

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS



Open Access, Refereed Journal Multi Disciplinary
Peer Reviewed

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JUDICIAL REVIEW AS A SAFEGUARD OF CONSTITUTIONALISM IN INDIA: AN ANALYSIS OF CONTEMPORARY CONSTITUTIONAL CHALLENGES

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ABSTRACT

India follows the rule of law which means that the Constitution is the supreme law of the land and any law that is against it shall be void. One of the most significant powers vested in the judiciary is judicial review. It is the interposition of the judicial restraint on the legislative as well as the executive organ of the state. Constitutionalism, as a governing principle, emphasizes limited government, the rule of law, and the protection of fundamental rights. The research seeks to analyze the role of the Indian judiciary as a safeguard of constitutionalism through an analysis of recent constitutional controversies and landmark judgments. This study adopts a doctrinal and analytical methodology based on constitutional provisions, judicial precedents, books, journal articles, and recent constitutional developments. The study concludes that judicial review remains indispensable to India's constitutional democracy, although its effectiveness depends upon maintaining an appropriate balance between judicial activism, judicial restraint, and democratic governance.

Keywords: Judicial Review, Constitutionalism, Basic Structure Doctrine, Rule of Law, Transformative Constitutionalism.

INTRODUCTION

Judicial review is the power of the courts of a country to examine the actions of the legislative, executive, and administrative branches of the government and to determine whether such actions are consistent with the Constitution. Those actions which are judged inconsistent are declared unconstitutional and, therefore, null and void². It is a great weapon in the hands of the judges. It comprises the power of a court to hold unconstitutional and unenforceable any law

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² Edward S. Corwin, "Judicial Review" 8 *Encyclopaedia of Social Sciences*, 457 (1930)

or order based upon such law or any other action by a public authority which is inconsistent or in conflict with the basic law of the land.³ The doctrine of judicial review was originated in USA. Originally, the United States Constitution did not contain an express provision for judicial review. It was propounded for the first time in the historic case of *Marbury v. Madison*⁴ by John Marshall the then Chief Justice of USA. He observed that the Constitution is Supreme and it is duty of the court to declare what the law is. This is of very essence of judicial duty. Why otherwise does it (Constitution) direct the judges to take an oath to support it?

Judicial Review is not expressly mentioned in the Indian Constitution though it has been implied in a number of articles⁵. The Constitution of India establishes judicial review as a fundamental mechanism for preserving constitutional supremacy and protecting individual rights. Article 13 empowers the judiciary to invalidate laws that are inconsistent with Fundamental Rights, while Article 32 guarantees the right to directly approach the Supreme Court for their enforcement. Similarly, Article 226 confers broad writ jurisdiction upon High Courts to protect constitutional and legal rights. Further, Article 368, which grants Parliament the power to amend the Constitution, is subject to judicial scrutiny through the Basic Structure Doctrine evolved by the Supreme Court. Collectively, these provisions constitute the constitutional foundation of judicial review and reinforce the role of the judiciary as the guardian of constitutionalism, rule of law, and democratic governance in India. In India, the Supreme Court in the landmark judgment of *Kesavananda Bharati v. State of Kerala*⁶ applied the doctrine of judicial review gave birth to the concept of Basic Structure. In *Indira Nehru Gandhi v. Raj Narain*⁷ the Supreme Court said that the Judicial Review is an integral part and parcel of the Basic Structure doctrine and cannot be removed by any amendment. While in *Minerva Mills Ltd v. Union of India*⁸ the Supreme Court observed that the Constitution has created an independent judiciary which is vested with the power of judicial review to determine the legality of administrative actions and the validity of legislation. It is the sole duty of the judiciary under the Constitution to keep different organs of the state within the limits of the power conferred upon them by the Constitution by exercising power of judicial review⁹.

³ Henry J. Abraham, *The Judicial Process* 315 (7th ed., Oxford University Press, 1998)

⁴ 60:5 US (1 Cranch) 137 (1803)

⁵ The Constitution of India, arts.13, 32, 226, 368

⁶ AIR 1973 SC 1461

⁷ AIR 1975 SC 2299

⁸ AIR 1980 SC 1789

⁹ S. Ramnath, "Judicial Review: Constitutional Safeguard and Protector of Fundamental Rights". *The Indian Journal for Research in Law and Management*, Volume III, Issue 8 (2026) Retrieved from <https://ijrlm.com/journal/judicial-review-constitutional-safeguard-and-protector-of-fundamental-rights/> (last

Professor McIlwain, is credited with introducing the concept of constitutionalism by devoting his six lectures at Cornell University in 1938-1939. He defined it in following words, “Constitutionalism has one essential quality: it is a legal limitation on government; it is the antithesis of arbitrary rule; its opposite is despotic government, the government of will instead of law”¹⁰.

In England, Magna Carta implies constitutionalism¹¹. Constitutionalism ensures that governments function within established legal frameworks and do not exercise arbitrary authority. The Indian Constitution, adopted in 1950, embodies the principles of constitutionalism through provisions such as separation of powers, federalism, judicial independence, and fundamental rights. These principles ensure a democratic system where governmental power is limited and accountable. The judiciary plays a crucial role in upholding constitutionalism, ensuring that executive and legislative actions comply with constitutional mandates.¹²

JUDICIAL REVIEW IN THE INDIAN CONSTITUTION

Justice Syed Shah Muhammad Quadri, former Judge of the Supreme Court of India, classified judicial review in India into the following three categories:

1. Judicial Review of Legislative Actions.
2. Judicial Review of Administrative Actions
3. Judicial Review of Constitutional Amendments¹³.

This classification reflects the broad constitutional scope of judicial review in safeguarding constitutional supremacy and limiting arbitrary exercise of State power.

Judicial review in India, inspired by the U.S. model is integrated into the Constitution through Article 13, 32 and 226¹⁴. In India, both the Supreme Court and High Courts possess the

visited May 30, 2026)

¹⁰ Charles H. McIlwain, *Constitutionalism: Ancient and Modern* 24 (Cornell University Press, Ithaca, 1940).

¹¹ Justin Buckley Dyer, “Slavery and the Magna Carta in the Development of Anglo-American Constitutionalism”, 43(3) *PS: Political Science & Politics* 479 (2010).

¹² Granville Austin, *Working a Democratic Constitution: The Indian Experience* (Oxford University Press, New Delhi, 1999).

¹³ Justice Syed Shah Mohammed Quadri, *Judicial Review of Administrative Action*, (3rd ed., LexisNexis Butterworths Wadhwa, 2004)

¹⁴ Rakshika G., “A Critical Study on Judicial Review in Administrative Action”, 4(3) *International Journal of Advanced Research in Science, Communication and Technology* (2024)

authority to carry out judicial review, as outlined in Articles 32 and 226 of the Constitution, respectively. Article 32 grants individuals the right to approach the Supreme Court for the protection of fundamental rights, while Article 226 provides a similar right to approach the High Courts. This power covers laws enacted by both the central and state governments.

Judicial review in India operates on the principle of "procedure established by law" as outlined in Article 21. This principle asserts that a law is only valid if it follows the constitutional process. For a law to be enforceable, it must first pass constitutional scrutiny.

The Constitution not only guarantees fundamental rights but also establishes the division of powers between the Union and the States and outlines the functions of each government branch, including the judiciary. Judicial review is an essential tool in protecting these provisions. Several constitutional articles, such as Article 13, 32, 131-136, 143, 226, 227, 245, 246, and 372, explicitly support the practice of judicial review¹⁵.

Article 13(2) underscores that any law that contradicts fundamental rights is void to the extent of the contradiction. This mandates that courts interpret the Constitution and strike down laws that are unconstitutional, ensuring judicial oversight¹⁶. In the case of *State of Madras v. Row*¹⁷ the Supreme Court affirmed the role of judicial review in ensuring that laws comply with constitutional provisions. While acknowledging the authority of the legislature, the Court maintained that it is responsible for reviewing the constitutionality of laws¹⁸. This was further reinforced in *A.K. Gopalan v. State of Madras*¹⁹ where the Court ruled that for a law to be valid, it must adhere to constitutional standards, and if it does not, it must be invalidated. Similarly, Justice Bhagwati, in *State of Rajasthan v. Union of India*²⁰ expanded on judicial review's role in upholding constitutional supremacy.²¹

CONSTITUTIONALISM IN INDIA

The evolution of constitutionalism in India has been shaped by Western Constitutionalism models. British influence is evident through the Government of India Act, 1935, which

¹⁵ A.K. Verma, *Judicial Review and its Impact on Indian Democracy* (Rupa Publication, 2010)

¹⁶ M.P. Jain, *Indian Constitutional Law* (8th ed., Lexis Nexis, 2014)

¹⁷ AIR 1952 SC 196

¹⁸ S. Kapoor, *Judicial Review and the Indian Constitution* (Shree Publishers, 1998).

¹⁹ AIR 1950 SC 27

²⁰ AIR 1977 SC 1361

²¹ C.K. Thakker, *Constitutional Law of India* (6th ed., Eastern Book Company, 2011)

introduced federalism, a parliamentary system and administrative governance. The U.S. Constitution served as a model for fundamental rights, judicial review and an independent judiciary. The ideals of liberty, equality and fraternity embedded in the Preamble were inspired by the French Revolution while Directive Principles of State Policy were drawn from the Irish Constitution, shaping India's vision for social and economic justice. By integrating these influences, India developed a hybrid constitutional system that balances democratic principles, social justice, and a strong legal framework.²² The rule of law, a foundational principle of Indian constitutionalism derived from Dicey's theory (1885), ensures that governance is conducted within legal frameworks where no one is above the law. This principle guarantees equal application of laws, judicial scrutiny of government actions, and protection of personal liberties through legal remedies.²³

Constitutionalism refers to a system of governance in which the exercise of governmental power is limited by a Constitution, ensuring that the State functions according to established laws, principles, and institutional restraints. Unlike mere possession of a written Constitution, constitutionalism emphasizes limited government, rule of law, protection of rights, and accountability.

Thus, Constitutionalism is not merely having a Constitution—it is the practice of limited, accountable, and rights-oriented government. Its core principles work together to ensure that power is exercised within legal boundaries, protecting democracy and individual liberty. Key principles of constitutionalism include the rule of law, separation of powers, judicial review, and the protection of fundamental rights. Having examined the constitutional foundations of judicial review, it is necessary to analyze its practical role in preserving constitutionalism through judicial decisions.

JUDICIAL REVIEW SAFEGUARDING CONSTITUTIONALISM

Indian judicial history is marked by several landmark rulings that have significantly shaped the legal framework, particularly in relation to judicial review, reflecting the judiciary's critical role in ensuring that laws are in harmony with the Constitution.

1. In the landmark case of *Kesavananda Bharati v. State of Kerala*²⁴ the Supreme Court

²² D.D. Basu, *Introduction to the Constitution of India* (23rd ed., LexisNexis, 2015)

²³ Andrew Heywood, *Politics* (5th ed., Red Globe Press, 2021)

²⁴ AIR 1973 SC 1461

has established the “Basic Structure Doctrine” which placed substantive limits on Parliament’s power to amend the Constitution, asserting that the Parliament can amend any part of the Constitution but certain basic features of the constitution cannot be altered. It reinforces the principle of limited government and prevented legislative supremacy. It affirmed India as a Constitutional Democracy and not a Parliamentary Dictatorship.

2. The *Maneka Gandhi v. Union of India*²⁵ judgment is one of the most transformative judgments in Indian constitutional history. It significantly expanded the meaning of constitutionalism—the idea that government power must be limited, accountable, and exercised according to just, fair, and reasonable principles²⁶. Through this case, the Supreme Court laid the foundation for a rights-oriented, rule-of-law-based constitutional order. Before this judgment Article 21 required only “procedure established by law” but after this judgment it is required that procedure must be just, fair and reasonable. It prevented the government from bypassing one fundamental right by integrating Article 14, 19 and 21. It promoted limited government by restricting the power of the State to interfere with various aspects of personal freedom by expanding the meaning of “Personal Liberty”. The judgment transformed Article 21 jurisprudence by replacing a narrow procedural approach with a rights-oriented framework grounded in fairness, reasonableness, and individual liberty. It thereby strengthened democratic values, personal autonomy, and constitutional limitations on State power.
3. In *Minerva Mills v. Union of India*,²⁷ the Supreme Court struck down certain provisions of 42nd Amendment Act which attempted to restrict judicial review by widening Article 31C. Thus, affirmed limited government by limiting parliamentary powers. It also held that giving uncontrolled precedence to Directive Principles of State Policy destroys harmony and violates the basic structure; thus establishing harmony between Part 3 and Part 4 of the Indian Constitution.
4. In *S. R. Bommai v. Union of India*²⁸ the Supreme Court held that the President’s rule under Article 356 is not absolute and is subject to judicial review. It ensures governance operates under rule of law, a key element to constitutionalism. Before this case Article

²⁵ AIR 1978 SC 597

²⁶ Rahul Shamota, “Judicial Review in India and Constitution,” 5(6) *International Journal of Law Management & Humanities* 1082 (2022), available at: <https://ijlmh.com/wp-content/uploads/Judicial-Review-in-India-and-Constitution.pdf> (last visited May 30, 2026).

²⁷ AIR 1980 SC 1789

²⁸ AIR 1994 SC 1918

356 (President Rule) was frequently misused by the Union Government to dismiss State Governments for political reasons. It also ruled that Federalism is part of the basic structure of the Constitution protects autonomy of the states.

5. In *I.R. Coelho v State of Tamil Nadu*²⁹ the Supreme Court held that any law placed in the Ninth Schedule after 24 April 1973 is subject to judicial review. It ensures that no law is above the constitution and prevents Parliament from using the Ninth Schedule as a “constitutional escape route”. The court reiterated that Parliament’s power under Article 368 is limited; it cannot destroy or damage the Constitution’s basic feature which reinforces limited government—a core of constitutionalism. Thus, this judgment prevented the Ninth Schedule from becoming a “constitutional black hole.”
6. One of the earliest judgement of public interest litigation reported as *Hussainara Khatoon v. State of Bihar*³⁰ in this case the Supreme Court treated a newspaper report and a public spirited lawyer’s letter as a writ petition accepting the dilution of locus standi. The court held that free legal aid is an essential element of “reasonable, fair and just” procedure under Article 21. It ensures that the State cannot arbitrarily detain individuals which strengthens rule of law through fair and timely procedure.
7. An important step in the area of gender justice was the decision in *Vishaka v. State of Rajasthan*.³¹ The petition in that case originated from the gang-rape of a grassroots social worker. In that opinion, the Court invoked the text of the Convention for the Elimination of all forms of Discrimination against Women (CEDAW) and framed guidelines for establishing redressal mechanisms to tackle sexual harassment of women at workplaces. This judgment affirmed the Judiciary’s role as Guardian of Rights. It elevates India’s constitutional system to global human rights standards strengthening constitutional interpretation through universal values of equality and dignity.
8. The Supreme Court in *Justice K.S. Puttaswamy v. Union of India*³² case recognized the Right to Privacy as a fundamental right under Article 21. The judgment also embraced transformative constitutionalism, recognizing that the Constitution must evolve with social and technological changes; particularly in the digital age. By protecting individual autonomy from surveillance, data misuse, and coercive state practices. It greatly promoted limited government, accountability, and the protection of

²⁹ AIR 2007 SC 861

³⁰ AIR 1979 SC 1369

³¹ Hansika Jain, “Vishakha v. State of Rajasthan” , 3(5) *Indian Journal for Research in Law and Management* (2026), available at <https://ijrlm.com/journal/vishakha-v-state-of-rajasthan-4/> (last visited June 7, 2026)

³² AIR 2017 SC 4161

fundamental rights against State overreach.

9. In the case of *State (NCT of Delhi) v. Union of India*³³, Justice Deepak Misra held that constitutional functionaries must cultivate a “spirit of constitutionalism”, ensuring their actions strictly conforms to the basic tenets of the Constitution, and that it also implies adhering to the norms of the Constitution to prevent arbitrary action.

10. The doctrine of transformative constitutionalism, extensively discussed by Justice Dipak Misra, traces its intellectual origins to South African constitutional jurisprudence, particularly the work of Karl Klare³⁴, who conceptualized the Constitution as an instrument of social transformation. Justice Misra in *Navtej Singh Johar v. Union of India*³⁵ writes-

“The concept of transformative constitutionalism has at its kernel a pledge, promise and thirst to transform the Indian society so as to embrace therein, in letter and spirit, the ideals of justice, liberty, equality and fraternity as set out in the Preamble to our Constitution. Transformative constitutionalism not only includes within its wide periphery the recognition of the rights and dignity of individuals but also propagates the fostering and development of an atmosphere wherein every individual is bestowed with adequate opportunities to develop socially, economically and politically. Discrimination of any kind strikes at the very core of any democratic society. When guided by transformative constitutionalism, the society is dissuaded from indulging in any form of discrimination so that the nation is guided towards a resplendent future”.

He cites from *R.C. Poudyal v. Union of India*³⁶ that “Mere existence of a Constitution, by itself does not ensure constitutionalism or a constitutional culture. It is the political maturity and traditions of people that import meaning to a constitution which otherwise merely embodies political hopes and ideals.”

This judgment significantly preserved democratic accountability by using judicial review to strike down Section 377 of the Indian Penal Code, 1860 insofar as it criminalized consensual same sex relations among adults. The Supreme Court held that constitutional morality must prevail over majoritarian morality, ensuring that State power is limited by the Constitution and not by social prejudice. By affirming that Articles 14, 19, and 21 protect dignity, privacy, equality, and autonomy, the Court reinforced the supremacy of the Constitution and the

³³ AIR 2018 SC 3444

³⁴ Karl E. Klare, "Legal Culture and Transformative Constitutionalism," 14 *South African Journal on Human Rights* 146 (1998)

³⁵ AIR 2018 SC 4321, para 96

³⁶ AIR 1993 SC 1804

centrality of fundamental rights in restraining arbitrary State action. The decision embraced transformative constitutionalism, recognizing the evolving nature of rights and the duty of the courts to protect vulnerable minorities from historical injustice. The evolution of judicial review can be better understood by examining recent constitutional controversies that have tested the judiciary's role as the guardian of the Constitution.

CONTEMPORARY CONSTITUTIONAL CHALLENGES

The Electoral Bonds Scheme represents one of the most significant constitutional controversies in recent Indian constitutional jurisprudence. In *Association for Democratic Reforms v. Union of India*³⁷, the Supreme Court examined the constitutional validity of anonymous political funding through electoral bonds and addressed whether such secrecy violated democratic principles and the citizens' right to information. The Court held that the anonymity attached to political donations undermined the voter's right to know, which forms an essential component of freedom of speech and expression under Article 19(1) (a) of the Constitution. By striking down the Electoral Bonds Scheme, the judiciary reaffirmed that transparency in political funding is indispensable for free and fair elections and democratic governance.

1. In *State of Tamil Nadu v. Governor of Tamil Nadu*³⁸ the Supreme Court addressed the constitutional issue of whether a Governor possesses the authority to indefinitely delay assent to legislation passed by a democratically elected State Legislature. Through judicial scrutiny of the Governor's constitutional role, the Court reinforced the principles of federalism, constitutional accountability, and responsible governance. The judgment reaffirmed that Governors, while holding constitutional office, are bound by constitutional limitations and cannot exercise powers arbitrarily.
2. The issue of "Bulldozer Justice" has emerged as a significant contemporary concern in Indian constitutional law, particularly in relation to civil liberties, due process, and executive accountability. In *Re: Directions in the Matter of Demolition of Structures*³⁹ the Supreme Court examined whether the State can demolish the houses of accused persons without adhering to established legal procedures. The Court intervened to protect the principles of constitutionalism by emphasizing that no person can be deprived of property or dignity without following due process of law, as guaranteed under Article 21 of the Constitution. It reiterated that punishment cannot precede

³⁷ AIR 2024 SC 1441

³⁸ Writ Petition (Civil) No. 1239 of 2023, AIR 2025 SC 2481

³⁹ Suo Motu Writ Petition (Civil) No. 3 of 2024, AIR 2024 SC 5612

conviction and that executive authorities cannot assume judicial functions by imposing penalties without trial. The judgment reinforced essential constitutional principles such as the rule of law, separation of powers, natural justice, and protection against executive arbitrariness.

3. The Article 370 judgment, *In Re: Article 370 of the Constitution*⁴⁰ a significant constitutional case concerning the limits of executive power and judicial review in India. The Supreme Court examined the constitutional validity of the abrogation of Article 370 and, while ultimately upholding the government's decision, closely scrutinized issues relating to federalism, democracy, and constitutional procedure. Thus, the judgment highlights the significance of judicial review in maintaining constitutional balance during exceptional exercises of executive power.
4. In the Same-Sex Marriage case, *Supriyo @ Supriya Chakraborty v. Union of India*⁴¹ the principal constitutional issue before the Supreme Court was whether same-sex marriages should receive legal recognition under Indian law. While the Court declined to grant legal recognition to same-sex marriage, the judgment remains highly relevant to constitutional discourse. The judgment is particularly important because it demonstrates the judiciary's attempt to balance constitutional protection with judicial restraint. Instead of judicially creating a new legal framework for marriage, the Court left the matter to the legislature, thereby reflecting the ongoing tension between constitutional morality and separation of powers in contemporary India.
5. The issue of reservation within Scheduled Caste, commonly referred to as "quota within quota," gained constitutional significance in *State of Punjab v. Davinder Singh*⁴² where the Supreme Court examined whether States can create sub-classifications within Scheduled Castes to ensure equitable distribution of reservation benefits. The judiciary interpreted the concept of substantive equality under Articles 14 and 16 of the Constitution, recognizing that certain groups within Scheduled Castes may remain more disadvantaged than others. The judgment demonstrates the Court's effort to maintain a constitutional balance between social justice and equality, thereby reinforcing the role of the judiciary in addressing unequal access to affirmative action benefits.
6. The case of *Madras Bar Association v. Union of India*⁴³ an important contemporary

⁴⁰ AIR 2024 SC 181

⁴¹ AIR 2023 SC 5283

⁴² AIR 2024 SC 4301

⁴³ AIR 2021 SC 3343

example of the constitutional restraint through the protection of tribunal independence and the doctrine of separation of powers. The principal constitutional issue concerned executive interference in the functioning and administration of tribunals. The Supreme Court reiterated that an independent judiciary forms part of the basic structure of the Constitution and emphasized that tribunals must function free from excessive executive control. The judgment reaffirmed that constitutional supremacy prevails over executive convenience, thereby strengthening judicial independence and preserving the constitutional balance among organs of government.

CONSTITUTIONAL LIMITATIONS ON JUDICIAL REVIEW

Indian constitutional jurisprudence recognizes that judicial review is subject to certain constitutional and practical limitations. Courts have repeatedly emphasized that not every governmental decision is suitable for judicial intervention.

1. *Restriction in Policy Matters*

In *Balco Employees Union v. Union of India*⁴⁴ the Supreme Court held that courts should not interfere with matters of economic and administrative policy unless there is clear arbitrariness, mala fide intention, or constitutional violation. The Court emphasized that economic policies fall within executive competence, and judges lack institutional expertise to determine policy wisdom. This judgment reflects judicial restraint and acknowledges constitutional separation of powers.

Similarly, in *Narmada Bachao Andolan v. Union of India*⁴⁵ the Court refused to interfere extensively in developmental policy concerning dam construction, observing that courts are not equipped to evaluate technical or scientific policy matters unless constitutional rights are directly violated.

2. *Restriction under the Political Question Doctrine*

In *State of Rajasthan v. Union of India*⁴⁶ the Supreme Court accepted that presidential action under Article 356 is subject to judicial review, it exercised restraint and held that courts should avoid interference in matters involving political questions unless constitutional boundaries are clearly violated. The judgment acknowledged that certain political issues

⁴⁴ AIR 2002 SC 350

⁴⁵ AIR 2000 SC 3751

⁴⁶ AIR 1977 SC 1361

require institutional caution.

However, this restrained approach was later modified in *S.R. Bommai v. Union of India*⁴⁷ where the Court expanded judicial review by holding that the imposition of President's Rule is reviewable if exercised mala fide or arbitrarily. Thus, while political matters are not completely immune from judicial review, courts generally intervene only where constitutional abuse is evident.

3. Restriction in National Security and Defence Matters

Courts generally exercise considerable restraint in matters concerning national security, defence, and foreign affairs. In *Ex-Army's Protection Services Pvt. Ltd. v. Union of India*⁴⁸ the Court reiterated that judicial review in defence and security matters is limited due to executive expertise and national interest considerations.

Similarly, in the Rafale Aircraft case, *Manohar Lal Sharma v. Narendra Damodardas Modi*⁴⁹ the Supreme Court declined detailed scrutiny of defence procurement decisions, holding that judicial review does not extend to technical suitability or pricing decisions unless there is evidence of procedural irregularity or corruption.

4. Restriction Relating to Parliamentary Proceedings and Privileges

Under Article 122 and Article 212 of the Constitution, courts cannot ordinarily inquire into procedural irregularities of parliamentary or legislative proceedings. In *Raja Ram Pal v. Hon'ble Speaker, Lok Sabha*⁵⁰ the Supreme Court clarified that while parliamentary privileges are subject to constitutional scrutiny, judicial review remains limited and courts cannot interfere merely due to procedural irregularities unless constitutional mandates are violated.

5. Restriction in Judicial Appointments and Institutional Self-Regulation

Judicial review itself occasionally adopts self-restraint regarding institutional matters. In the Judges Appointment Case, particularly *Supreme Court Advocates-on Record Association v. Union of India*⁵¹, the Court established the collegium system to preserve judicial independence. However, this area has faced criticism because judicial review effectively expanded judicial control over appointments, raising concerns about accountability and transparency.

⁴⁷ AIR 1994 SC 1918

⁴⁸ AIR 2014 SC 3485

⁴⁹ AIR 2019 SC 965

⁵⁰ AIR 2007 SC 1988

⁵¹ AIR 2016 SC 117

6. *Restriction through Judicial Restraint in Same-Sex Marriage*

In *Supriyo @ Supriya Chakraborty. Union of India*⁵² despite recognizing concerns relating to dignity, equality, and discrimination, the Supreme Court declined to judicially recognize same-sex marriage and left the issue to Parliament. This case demonstrates judicial restraint where courts refrain from creating extensive legislative frameworks despite constitutional concerns.

CRITICAL ANALYSIS

Judicial review is regarded as the cornerstone of constitutionalism in India because it ensures that legislative and executive actions conform to constitutional mandates. By empowering courts to examine the validity of laws and governmental actions, judicial review preserves constitutional supremacy, protects fundamental rights, and prevents arbitrary exercise of power. Through landmark judgments, the Supreme Court has consistently acted as the guardian of the Constitution. However, the exercise of judicial review in India is neither unlimited nor absolute. Over time, constitutional practice and judicial precedent have evolved to impose certain restrictions and self-imposed limitations on judicial review, particularly in matters involving policy, national security, parliamentary privileges, and political questions. The Supreme Court's development of the Basic Structure Doctrine remains one of the strongest examples of judicial review strengthening constitutional governance. By restricting Parliament's amending power under Article 368, the Court ensured that essential constitutional features such as democracy, secularism, judicial review, federalism, and rule of law could not be destroyed. This judgment transformed constitutionalism from a mere written framework into a substantive system of limited government.⁵³ However, critics argue that the doctrine significantly enhanced judicial power by allowing unelected judges to determine constitutional essentials, raising concerns regarding democratic legitimacy.

Nevertheless, judicial review has also faced criticism for expanding into domains traditionally reserved for the legislature and executive. This tension between judicial activism and judicial restraint raises an important constitutional question: should courts actively shape policy or merely interpret constitutional boundaries? Judicial activism may threaten democratic

⁵² AIR 2023 SC 5283

⁵³ Sudhir Krishnaswamy, *Democracy and Constitutionalism in India: A Study of the Basic Structure Doctrine* (Oxford University Press, 2010).

accountability and separation of powers.⁵⁴ While judicial activism has often protected constitutional rights, excessive intervention risks violating the doctrine of separation of powers by permitting courts to function as policymakers⁵⁵. Critics argue that judicial intervention in matters such as judicial appointments through the Collegium system and extensive directions issued in environmental Public Interest Litigations (PILs) reflects a tendency towards judicial overreach. In several instances, courts have issued detailed governance-related directions, thereby entering domains traditionally reserved for the executive and legislature. While such interventions are often justified as necessary to address governmental inaction, they raise concerns regarding democratic accountability and the doctrine of separation of power.

At the same time, strict judicial positivism may be insufficient for addressing the complex realities of a modern constitutional democracy⁵⁶. The Indian Constitution is not merely a legal document but a transformative charter intended to restructure social relations and promote substantive justice. Consequently, constitutional interpretation has increasingly been influenced by the concept of constitutional morality. Constitutional morality requires constitutional actors to adhere not merely to the text of the Constitution but also to its underlying values, including liberty, equality, dignity, fraternity, and inclusiveness.

The growing reliance on constitutional morality is closely associated with the doctrine of transformative constitutionalism. Transformative constitutionalism views the Constitution as a living instrument designed to facilitate social transformation and rectify historical injustices⁵⁷. Rather than merely preserving existing social arrangements, transformative constitutionalism seeks to promote equality, inclusion, and democratic participation.

Nevertheless, transformative constitutionalism presents its own challenges. Critics argue that an overly expansive understanding of constitutional transformation may permit judges to substitute personal or ideological preferences for democratic decision-making. Because constitutional values are often broad and open-ended, courts possess considerable discretion in determining their meaning and application. This raises concerns that judicial review may

⁵⁴ Anil Singh, "Constitutional Morality and Transformative Constitutionalism in India: A Critical Appraisal of Judicial Activism and Democratic Accountability," 7(5) International Journal for Multidisciplinary Research (2025).

⁵⁵ Upendra Baxi, *The Indian Supreme Court and Politics*, 121-145 (Eastern Book Company, 1980).

⁵⁶ H.L.A. Hart, *The Concept of Law* (3rd ed., Oxford University Press, 2012)

⁵⁷ Justice Dipak Misra, *Navtej Singh Johar v. Union of India*, AIR 2018 SC 4321, para 96

become unpredictable and insufficiently constrained by objective legal standards.

Conversely, excessive judicial restraint may also undermine constitutionalism. The Supreme Court's approach in cases concerning the abrogation of Article 370 and the recognition of same-sex marriage has attracted criticism from scholars who argue that the Court displayed significant deference to the political branches. In *Supriyo* case the Court declined to recognize a constitutional right to same-sex marriage and left the matter to legislative determination. Similarly, the decision upholding the constitutional validity of measures relating to Article 370 generated debate regarding the intensity of judicial scrutiny applied to executive action. Supporters contend that the decision respected constitutional processes and national interest, whereas critics maintain that a more rigorous scrutiny was necessary to preserve federalism and constitutional accountability.

The restrictions on judicial review are constitutionally significant because they maintain institutional balance and prevent judicial overreach. Courts recognize that excessive intervention may undermine democratic legitimacy by weakening legislative and executive functions⁵⁸. However, excessive judicial restraint can also weaken constitutionalism by allowing executive arbitrariness to go unchecked, particularly in politically sensitive matters. Thus, the challenge lies in maintaining a balance between judicial activism and judicial restraint. Judicial review best safeguards constitutionalism not when courts intervene excessively or withdraw completely, but when they exercise principled, consistent, and constitutionally grounded scrutiny.

CONCLUSION

Judicial review stands as the central mechanism for protecting constitutionalism in India, ensuring that the legislature and executive remain answerable to the Constitution and do not exceed their lawful authority. Modern judicial decisions show a clear movement toward safeguarding individual rights, maintaining federal balance, and reinforcing democratic principles. These developments highlight the judiciary's commitment to transformative constitutionalism, which views the Constitution as a living and evolving document suited to the changing needs of society. Through this approach, the courts not only prevent misuse of power but also nurture the rule of law, uphold dignity and equality, and strengthen the values

⁵⁸ D.D. Basu, *Introduction to the Constitution of India*, 458-472 (23rd ed., LexisNexis, 2015)

on which the Indian constitutional order rests. In this way, judicial review continues to strengthen constitutional governance in a rapidly evolving democracy.

The Supreme Court, has played a crucial role in protecting fundamental rights, preserving the rule of law, maintaining the separation of powers, and upholding democratic accountability. Contemporary constitutional developments, including the Electoral Bonds case, Governor's assent to Bills, Bulldozer Justice, Article 370, Same-Sex Marriage, reservation within Scheduled Castes, and tribunal independence, demonstrate the judiciary's active role in addressing evolving constitutional challenges. Through these decisions, courts have reinforced principles such as federalism, transparency, constitutional morality, equality, and procedural fairness.

At the same time, the judiciary has maintained a delicate balance between judicial activism and judicial restraint, recognizing the constitutional domain of the legislature and executive while intervening where constitutional values are threatened. Although concerns regarding judicial overreach and institutional limitations continue to exist, judicial review remains an indispensable feature of the Indian constitutional framework and a vital instrument for preserving constitutional supremacy, and in a rapidly changing democratic landscape, the judiciary continues to serve as the guardian of the Constitution and a protector of constitutionalism in India. In conclusion, judicial review remains indispensable to constitutionalism in India because it limits arbitrary State power, preserves constitutional supremacy, and protects individual rights. At the same time, constitutional practice demonstrates that judicial review is not absolute, as courts have developed principled restrictions in matters involving policy, national security, political questions, and legislative functioning to maintain institutional balance.

Therefore, the effectiveness of judicial review as a safeguard of constitutionalism depends upon the judiciary's ability to balance constitutional vigilance with democratic restraint, and the judiciary continues to function as the guardian of constitutional values and an essential protector of constitutionalism in the face of contemporary constitutional challenges.