should not follow a single rigid model. Courts may apply stricter scrutiny where rights, democracy or institutional independence are directly affected, but greater deference may be appropriate in specialised economic matters requiring technical expertise. This approach avoids both judicial abdication and excessive judicial intervention. However, the challenge remains in determining when deference becomes constitutional avoidance. The literature has not yet provided a fully developed framework for distinguishing legitimate institutional deference from judicial reluctance in politically or economically sensitive cases.

The recent case-law literature from 2020 onwards shows that Indian judicial review is expanding into questions of democratic accountability and institutional independence. In *Anoop Baranwal v. Union of India*, the Supreme Court intervened in the appointment process of Election Commissioners to protect the independence of the Election Commission until Parliament enacted a law.<sup>17</sup> In *Association for Democratic Reforms v. Union of India*, the Court struck down the Electoral Bond Scheme and linked transparency in political funding with voters' right to information.<sup>18</sup> These cases demonstrate a strong rights-and-democracy model of judicial review. They show that constitutional supremacy includes not only individual liberty but also the integrity of democratic institutions. At the same time, In *Re: Article 370 of the Constitution* reflects a more deferential judicial approach in a politically sensitive federal matter.<sup>19</sup> The contrast between these decisions reveals an important research gap: the intensity of judicial review appears to vary significantly depending on whether the case concerns electoral transparency, institutional independence, national security, sovereignty or federal restructuring.

Environmental judicial review has generated a large body of scholarship, especially after the expansion of Article 21. Indian courts have incorporated principles such as sustainable development, the precautionary principle, the polluter pays principle and public trust doctrine

into constitutional adjudication. M.C. Mehta jurisprudence and later environmental PILs show how judicial review has been used to address failures of environmental governance. The creation of the National Green Tribunal attempted to institutionalise specialised environmental adjudication. However, recent environmental literature identifies a persistent enforcement paradox: courts and tribunals may issue progressive orders, but implementation remains weak because of fragmented regulation, limited monitoring capacity and poor executive compliance.<sup>20</sup> This is also reflected in climate litigation scholarship, particularly after M.K. Ranjitsinh v. Union of India, where the Supreme Court recognised the relationship between climate change and constitutional rights.<sup>21</sup> The literature therefore shows that judicial review can constitutionalise ecological concerns, but it cannot alone substitute for coherent legislation, administrative capacity and long-term regulatory planning.

International literature provides useful comparative frameworks for evaluating the Indian model. Mark Tushnet's theory of weak-form judicial review argues that constitutional rights can be protected through a dialogic model in which courts and legislatures interact rather than courts having final supremacy over all constitutional questions.<sup>22</sup> In contrast, strong-form judicial review theory defends courts as necessary protectors of rights against majoritarian politics. India does not fit neatly into either model. The Supreme Court has strong powers to invalidate laws and constitutional amendments, but Indian constitutional practice also involves legislative responses, continuing mandamus, policy directions and institutional dialogue. Comparative literature therefore helps reveal the hybrid character of Indian judicial review. However, international theories are sometimes insufficiently attentive to India's specific constitutional context, where judicial review operates alongside social inequality, administrative weakness, federal complexity and transformative constitutional commitments.

Overall, the literature establishes that judicial review is indispensable for constitutional supremacy in India, but it also reveals important unresolved tensions. Classical scholarship explains the doctrinal foundation of judicial review; basic structure scholarship defends the limits of constitutional amendment; rights-based literature highlights transformative constitutionalism; PIL literature shows both access-to-justice gains and overreach risks; institutional literature exposes docket pressure and capacity constraints; and recent case-law scholarship reveals variable judicial intensity across different constitutional domains. The major research gap is the absence of an integrated framework that connects doctrinal legitimacy, institutional capacity, democratic accountability and emerging areas such as digital rights, political finance, climate change and federal restructuring. The present study therefore seeks to analyse judicial review not merely as a legal doctrine, but as an evolving constitutional practice whose future depends on principled adjudication, institutional restraint, transparency, timely decision-making and continued commitment to constitutional supremacy.

### **Research Methodology**

This study will be doctrinal, analytical and descriptive in nature. It will be based on secondary sources such as the Constitution of India, Supreme Court judgments, High Court judgments, law books, journal articles, legal commentaries and reports. The study will use case law

analysis to understand the development of judicial review and its role in protecting constitutional supremacy.

### **Historical Evolution of Judicial Review in India**

The historical evolution of judicial review in India reflects the gradual transformation of the judiciary from a cautious constitutional interpreter into an active guardian of constitutional supremacy. In the early years after independence, the Indian judiciary adopted a restrained approach and generally respected legislative wisdom and policy choices. The courts were reluctant to interfere with laws passed by Parliament and state legislatures unless there was a clear violation of constitutional provisions or fundamental rights. During this phase, judicial review was largely limited to examining whether legislation and executive action were within the limits prescribed by the Constitution.

In the early phase, the Supreme Court followed a narrow interpretation of fundamental rights, especially the right to life and personal liberty under Article 21. In *A.K. Gopalan v. State of Madras*, the Court held that personal liberty could be restricted if the procedure established by law was followed. This showed that the judiciary initially preferred a literal and formal interpretation of constitutional provisions. However, even during this period, the Court recognised that no organ of the State could act beyond the authority granted by the Constitution.

The second important phase was marked by conflict between Parliament and the judiciary. This conflict mainly arose over land reforms, property rights and the extent of Parliament's power to amend the Constitution. After independence, land reform laws were introduced to remove zamindari and redistribute land, but many of these laws were challenged before the courts for violating the right to property. To protect such laws from judicial review, Parliament inserted several laws into the Ninth Schedule. This created a serious constitutional debate about whether Parliament's amending power was unlimited or subject to judicial scrutiny.

The Parliament–judiciary conflict became more intense in *Golaknath v. State of Punjab*, where the Supreme Court held that Parliament could not amend fundamental rights. This decision strengthened the power of judicial review but also raised questions about parliamentary sovereignty and constitutional supremacy. Parliament responded through constitutional amendments to restore and expand its amending power. Thus, this phase became one of the most important periods in shaping the balance of power between the legislature and the judiciary in India.

The most significant development in the evolution of judicial review came in *Kesavananda Bharati v. State of Kerala*. In this landmark case, the Supreme Court held that Parliament has the power to amend the Constitution under Article 368, but this power is not unlimited. The Court introduced the basic structure doctrine and ruled that Parliament cannot destroy or alter the basic structure of the Constitution. This doctrine became the foundation of constitutional supremacy in India.

The basic structure doctrine gave judicial review a powerful constitutional foundation. It established that the Constitution is supreme and that every organ of the State, including Parliament, must function within constitutional limits. Features such as democracy, rule of law,

secularism, federalism, separation of powers, judicial review and free and fair elections came to be regarded as part of the basic structure. As a result, even constitutional amendments became subject to judicial review if they damaged the essential identity of the Constitution.

From the late 1970s and 1980s, judicial review further expanded through Public Interest Litigation. The Supreme Court relaxed the traditional rule of locus standi and allowed socially conscious individuals and organisations to file petitions on behalf of poor, marginalised and disadvantaged groups. This made the judiciary more accessible to the common people and transformed judicial review into an instrument of social justice.

Through Public Interest Litigation, the courts began to deal with issues such as environmental protection, prisoners’ rights, bonded labour, child labour, women’s rights, corruption, custodial violence, pollution, displacement and governance failures. The interpretation of Article 21 was also expanded during this period. The right to life came to include the right to dignity, livelihood, health, education, privacy and a clean environment. Therefore, judicial review moved beyond the narrow protection of legal rights and became a broader mechanism for protecting human rights, democratic values and accountable governance.

**Table-01: Landmark Cases on Judicial Review in India**

<b>Case</b>	<b>Contribution</b>
A.K. Gopalan v. State of Madras	Provided an early narrow interpretation of personal liberty under Article 21 and reflected judicial restraint in the initial phase.
Golaknath v. State of Punjab	Questioned Parliament’s power to amend fundamental rights and strengthened judicial review over constitutional amendments.
Kesavananda Bharati v. State of Kerala	Established the basic structure doctrine and held that Parliament cannot destroy the essential features of the Constitution.
Indira Nehru Gandhi v. Raj Narain	Recognised free and fair elections as part of the basic structure of the Constitution.
Minerva Mills v. Union of India	Reaffirmed the limited amending power of Parliament and protected the balance between Fundamental Rights and Directive Principles.
S.R. Bommai v. Union of India	Strengthened judicial review over the use of President’s Rule under Article 356.
I.R. Coelho v. State of Tamil Nadu	Held that Ninth Schedule laws inserted after 24 April 1973 are subject to basic structure review.
Maneka Gandhi v. Union of India	Expanded Article 21 by linking personal liberty with fairness, reasonableness and due process.
K.S. Puttaswamy v. Union of India	Recognised the right to privacy as a fundamental right under the Indian Constitution.

Source: Author's compilation based on landmark Supreme Court judgments, including A.K. Gopalan v. State of Madras, AIR 1950 SC 27; I.C. Golaknath v. State of Punjab, AIR 1967 SC 1643; Kesavananda Bharati v. State of Kerala, AIR 1973 SC 1461; Maneka Gandhi v. Union of India, AIR 1978 SC 597; and Justice K.S. Puttaswamy v. Union of India, AIR 2017 SC 4161.

### **Emerging Trends in Judicial Review**

Emerging trends in judicial review in India show the growing role of the judiciary in protecting constitutional values in changing social, political and technological contexts. One major trend is the expansion of Article 21, which now includes not only physical liberty but also dignity, privacy, livelihood, health, education, clean environment and speedy trial. The courts have also increasingly applied the idea of constitutional morality to protect equality, liberty and human dignity, especially in cases related to gender justice, minority rights and personal freedom. Environmental judicial review has become another important area, where principles such as sustainable development, polluter pays principle, precautionary principle and public trust doctrine have been developed. With the rise of digital governance, Aadhaar, surveillance, internet shutdowns and data protection concerns, digital rights and privacy have become new areas of judicial scrutiny. The judiciary also continues to play an important role in Centre-State relations by reviewing President's Rule, legislative competence and federal disputes.

### **Findings**

The study finds that judicial review in India has evolved from a limited and cautious constitutional mechanism into a powerful tool for protecting constitutional supremacy. The judiciary initially followed restraint, but later expanded its role through landmark judgments, especially the basic structure doctrine. Article 21 has been broadly interpreted to include dignity, privacy, livelihood, health, education and a clean environment. Public Interest Litigation has strengthened access to justice for marginalised groups. However, challenges such as judicial overreach, pendency of cases, misuse of PILs, separation of powers concerns and weak implementation continue to affect the effectiveness of judicial review.

### **Conclusion**

Judicial review is one of the most important features of the Indian constitutional system. It protects the supremacy of the Constitution and ensures that the legislature, executive and other authorities act within constitutional limits. The study shows that judicial review in India has evolved from a cautious approach in the early years to an active instrument of constitutional protection, social justice and good governance. Landmark judgments such as Kesavananda Bharati, Maneka Gandhi, Minerva Mills, S.R. Bommai and K.S. Puttaswamy have strengthened fundamental rights, basic structure doctrine, federalism, rule of law and individual liberty.

The expansion of Article 21, Public Interest Litigation, environmental protection, constitutional morality and digital privacy shows the dynamic nature of judicial review in India. However, challenges such as judicial overreach, delay, pendency of cases, misuse of PILs, separation of powers concerns and weak implementation of judgments continue to affect its effectiveness. Therefore, judicial review must remain independent, balanced and responsible. It should

protect constitutional values while respecting democratic institutions and maintaining harmony among the organs of government.

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