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Judicial Review in India: Balancing Parliamentary Sovereignty and Constitutional Supremacy

[*1]Dr. Abdul Sajid

[*1]B.A., LL.M., Ph.D. (Law), Osmania University, Hyderabad, Telangana, India.

Abstract

Judicial review is a critical aspect of the Indian constitutional system as it safeguards the legislative and executive powers used by the authorities within the boundaries enshrined in the Constitution. Judicial review and parliamentary sovereignty versus constitutional supremacy have continued to be a significant topic of constitutional discourse ever since the declaration of Independence. In India, in contrast to the British constitutional system where traditionally the main law-making power is held by Parliament, it follows a system of constitutional supremacy where Parliament bases its powers on the Constitution. This paper is a critical discussion of the constitutional roots, historical development and judicial interpretation of parliamentary power and judicial review. The special emphasis is on the formulation of the doctrine of basic structure in terms of *Shankari Prasad Singh Deo v. Union of India*, *I.C. Golak Nath v. State of Punjab* and *Kesavananda Bharati v. State of Kerala*. Significant decisions that pertain to the protection of fundamental rights, independence of the judiciary, federalism, legislative privileges and constitutional amendments are also discussed. It also takes into consideration recent developments in the Constitution, such as electoral bonds, political responsibility and constitutional authorities. The article takes the doctrinal approach to law research, meaning that the idea of judicial review and parliamentary democracy cannot be construed as antithetical ideas. Parliament should not lose significant power to serve democratic and socioeconomic goals, and the judiciary should guarantee that the power does not compromise the fundamental rights and the essential elements of the Constitution. The article finds its conclusion on the premise that constitutional supremacy with a concurring judicial review and proper judicial restraint presents the best way to uphold democratic accountability, institutional balance and rule of law in India.

Keywords: Judicial Review, Parliamentary Sovereignty, Constitutional Supremacy, Basic Structure Doctrine, Constitutional Amendments, Separation of Powers.

1. Introduction

The Constitution of India establishes a democratic system in which governmental power is distributed among the legislature, executive and judiciary. All institutions have significant roles to play, and they do not have unlimited powers. Laws are made by Parliament, which has the power to check the executive and reflect the political will of the people. The courts interpret and enforce the law, besides advocating constitutional rights and finding out whether the state authorities have acted under their constitutional mandate. The interaction between these institutions is especially significant when courts consider legislation enacted by Parliament, or constitutional amendments enacted with the help of the procedure stipulated in Article 368. [1]

The term judicial review is a term used to describe the authority of a constitutional court to review the legality and constitutionality of a legislative act, executive ruling and other activities of the government. Where an enactment is beyond the power of the law enforcers, infringes a basic right or is inconsistent with another established restriction in the Constitution, then the enactment might be declared unconstitutional by the courts. This power under Articles 13, 32 and 226 is largely exercised in India as a part of the expanded constitutional scheme of legislative competence, judicial jurisdiction and constitutional amendments. [2] The *State of Madras v. V.G. Row* and *L. Chandra Kumar v. Union of India* are rulings of the Supreme Court that show that judicial review is more than a procedural provision and is a significant constitutional protection against the abuse of political authority. [3]

The connection between judicial review and parliamentary sovereignty leads to one essential question: whether the law which was adopted by the elected representatives could be invalidated by judges, who are not directly elected by citizens. This question is especially pertinent in India, where Parliament has significant powers in issues to do with the economic development of the country, social justice, administration of the people and changes in the Constitution. Meanwhile, the Constitution clearly limits the authority of the government and ensures rights that are enforced upon people. [4] As a result, the legal supremacy of the Constitution should be regarded in tandem with the democratic legitimacy of Parliament.

The traditional interpretation of the concept of parliamentary

***Corresponding Author:** Dr. Abdul Sajid

sovereignty is the British constitutional system. A.V. Dicey interpreted parliamentary sovereignty to mean law making power by the Parliament, the authority to create or repeal laws where the ordinary courts had no power to challenge parliamentary laws. [5] This notion has been elaborated in a constitutional framework, which is traditionally defined by the lack of a codified constitution and the absence of a general judicial authority to invalidate primary legislation. The Indian system of constitution is radically different. The Constitution is documented, absolute and deep-rooted and legislative agencies obtain their authority through it. Articles 245, 245 coupled with the Seventh Schedule, provide the sharing of legislative powers between Parliament and State Legislatures. There can be no claim off the part of parliament to unrestricted competence in legislative matters simply because it is representing the national electorate. [6]

Constitutional supremacy refers to the fact the Constitution takes the first place in law. Every institution has to use its authority under the provisions of the Constitution, and its acts are also subject to legal restrictions. This principle is echoed in the Indian Constitution in terms of the provisions of the fundamental rights, federalism, judicial remedies, constitutional amendments and the separation of governmental functions. [7] What is important about this arrangement is the acknowledgement that the power of democracy cannot function without a constitutional system, but rather relying solely on the will of a changeable political majority.

This discussion took on a specific significance in the initial years after Independence. The legislative and constitutional reforms brought about by Parliament were aimed at accomplishing agrarian reform, decreasing economic inequality and giving effect to the Directive Principles of State Policy. The company faced backlash on some of these measures since they were related to interfering with constitutional rights and the right to property, which was then in place. In *Shankari Prasad Singh Deo v. Union of India* and *Sajjan Singh v. State of Rajasthan,* the Supreme Court originally viewed the amendment authority of Parliament to be exercised broadly. [8] Nevertheless, in *I.C. Golak Nath v. State of Punjab*, the Court used a restrictive view and decided that Parliament could not deprive or abridge fundamental rights in constitutional amendments. [9] These opposing views brought some confusion with regard to what constitutes constitutional flexibility and upholding of fundamental rights.

In *Kesavananda Bharati v. State of Kerala,* a decisive shift was seen when a thirteen-judge Bench, by a majority of seven to six, declared that Parliament had the capacity to amend any provision of the Constitution, but could not destroy or impair its basic structure. [10] The verdict has acknowledged the broad constituent power of the Parliament, but it has been noted that the Constitution had a necessary identity that could not be annulled by the amendment procedure. The doctrine then became the primary method to be used in law in the analysis to determine whether the provisions of the constitutional amendments had gone beyond the boundaries of constituent power.

This was reinforced by subsequent rulings. In *Indira Nehru Gandhi v. Raj Narain*, the Supreme Court used the principles of basic structure to safeguard democratic elections and constitutional accountability. [11] The Court had stated in *Minerva Mills Ltd. v. Union of India* that limited amendment power and a balance between fundamental rights and Directive Principles were a component of the basic framework of the Constitution. [12] In *I.R. Coelho v. State of Tamil Nadu*, the Court also affirmed the constitutional interpretation that constitutional amendments that put the laws in the Ninth Schedule since 24 April 1973 could be reviewed for violations of the basic structure. [13] Through such decisions, it was determined that even with broad parliamentary power, it cannot be employed to eradicate crucial constitutional protections.

Judicial review has also grown to other areas that involve a controversy on constitutional amendments. Cases concerning personal freedom, judicial fairness, federal relations, electoral transparency and judicial independence have helped define the constitutional duties of institutions and people. In the case of *Maneka Gandhi v. Union of India,* the Supreme Court created a more comprehensive view of personal liberty not only in the Article 21 provision but also related it to fairness in Articles 14 and 19. [14] *S.R. Bommai v. Union of India* brought the Court to acknowledge judicial scrutiny of proclamations under Article 356 and enhance constitutional safeguards against arbitrary interference with elected State governments. [15] These rulings show that constitutional supremacy does not apply to the formal validity of the legislation alone. It also affects the exercise of governmental powers.

The increasing strength of the judicial system is, however, threatening judicial overreach. The constitutional courts have the duty of upholding the Constitution, but they should be left to make their own policy choices only on extraordinary occasions when the legislature and executive have the duty of making decisions. In *Asif Hameed v. State of Jammu and Kashmir*, the Supreme Court had stressed the need to coexist with the constitutional roles given to the various institutions of the government. [16] On the same note, in *BALCO Employees Union v. Union of India*, the Court acknowledged the restraint it needed in reviewing economic policy decisions so long as there is legality of the governmental power exercise. [17]

The issue is not whether the Parliament or the judiciary ought to have absolute powers. The larger question relates to the constitutional limits of their respective authorities. The essential operation of parliamentary democracy is that, unless courts habitually substitute legislative decisions with judicial gratifications, then the parliamentary system is unable to operate. It is also true that the constitutional democracy cannot exist when the Parliament has unlimited power to undermine the basic rights, corruption of the institutions of democracy or elimination of the independence of the judiciary.

The article is a doctrinal legal research undertaking, which is based on the Constitution, appropriate constitutional amendments, Supreme Court rulings, as well as on constitutional guiding principles. It analyses the history of judicial review, the extent of amendment power by Parliament, the basic structure doctrine and the enduring significance of institutional restraint. The crux of the matter is that the powers of parliament and constitutional supremacy do not necessarily clash with each other. It is in their correct relationship that they ought to have a system of limited government where constitutional courts safeguard fundamental principles without meddling in the legitimate democratic roles of elected institutions.

2. Constitutional Foundations and Historical Development of Judicial Review in India

Judicial review in India has its constitutional basis directly related to the judgment made by the Constituent Assembly to

create a written Constitution, which included binding restrictions on governmental authority. The framers had not adopted the traditional British doctrine of unlimited parliamentary sovereignty. They instead established a constitutional democracy where the legislature, executive and the judiciary conduct their work and exercise powers defined by the Constitution. Even though the Indian style of parliamentary government was under the influence of the British government, the creation of constitutional supremacy and fundamentally enforceable legal rights resulted in a substantially independent legal system. [18]

Dr. B.R. Ambedkar attached a lot of value to constitutional remedies when drafting the Constitution. Article 32 was to give the people direct access to the Supreme Court, where fundamental rights could be exercised by the people. It is important in the sense that constitutional rights must be remediable in order to have practical worth. Article 226 also enables the High Courts to grant constitutional writs not just to enforce fundamental rights but also in other legal cases. [19] These are the provisions that allow a system of constitutionalism which allows the subjects to question the governmental action before independent judicial organs.

Article 13 gives a more significant foundation for judicial review of ordinary legislation. Article 13(1) concerns laws that are inconsistent with fundamental rights that precede the Constitution, and Article 13(2) disallows laws made by the State that deny or abridge the rights provided under Part III. These laws will lapse to the degree of inconsistency. [20] The provision shows that constitutional validity is not determined by a mere action by the legislature. A measure should also meet the substantive limitations that are entrenched in the Constitution.

Some of the earliest rulings by the Supreme Court that dealt with legislative competency and constitutional limitations were in a number of early cases. *A.K. Gopalan v. State of Madras*, the Court took a rather non-expansive perspective on the interrelationship among the fundamental rights and took into consideration preventive detention. [21] The case was a young indication of the urge to read various constitutional guarantees in isolation. This practice, however, evolved dramatically during the later years, especially with the case of *R.C. Cooper v. Union of India* and *Maneka Gandhi v. Union of India*, which did not ignore the significance of looking into the substantive impacts of the government act and correlation of fundamental rights. [22]

In *State of Madras v. V.G. Row*, the Supreme Court looked into limitations to the freedom of association. The Court recognised the importance of judicially determining whether restrictions upon fundamental rights satisfied the constitutional standard of reasonableness. [23] This ruling was significant in the fact that it shaped the view that legislative rulings on limitations against freedom could not automatically be deemed final. The courts had to look into the constitutional validity in the light of the nature of the right, the reason behind the restriction and the circumstances under which the legislation was passed.

The federal division of powers is also used to determine the extent of judicial review. The competence of Parliament and State Legislatures is ascertained in Articles 245 and 246 along with the Seventh Schedule. [24] The enactment can be invalidated when the legislature has overstepped its constitutional area of jurisdiction. In the case of *State of West Bengal v. Union of India*, the Supreme Court addressed the nature of Union-State relations and the position of the States in the Constitution. [25] Though the Indian federation provides a lot of powers to the Union, neither the Parliament nor a State Legislature has a legislative authority outside the constitutional structure.

The judiciary's review of administrative action is also important. Administrative authorities tend to have discretionary powers that influence employment, property, personal liberty and accessibility of government services. This kind of powers is bound by the law and have to meet the stipulated constitutional standards. The relationship between equality and arbitrariness was worked out in *E.P. Royappa v. State of Tamil Nadu*, which helped to establish a broader interpretation of Article 14. [26] This method was later reaffirmed in the case of *Maneka Gandhi*, in which the Court determined that any procedure which involves a restriction on personal liberty must meet constitutional requirements of fairness and reasonableness. [27]

The connection between Articles 14, 19 and 21 was at the forefront of contemporary rights adjudication. Instead of interpreting these provisions as independent guarantees, the Court realised the interdependent nature of these provisions. A state action that violates the freedom of an individual could thus need to be reviewed in at least two constitutional clauses. This reading enhanced the judicial review process of a court as it enabled the court to gauge the substantive fairness of government rather than solely basing on compliance with the formal legislative process. [28]

L. Chandra Kumar v. Union of India also added some more explanation on the constitutional role of judicial review. The case was about the creation and setting up of administrative tribunals, as well as the extent to which constitutional changes could disavow the authority of High Courts. The Supreme Court decided that the powers granted to the Supreme Court and the High Courts by Articles 32 and 227/228 were a part of the basic structure of the Constitution. [29] It realised that specialised tribunals would help the court system, but they were not able to fully substitute the constitutional oversight of the superior courts.

Such a ruling is especially significant as it safeguards the institutional structure of judicial review. The Constitution does not simply permit courts to review specific decisions made by governmental authorities; it does not annul the establishment of independent judicial entities that will be able to impose constitutional restrictions. Legislation and tribunals may be used by Parliament to enhance administrative justice, but can do nothing to help abolish the shielded constitutional place of the superior judiciary. [30]

The evolution of judicial review, however, was more debatable when it came to constitutional amendments. In the initial months of the Republic, Parliament tried to introduce land reforms which were meant to minimise the unbalanced ownership of agricultural land. Various provisions in the law were challenged on a constitutional basis in terms of the primary right to property. In response, Parliament made changes to the Constitution, which included the First Amendment, which added Articles 31A and 31B and the Ninth Schedule. [31] These attendant provisions were to safeguard certain legislative reforms against certain constitutional difficulties.

In *Shankari Prasad Singh Deo v. Union of India*, the Supreme Court looked at whether or not the Constitution (First Amendment) Act, 1951 infringed on Article 13(2). The petitioners contended that constitutional amendments were legislation in the sense of Article 13 and could not thus be used to contravene fundamental rights. The Court denied this understanding and rather drew the line between a constituent

power exercise and the routine exercises of legislative power. [32] It believed that the fundamental rights could be revised by Parliament by the process as required by Article 368. The case laid down a precedent of liberal interpretation on the power of parliament amendments. The question was reiterated in *Sajjan Singh v. State of Rajasthan* that dealt with Constitution (Seventeenth Amendment) Act, 1964. The High Court confirmed that the authority of Parliament to make amendments to the fundamental rights is valid. [33] But judicial rulings on a case-by-case basis showed a rising sense of anxiety about whether amendments to the Constitution might go as far as altering its very characteristics. The observations of Justice Mudholkar about the presence of basic constitutional features came to play an important role in the foundations of the basic structure doctrine.

The Supreme Court changed its approach in *I.C. Golak Nath v. State of Punjab*. In a close decision, a Bench composed of eleven judges ruled that fundamental rights could not be taken away or abridged by Parliament by constitutional amendments. Most of them interpreted the constitutional amendments to be within the scope of Article 13, and they embraced prospective overruling to prevent repealing the previous amendments. [34] The ruling was part of a worry that unrestricted amendment power could allow a majority in Parliament to undermine constitutional safeguards of the rights of individuals.

However, Golaknath also created difficulties for constitutional governance. The Constitution contains both enforceable fundamental rights and Directive Principles requiring the State to pursue social and economic justice. A strict ban on amendments touching on basic rights had the danger of limiting the powers of Parliament to address evolving economic and social realities. Article 37 clearly states that the Directive Principles are very basic in ruling the country even though they cannot be enforced per se by the courts. [35] The political issue then was the reconciliation of rights protection and the necessity of justified social reform in the constitution.

Parliament reacted by enacting a new Act, the Constitution (Twenty-Fourth Amendment) Act, 1971, which made it clear that the power to amend the Constitution was constitutional and explained the connection between Article 13 and amendments to the Constitution. The Constitution (Twenty-Fifth Amendment) Act, 1971, wheeled out some more modifications on the rights of property, and put into practice some of the Directive Principles. [36] These advances put the judiciary and Parliament at head-on conflict over ultimate boundaries of constitutional amendment authority.

The controversy led to *Kesavananda Bharati v. State of Kerala*. Thirteen judges heard the case, the largest constitutional bench to ever hear a case in Indian judicial history. Judging on 24 April 1973, the Supreme Court gave its decision by a majority of seven against six that Parliament had the power to amend the Constitution but not to alter or destroy its basic framework. [37] The ruling put a notable difference between constitutional amendment and constitutional destruction. Parliament was able to amend the pre-existing constitutional set-up, establish new institutions and amend the Constitution. But it did not contain within its amending power authority to destroy the identity of the Constitution itself.

The judges could not come to a unified, exhaustive definition of basic structure. However, most opinions that were found or examined were associated with fundamental principles of constitutionalism, such as constitutional supremacy, republican and democratic states, secularism, federalism and separation of powers and the guardianship of constitutional liberties. The accurate content of the doctrine later evolved in later decisions. [38] What is significant about Kesavananda Bharati is that it is an effort to bridge two conflicting constitutional considerations. It acknowledged the presence of the flexibility of the Constitution, in that it was amenable to all constitutional provisions. Meanwhile, it laid a substantive constraint upon the power of Parliament under its amendment power, to abolish the constitutional system out of which the power itself had originated.

Such a difference is vital to the conception of constitutional supremacy in India. Just because the proposed amendment impacts a significant constitutional provision, Parliament is not deprived of the ability to make amendments to the Constitution. Instead, it should be controlled by the question of whether the amendment is harmful or annihilates a feature which was part of the fundamental structure of the Constitution. [39]

The doctrine of the basic structure can thus not be interpreted as making the Constitution utterly unchangeable. It also allows constitutional evolution, but secures constitutional identity. The doctrine also indicates the principle that the authority to do so (assigning it to an institution) cannot be transformed into power that is boundless and that does not have the possibility of abandoning its own legal limits.

3. The Basic Structure Doctrine and the Limits of Parliamentary Sovereignty

The doctrine of basic structures has played an important role in the interaction of the relations between the Parliament and judiciary in India. The Supreme Court in *Kesavananda Bharati v. State of Kerala* saw the power of Parliament to alter any provision of the Constitution and limited its ability to annihilate the essential characteristics of the Constitution. This amendment/destruction difference is at the heart of Indian constitutional law. [40] The doctrine does not bar constitutional reform; but it is necessary to make sure that the reform will not destroy the principles on which the constitutional government relies.

Its practical significance was revealed in the case of *Indira Nehru Gandhi v. Raj Narain*. The Constitution (Thirty-Ninth Amendment) Act, 1975, which tried to shield some of the elections of high constitutional office against customary judicial review, was examined by the Supreme Court. Using basic principles of structure like democratic elections, equality and rule of law, the Court struck down the relevant provision. [41] This ruling established that the power of parliamentary amendment could never be used to shield specific officeholders in politics against constitutional scrutiny.

In *Minerva Mills Ltd. v. Union of India,* a more straightforward conflict was seen. The 1976 Constitution (Forty-Second Amendment) Act had also made an effort to repeal restraints on the amendment power of Parliament and curtail the judicial review. The Supreme Court ruled that clauses (4) and (5) of Article 368 were unconstitutional, basing limited amendment power on the basic structure. The Court overturned as well the expansion of Article 31C which aimed at safeguarding legislation to apply all Directive Principles to stand challenge to Articles 14 and 19. [42] It stressed the fact that fundamental rights and Directive Principles should work together instead of working against each other. [43]

The argument is especially applicable to the Indian inclination

towards socioeconomic justice. Parliament needs to have enough power in the implementation of land reforms, welfare measures and redistributive policies. However, the erosion of constitutional protections may not be lawful just because of the pursuance of desirable social goals. Social justice is one of the things that the Constitution expects the State to seek, using constitutionally permissible means.

Another challenge was presented by the Ninth Schedule. Initially designed to safeguard land reform acts, it later came under attack regarding the possibility of Parliament to prevent constitutional review of legislation by making them a Schedule. In *Waman Rao v. Union of India*, the Supreme Court used 24 April 1973 as the date of the basic structure test of such amendments to the Constitution. [44] And in *I.R. Coelho v. State of Tamil Nadu*, a nine-judge Bench decided that amendments to the basic structure did not prevent amendments to the Ninth Schedule after the amendment of the basic structure in the 1976 (post-Kesavananda Bharati) amendments. [45] The decision made sure that the constitutional amendment process did not turn out to be a free vehicle for upholding illegal laws.

Independence of the judiciary has also been seen as a vital constitutional attribute. This problem gained a certain relevance in the National Judicial Appointments Commission case. The Constitution (Ninety-Ninth Amendment) Act, 2014, and the related legislation were enacted by Parliament to introduce a new judicial appointments system. The Supreme Court struck down the arrangement in *Supreme Court Advocates-on-Record Association v. Union of India* (in a four-to-one vote), stating it infringed upon judicial independence. [46]

There were valid doubts raised by the judgment on the transparency and accountability of judicial appointments. The dissent by Justice Chelameswar brought up issues with the way the current collegium system operates. [47] Such opposing views suggest that the independence of the judiciary needs to be ensured without necessarily considering all the institutional configurations existing to be impervious to change.

The doctrine of basic building blocks thus creates a significant restriction on parliamentary sovereignty. The Parliament has a large power to modify the Constitution; however, it is not able to remove the key principles of the Constitution. Its further validity relies on judicial discretion, especially due to the fact that the doctrine lacks a comprehensive list of which features are covered. The constitutional courts need to articulately explain how the given amendment harms the fundamental framework instead of just banning changes that include new institutional setups just because of being new to the system.

4. Judicial Review, Democratic Accountability and Contemporary Constitutional Challenges

Judicial review guards constitutional democracy by helping to keep within constitutional bounds the legislative and executive powers of the government. This is especially important when the decisions of governments impact some of the basic rights, democratic institutions and federal relations. Nonetheless, judicial interference has to be in line with separation of powers since constitutional supremacy should not give jurisdiction to the courts that will give the legislative policies any free rein.

The Emergency of 1975–1977 demonstrated the consequences of weakening constitutional remedies. A majority of the Supreme Court, in *Additional District Magistrate, Jabalpur v. Shivkant Shukla*, took a more limiting view of the implementation of personal liberty during the Emergency. [48] Justice H.R. Khanna dissented and argued in favour of the undying relevance of law to protect against unlawful denial of liberty. This majority view was later struck down in *Justice K.S. Puttaswamy (Retd.) v. Union of India*, where the Court considered privacy as a fundamental right and supported constitutional protection of individual dignity and autonomy. [49]

The federal structure is also safeguarded by judicial review. The Supreme Court, in the case of *S.R. Bommai v. Union of India,* determined that proclamations under Article 356 were not beyond judicial review. Introducing secularism as an essential element in the Constitution, the ruling limited the arbitrary intrusion into the functioning of elected State governments. [50] It showed that even the politically sensitive decisions that involve Union-State relations have to be made in accordance with the constitutional requirements.

New decisions have raised questions with regard to electoral accountability. On 15 February 2024, the Supreme Court struck down the Electoral Bond Scheme and other statutory requirements limiting the disclosure of political funding in the case of *Association for Democratic Reforms v. Union of India*. The Court considered the nondisclosure as a breach of the constitutional right to information (Article 19(1)(a). It also struck down provisions which allowed unlimited political contributions by corporations as capricious under Article 14. [51] Though Parliament has the power to control electoral finance, such power should accommodate the constitutional right of participation in a democratic process.

In *Sita Soren v. Union of India*, a parallelism was created between legislative privilege and constitutional responsibility. The Supreme Court ruled that the immunity provided in Articles 105(2) and 194(2) did not allow the legislators immunity against prosecution concerning bribery related to legislative speech or voting. Thus, it reversed the authoritative stance to the contrary in *P.V. Narasimha Rao v. State (CBI/SPE)*. [52] The ruling made it clear that legislative privileges safeguard independent legislative operations, rather than actions that compromise legislative integrity.

Property Owners Association v. State of Maharashtra involved a re-examination of the relationship between politics and socioeconomic justice in the parliament. A nine-judge Bench, in November 2024, by a seven-to-two majority, said that not all privately owned resources necessarily qualify as material resources of the community under Article 39(b). The ruling recognised that certain private resources might be included in Article 39(b), based on their nature and social significance. [53] It also reaffirmed the continued existence of Article 31C in its constitutionally protected version. The ruling explains that interpretation of the Constitution can safeguard redistributive aims of a State and emphasise a legal constraint on the claims of the government to the possessions of a person.

Another example is the constitutional controversy of the assent of Governors to State legislation. The Supreme Court dealt with delays of long duration in taking action on Bills passed by the State Legislature, in the case of *State of Tamil Nadu v. Governor of Tamil Nadu*. Later, in Presidential Reference No. 1 of 2025, a five-judge Bench explained that the courts were not allowed to establish general judicially created schedules or give presumed consent to Articles 200 and 201. However, constitutional passivity that would persist over extended periods and lack a clear explanation would draw some minimal judicial attention. [54]

The importance of the advisory opinion lies in that it

acknowledges the necessity of constitutional responsibility, as well as the boundaries of judicial redress. Councils may need constitutional powers to do their work, yet cannot just take the powers that have been allocated to the powers.

Such developments will also need to be looked at, as will the principle of judicial restraint. *R.K. Garg v. Union of India,* the Supreme Court appreciated that economic legislation typically calls on greater judicial latitude, as policymaking is usually experimental. [55] On the same note, in the case of *BALCO Employees Union v. Union of India,* the Court pointed out that judicial review is about what is legal, not what is more economically wise. [56]

A middle ground would therefore lead to courts stepping heavily in cases of infringing constitutional rights or institutional constraints, but not to interfere or intervene in activities that are vested in elected authorities. Judicial review enhances democracy by safeguarding the constitutional system; it is perverse when constitutional adjudication is also employed as a means to replace judicial preferences with valid legislative judgments.

5. Critical Analysis and Conclusion

The history of judicial review in India shows that the notion of parliamentary sovereignty cannot be perceived without any reference to constitutional supremacy. The parliament has a democratic legitimacy since the electorate is represented by its members, but the power of the parliament is still undermined by the Constitution. The basic structure doctrine aims to provide a guarantee that constitutional amendments cannot be misused by temporary majorities to eliminate institutions of democracy, independent judicial policymaking (or other constitutional principles). [57]

However, the concept of judicial review has its challenges. The fact that there is no stringent definition of basic structure places doubt on the breadth of the power of the Parliament to amend the Constitution. Courts should then determine the constitutional aspect that the contested amendment will impact and give clear reasons of what will qualify as the perceived harm. The mere fact that a reform is not agreed with by the judiciary should not be enough to warrant that it be struck down.

The democratic power of the Parliament merits the proper attention as well. Policy decisions on legislation are often characterised by competing economic interests, social interests and administrative interests. Elected institutions are the ones to which such matters must be of central responsibility. The rulings of the Supreme Court in *Asif Hameed v. State of Jammu and Kashmir* and the BALCO Employees' Union are positive reinforcements of institutional restraint, and acknowledge that courts should not tend to displace legitimate governmental policy-making. [58]

Meanwhile, the concept of judicial restraint should not turn into a pretext to not uphold constitutional rights. The cases of ADM Jabalpur, *Maneka Gandhi* and *Puttaswamy* show what can happen under the pretext of being too submissive to executive authority and what the judiciary has done to enhance personal freedom and constitutional responsibility. [59] A healthy balance would then entail the independence of the judicial system coupled with a sound constitutional interpretation.

The institutional reform should be aimed at enhancing constitutional review in the legislative process, enhancing the administration of courts and offering legal redress easily. Constitutional wrangles can be minimised through parliamentary debates and thorough discussion during the formulation of laws. Courts, on their part, must make sure that their remedies are reasonable in relation to the violation under the Constitution and that they do not overstep their role over other institutions.

The Indian Constitution does not provide sovereignty to Parliament or unlimited Judicial supremacy. Rather, it forms a system of government that has a constitutional barrier where various institutions play complementary roles. They need to have parliament that is able to provide democratic and socioeconomic reforms and a judiciary that is able to retain the fundamental constitutional structure in which reforms are to take place.

An important aspect of *Kesavananda Bharati* is that its conclusion is that constitutional development should not lead to constitutional destruction. [60] The independence and restraint in which judicial review is exercised do not undermine parliamentary democracy. It safeguards the constitutional stipulations under which it operates.

After all, the range of the power of parliament and the constitutional supremacy (or vice versa) rests on mutual respect for institutional boundaries and ensuring fundamental rights and regular adherence to the rule of law. Neither the Parliament nor the judiciary is sovereign to the Constitution. It gives both their authority and makes them accountable to uphold the democratic order that it provides.

Footnotes

1. INDIA CONST. arts. 79, 122, 124, 245–46, 368.
2. INDIA CONST. arts. 13, 32, 226; L. Chandra Kumar v. Union of India, (1997) 3 S.C.C. 261 (India).
3. State of Madras v. V.G. Row, AIR 1952 SC 196 (India); L. Chandra Kumar, (1997) 3 S.C.C. 261.
4. INDIA CONST. arts. 14, 19, 21, 32, 38–39.
5. A.V. DICEY, INTRODUCTION TO THE STUDY OF THE LAW OF THE CONSTITUTION 39–40 (10th ed. 1959).
6. INDIA CONST. arts. 245–46, sched. VII; State of W.B. v. Union of India, AIR 1963 SC 1241 (India).
7. INDIA CONST. pmbl., arts. 13, 32, 50, 226, 368.
8. Shankari Prasad Singh Deo v. Union of India, AIR 1951 SC 458 (India); Sajjan Singh v. State of Rajasthan, AIR 1965 SC 845 (India).
9. I.C. Golak Nath v. State of Punjab, AIR 1967 SC 1643 (India).
10. Kesavananda Bharati v. State of Kerala, (1973) 4 S.C.C. 225 (India). See also the Supreme Court's Basic Structure Judgment archive.
11. Indira Nehru Gandhi v. Raj Narain, 1975 Supp. S.C.C. 1 (India).
12. Minerva Mills Ltd. v. Union of India, (1980) 3 S.C.C. 625 (India).
13. I.R. Coelho v. State of Tamil Nadu, (2007) 2 S.C.C. 1 (India).
14. Maneka Gandhi v. Union of India, (1978) 1 S.C.C. 248 (India).
15. S.R. Bommai v. Union of India, (1994) 3 S.C.C. 1 (India).
16. Asif Hameed v. State of Jammu and Kashmir, 1989 Supp. (2) S.C.C. 364 (India).
17. BALCO Emps.' Union (Regd.) v. Union of India, (2002) 2 S.C.C. 333 (India).
18. INDIA CONST. pmbl., arts. 13, 32, 124, 226, 245–46; Kesavananda Bharati v. State of Kerala, (1973) 4 S.C.C. 225 (India).
19. INDIA CONST. arts. 32, 226; L. Chandra Kumar v.

Union of India, (1997) 3 S.C.C. 261 (India).
20. INDIA CONST. art. 13(1)–(2).
21. A.K. Gopalan v. State of Madras, AIR 1950 SC 27 (India).
22. Rustom Cavasjee Cooper v. Union of India, (1970) 1 S.C.C. 248 (India); Maneka Gandhi v. Union of India, (1978) 1 S.C.C. 248 (India).
23. State of Madras v. V.G. Row, AIR 1952 SC 196 (India).
24. INDIA CONST. arts. 245–46, 254, sched. VII.
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