

Doctrine of Judicial Review: Soul and Silence Tracker of the Constitution



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Abstract

*The Constitution of India is not merely a legal document, but a living social and political testament embodying justice, liberty, equality, and fraternity. Its strength lies in the mechanism of judicial review, which ensures that every organ of government functions within constitutional limits. Judicial review acts as both the soul and the silence tracker of the Constitution, reviving its spirit when political forces distort its intent and interpreting its unspoken commitments in light of constitutional morality. Rooted in the doctrine of checks and balances, it empowers the judiciary to test legislative and executive actions against constitutional principles. Though its origin lies in *Marbury v. Madison* (1803), India has elevated judicial review into a basic feature of its Constitution. Drawing upon ancient Indian jurisprudence and comparative constitutional thought, the doctrine has evolved through various important judgments which shaped the framework of due process, basic structure, and constitutional morality. Judicial review thus sustains the Constitution's moral legitimacy and transforms written rights into living realities. It breathes life into constitutional ideals, ensuring that the promises of Part III are not mere textual aspirations but enforceable guarantees. Yet, debates on judicial activism and overreach continue to question its limits. Despite such tensions, judicial review remains the bedrock of Indian constitutional democracy, a dynamic mechanism that balances governance with liberty, legality with morality, and text with transformative spirit.*

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I. Introduction

The true challenge is to infuse constitutionalism and constitutional culture into all actions of all constitutional authorities, solidify the preambular vision of justice, equality, liberty and fraternity make it tangible and meaningful for the people and strengthen democracy within the parameters of the separation of powers and democratic functioning. One essential component of our constitutional government's operation is the judicial review power where the court is tasked with interpreting the constitution. Judicial review is supplement of Limited Government *i.e.*, Constitutionalism. Judicial review ensures that constitutional governance is guided by law, reason, and justice rather than power and expediency.

Constitutionalism is the commitment to Justice, liberty, equality and fraternity and task to protect them conferred on the Courts. The duty of the Courts is to keep these ideals in eloquent, vocal and audible rather than in silence mode by providing them dignity and choice within due process of law. Judicial review is the manifestation of the inherent powers to maintain discipline in the exercise of sovereign powers under public law. For a *Viksit* (developed) and *Atmanirbhar* (self-reliant) India, it is imperative that all three organs of the State, function in complete harmony within their constitutionally demarcated spheres.¹

II. Historical and Philosophical Foundations

The genesis of judicial review can be found either in the concept of a jurisprudential sanction applied to breaking an unfair law² or as a valid way to protect a country's constitution,³ with roots in the ancient Greek notion of *graphai paranomon*,⁴ and the Roman practice of nullifying laws if they

¹B.R. Ambedkar, 7 Constituent Assembly Debates, 35 (1948–49) (India).

² THOMAS AQUINAS, SUMMA THEOLOGICA, 96(4) (“lex iniusta non est lex”).

³David Deener, Judicial Review in Modern Constitutional Systems, 46 Am. Pol. Sci. Rev. 1079 (1952).

⁴In ancient Athens, the *graphe paranomon* functioned as a form of judicial review, providing a mechanism for the courts to check the legislature's power and ensure that new laws did not contradict or undermine existing ones. While the Athenian system was distinct from modern-day judicial review in several key ways, its core function of using a legal process to invalidate legislation is a clear precursor.



were issued improperly.⁵ “Lord Coke” ruling in *Dr. Bonham’s Case* in 1610 is the first reference in United Kingdom (Britain) to a lack of absolute judicial respect to legislative whims and it set the stage for the doctrine’s arrival in America, where it was applied in *Marbury v. Madison*.⁶ Ironically, the period of English expansionism following the Glorious Revolution (which essentially confirmed Parliamentary power).

According to the traditional perspective, each democratic state is made up of three branches: the legislative, executive, and judicial branches. The first is tasked with enacting laws, the second with putting laws into practice, and the third with interpreting and applying the law in the particular instances that are presented before them, mostly to settle disputes. From Aristotle to the contemporary articulations of Lord Acton and Montesquieu, it has been generally acknowledged that these three powers must not only be kept apart from one another but also be in balance in order to ensure fundamental liberties, the cornerstone of democracy.⁷

Judicial Review in United States and United Kingdom

Doctrine of judicial review which was laid down in the landmark case of *Marbury v Madison*,⁸ has been originated in the United States of America. The Constitution requires all courts and other departments to act in accordance with it.⁹ The views of “Sir Edward Coke” ruled out the parliamentary laws in favor of Common Law and the Magna Carta. However, the legislation cannot be overridden by the courts. The doctrine of ministerial responsibility to Parliament is obligatory to be taken into account by the courts.¹⁰ In *Council of Civil Service Unions v. Minister for the Civil Service*,¹¹ The three categories of ‘illegality, irrationality, and procedural impropriety’ are how Lord Diplock categorized the grounds of judicial review. Additionally, he acknowledged that other ideas like ‘proportionality’ might develop.

⁵Ibid.

⁶5 U.S. 137 (1803).

⁷Mauro Cappelletti, *Judicial Review in Comparative Perspective*, 58 CAL. L. REV. 1017 (1970).

⁸Supra note 12.

⁹Ibid.

¹⁰JOHN ADLER, *CONSTITUTIONAL & ADMINISTRATIVE LAW* 297 (2d ed., Macmillan 1994).

¹¹*Council of Civil Service Unions v. Minister for the Civil Service*, [1985] A.C. 374 (H.L.) (U.K.).



Judicial Review in the Vedic Era

In the Vedic era, the concept of Dharma acted as a moral and legal check on the actions of rulers. Ancient Indian texts emphasized that the king was not above the law, and governance had to align with established norms of justice. The king was expected to rule according to dharma and was advised by Brahmin scholars and legal experts who interpreted these laws.¹²The ancient Indian polity included Sabhas (assemblies) and Samitis (councils), which functioned as advisory and partially judicial bodies.

Judicial Review during Medieval India

In the medieval period, especially under Mughal rule, the system of justice was influenced heavily by Islamic jurisprudence, particularly Sharia law. The concept of Qazis (judges) and Muftis (jurisconsults) was prevalent, and though the emperor held supreme power, there was a structured judiciary that operated based on Islamic law and precedents. There were instances where Ulemas and Qazis exercised judicial independence by interpreting Sharia to counteract unjust royal decrees. However, the idea of judicial review in the modern, institutionalized sense remained limited as the state was deeply intertwined with the monarch's will.

Judicial Review in British Era

Between 1834 and 1947 the four law commissions and the other committees were in place to provide reason to the judicial system in India. The Regulating Act of 1773 established the Supreme Court of Calcutta, introducing formal legal systems modeled after English common law. This marked the beginning of a more structured judiciary with limited checks on executive and legislative authority. Key legal developments during this period included: Indian Councils Act, 1861, GOI Acts of 1909, 1919, and 1935. While these Acts incrementally introduced representative institutions and legal reforms, the doctrine of judicial review was still not fully realized. The British Parliament remained sovereign, and Indian courts did not have the power to invalidate legislative enactments for being unconstitutional.

III. Constitutional Basis of Judicial Review in India

Dr. B. R. Ambedkar justified it and said that it is an essential part of our legal system to have the provisions of judicial review. Though not named

¹²For instance, the Mahabharata and Manusmriti explicitly state that a ruler must adhere to dharma, and if he failed, his actions could be questioned and delegitimized.



directly, the doctrine of judicial review in India rests upon various constitutional provisions, article 13, 32, 136, 142, and 226. Together, these provisions enable courts to annul legislative or executive actions violating constitutional norms.

Types of Judicial Review

- **Judicial Review by Constitutional Courts-** Normally, the Constitutional Courts operate in two distinct judicial systems - 'centralised'¹³ and 'diffused'.¹⁴ The Constitutional Court in a diffused system does not undertake abstract review - and only reviews crystallised governmental action or policy which is challenged as being violative of the constitutional protections granted to citizens. The U.S. Supreme Court (to a certain extent, Indian Supreme Court) are examples of constitutional courts operating in a diffused system. The Indian Supreme Court does not deal exclusively in constitutional matters - it is also the final court of appeal in civil and criminal matters as also causes brought up before various statutory tribunals.¹⁵ Constitutional Courts do not have unbridled power to substitute their view with that of the will and voice of the people nor can they lightly disregard the wisdom of the legislature. They will have to give due weight to the legislative judgment.
- **The Constitutional Court's Role as Sentinel on the *Qui Vive*-** The Supreme Court's power of judicial review has often been referred to as the safety valve against arbitrary and unreasonable State action,¹⁶ which threatens to violate individual freedoms. Justice Patanjali Shastri, in *VG Row*,¹⁷ first referred to the Court's role as "*the sentinel on the qui vive*." As a Constitution is a dynamic and ever-evolving document imbibing the values and mores of the society with each passing day, the role of the Constitutional Court as the ultimate interpreter of the Constitution is crucial to maintain the delicate balance

¹³In a centralised system, the Constitutional Court is exclusively dedicated to adjudicating and answering constitutional issues and questions. It has no role in other types of litigation (civil, criminal, commercial, etc).

¹⁴Andrew Harding, *The Fundamentals of Constitutional Courts*, Int'l IDEA Constitution Brief (Apr. 2017), <https://www.idea.int/sites/default/files/publications/the-fundamentals-of-constitutional-courts.pdf> (accessed Apr. 16, 2025).

¹⁵T.N. SINGH, *QUEST FOR JUSTICE: MISCELLANY OF AN ACADEMIC JUDGE* 141 (Universal Law Publ'g 2014).

¹⁶*State of Madras v. VG Row*, 1952 INSC 19.

¹⁷India Const., Art, 132.



between constitutional rights and public interest and thereby serve and safeguard democracy.¹⁸

- **Judicial Attitude on Judicial Review**-The Supreme Court has consistently upheld judicial review as an essential feature of the Indian Constitution. Beginning with *A.K. Gopalan*¹⁹ and *State of Madras v. Row*,²⁰ the Court affirmed the supremacy of the Constitution and the judiciary's duty to review legislation. In *S.S. Bola*²¹ and *Subhash Sharma*,²² judicial review was recognized as vital for protecting fundamental rights and federalism and as part of the basic structure. *Sampath Kumar*²³ and *Minerva Mills*²⁴ held that judicial review cannot be removed without destroying the rule of law. Finally, *L. Chandra Kumar*²⁵ confirmed that the powers of the SC & HC under Articles 32, 226/227 are part of the Constitution's basic structure.

In *Kesavananda Bharati v. State of Kerala*²⁶, the SC elevated judicial review to a basic feature of the Constitution, beyond the reach of parliamentary amendment. Justice Khanna emphasized that "the power of judicial review is an integral part of the Constitution and forms part of its basic structure."

There are few more cases to illustrate-

- A) *(NJAC Case)*, 2015(judicial-review element): The Court struck down the Constitution (99th Amendment) Act and the NJAC Act that sought to replace the Collegium for judicial appointments, holding the amendment unconstitutional because it endangered judicial independence (review of a constitutional amendment/legislative action).
- B) *Right to Privacy Case*²⁷: The Court held that privacy is a constitutionally protected fundamental right under Articles 14, 19 and 21, a foundational constitutional review that re-framed how later legislative and executive schemes (surveillance, data laws, Aadhaar) are tested.

¹⁸*A.K. Gopalan v. State of Madras*, AIR 1950 SC 27.

¹⁹*State of Madras v. Row*, AIR 1952 SC 196.

²⁰*S.S. Bola v. B. D. Sardana*, AIR 1997 SC 3126.

²¹*Subhash Sharma v. Union of India*, AIR 1991 SC 631.

²²*Sampath Kumar v. Union of India*, AIR 1987 SC 271.

²³*Minerva Mills v. Union of India*, AIR 1980 SC 1789.

²⁴*L. Chandra Kumar v. Union of India*, AIR 1997 SC 1125.

²⁵*Kesavananda Bharati v. State of Kerala* (1973) 4 SCC 225.

²⁶*Justice K.S. Puttaswamy (Retd.) v. Union of India*, (2017) 10 S.C.C. 1.

²⁷(2019) 1 SCC 1.



- C) *Aadhaar Constitutionality Case (Puttaswamy II / Aadhaar case)*²⁸: The Court upheld the constitutional validity of Aadhaar for state welfare purposes but read down several provisions (especially private-sector mandatory linkage), applying privacy/proportionality tests. This is a typical case of judicial review of a major national statute and administrative scheme.
- D) *Triple Talaq Case*²⁹: A five-judge bench (3:2) held it is unconstitutional as violates Articles 14 and 21; the Court thus exercised judicial review over a religiously framed personal law practice by applying equality and fundamental-rights standards.
- E) *LGBTQ Rights Case ("Homosexuality decriminalisation case")*³⁰: A Constitution-bench read down Section 377 insofar as it criminalised consensual adult same-sex relations, holding that criminalisation violated Articles 14, 15, 19 and 21. This overruled earlier precedent and is a prominent example of rights-protective judicial review.
- F) *Sabarimala Temple Entry case*³¹—The Court reviewed a temple practice that barred menstruating women from entering Sabarimala and held the exclusion unconstitutional (essential-practice test / non-essential facet of religion), balancing religious freedom with gender equality.
- G) *Ayodhya Ram-Janmabhoomi title dispute*³²—2019 A five-judge bench gave a final title judgment in the decades-long Ayodhya dispute, resolving competing title and historical-evidence claims and directing creation of a trust. The decision illustrates the Court's role in adjudicating complex title, historical evidence and public-order implications through judicial review.
- H) *Right to die Case (Passive euthanasia)*³³— : The Court recognised the legality of “living wills”/advance medical directives and allowed passive euthanasia under strict safeguards — reviewing the state of law where statutory guidance lacked clarity and holding that Article 21's dignity and autonomy principles permit advance directives.

²⁸Shayara Bano v. Union of India, (2017) 9 SCC 1.

²⁹Navtej Singh Johar v. Union of India, (2018) 10 SCC 1.

³⁰Indian Young Lawyers Association v. State of Kerala, (2019) 11 SCC 1.

³¹M. Siddiq (D) through Lrs. v. Mahant Suresh Das & Ors, (2020) 1 SCC 1.

³²Common Cause (A Regd. Society) v. Union of India, (2018) 5 SCC 1.

³³Anuradha Bhasin v. Union of India, (2020) 3 SCC 637.



- I) *Internet Shutdown Case*³⁴: The Court held that restrictions on internet access must satisfy legality, necessity and proportionality tests; it reviewed the administrative orders used to impose prolonged communication blackouts in J&K, emphasising Article 19 rights.
- J) *Online Court Proceedings Case*³⁵: The Bench recognised that open access to justice can include live-streaming of certain proceedings; the Court framed guidelines allowing judicial discretion and model rules for broadcasting, balancing transparency with fairness/security, judicial review of court practices and rules.
- K) *Electoral Bonds Case*³⁶: In challenges to the Electoral Bonds scheme the Court examined whether the scheme undermines transparency and electoral fairness; the litigation involved judicial scrutiny of statutory provisions and Finance-Bill processes and remains a leading example of review of electoral/financial policy.

Through these pronouncements, the Indian judiciary has shown that the Constitution lives through judicial interpretation. Courts not only enforce the written provisions but also infuse them with moral meaning, thereby keeping the Constitution a living and evolving document.

The emotion of constitutionalism “legal spirit.” is protected by judicial review. The idea that government power must be limited and accountable. Without it, written rights become hollow, and constitutional provisions are easily subverted. As Justice Vivian Bose once remarked, “The Constitution is not a parchment of paper; it is a way of life.”³⁷ Dicey asserted that no constitution can survive merely on written guarantees unless there exists in society a habit of obedience to law and respect for judicial institutions.³⁸ Through the power of judicial review Constitution will remain not merely a document of governance, but a living testament to the ideals of justice, liberty, and equality.

Integration of Fundamental Rights and Directive Principles

Constitutional sHarmony through judicial review: One of the most remarkable achievements of Indian constitutional jurisprudence is the judiciary’s endeavour to integrate and synthesize the Fundamental Rights enshrined in Part III with

³⁴Swapnil Tripathi & Ors. v. Supreme Court of India, (2018) 10 SCC 639.

³⁵Association for Democratic Reforms (ADR) v. Union of India, (2024) SCC OnLine SC 146.

³⁶State of West Bengal v. Anwar Ali Sarkar, AIR 1952 SC 75 (Vivian Bose J, concurring).

³⁷State of Madras v. Champakam Dorairajan, AIR 1951 SC 226.

³⁸I.C. Golaknath v. State of Punjab, AIR 1967 SC 1643.



the Directive Principles of State Policy (DPSPs) in Part IV.³⁹ Initially, the Supreme Court viewed these two as distinct and often conflicting, Fundamental Rights being enforceable and DPSPs non-justiciable.⁴⁰ However, through progressive interpretation, the Court evolved a harmonious construction approach, asserting that both Parts represent complementary facets of the same constitutional philosophy aimed at achieving a just social order.⁴¹ The turning point came in *Kesavananda Bharati* case where the Court declared that Part III and PART IV both don't hold absolute supremacy; instead, a balance must be maintained to preserve the basic framework of Constitution.⁴² Later, in *Minerva Mills case*, the Court reaffirmed that the two parts form the "conscience of the Constitution" and that the goals of social and economic justice under Part IV must be pursued without abridging the individual freedoms guaranteed under Part III.⁴³ This synthesis continued in cases like *capitation fee case* where the right to education was read as flowing from both Article 21 and Article 45, demonstrating judicial creativity in transforming socio-economic directives into enforceable rights.⁴⁴ Through this integrative approach, the judiciary has ensured that liberty and justice coexist, reflecting the Constitution's vision of a welfare democracy where individual dignity and collective good are harmoniously realized.⁴⁵

The judicial interpretation has made movement of a variety of rights as extensions to be well incorporated and hence the human rights rhetoric can be interpreted into reality successfully. It has been a very interesting and reunifying experience. *Bank of Cochin'* and *Ratlam Municipality'*⁴⁶ were, no doubt, appeals, not cases of judicial review. But they uncovered judicial power. Statute law, common law and international instruments like treaties and conventions were resorted to enforce the obligations and realize the social goals of a modern welfare state. *Olga Tellis, M.C. Mehta,*" and UCC are cases in point.

³⁹*Kesavananda Bharati v. State of Kerala*, (1973) 4 SCC 225.

⁴⁰*Ibid.*

⁴¹*Minerva Mills Ltd. v. Union of India*, (1980) 3 SCC 625.

⁴²*Unni Krishnan, J.P. v. State of Andhra Pradesh*, (1993) 1 SCC 645.

⁴³*Olga Tellis v. Bombay Municipal Corporation*, (1985) 3 SCC 545.

⁴⁴*Minerva Mills v. Union of India*, 1980 INSC 142; *Jolly George Verghese v. Bank of Cochin*, 1980 INSC 19; *Vishaka v. State of Rajasthan*, 1997 INSC 604; *Jolly George Verghese v. Bank of Cochin*, 1980 INSC 19; *Municipal Council Ratlam v. Shri Vardhichand*, 1980 INSC 138.

⁴⁵*Kesavananda Bharati v. State of Kerala*, (1973) 4 SCC 225.

⁴⁶*Indira Nehru Gandhi v. Raj Narain*, 1975 Supp SCC 1.



The Indian judiciary's strong dedication to upholding the supremacy and spirit of the Constitution is reflected in the Doctrine of Basic Structure, a superb illustration of the art of judicial review. This theory, which was initially presented in the *Kesavananda Bharati v. State of Kerala case*, established that although Parliament has broad authority to amend the Constitution under Article 368, it cannot change its core elements or basic structure.⁴⁷

Through this principle, the Supreme Court ingeniously balanced parliamentary sovereignty with constitutional supremacy, ensuring that no amendment could destroy the core ideals of democracy, rule of law, and separation of powers.⁴⁸ The doctrine exemplifies judicial craftsmanship, as it was not explicitly stated in the text of the Constitution but was instead evolved through interpretative reasoning to safeguard its permanence and integrity.⁴⁹ Judicial scrutiny, free and fair elections, and equality are all part of this immutable fundamental structure, according to later instances like *Indira Nehru Gandhi v. Raj Narain*. In a similar vein, the Court stressed in *Minerva Mills v. Union of India* that judicial review is a fundamental component that is essential to preserving the harmony between Parts III and IV of the Constitution.⁵⁰

Through these decisions, the judiciary demonstrated its role as the constitutional sentinel, preventing arbitrary alterations by transient political majorities.⁵¹ Thus, the doctrine of basic structure is not merely a judicial innovation but a living testament to the artistry of judicial review, ensuring that the Constitution remains a dynamic yet enduring charter of liberty and justice.⁵²

IV. Judicial Review of Administrative Action

Essentially, the requirement to act justly and fairly rather than arbitrarily or capriciously is what it means to act judicially.⁵³ The doctrine of proportionality has evolved as a powerful judicial tool to ensure that the actions of administrative and legislative authorities do not exceed the limits of reasonableness and necessity. It acts as a “silence finder” within constitutional interpretation—

⁴⁷I.R. Coelho v. State of Tamil Nadu, (2007) 2 SCC 1.

⁴⁸Minerva Mills Ltd. v. Union of India, (1980) 3 SCC 625.

⁴⁹S.R. Bommai v. Union of India, (1994) 3 SCC 1.

⁵⁰L. Chandra Kumar v. Union of India, (1997) 3 SCC 261

⁵¹AHARON BARAK, PROPORTIONALITY: CONSTITUTIONAL RIGHTS AND THEIR LIMITATIONS (Cambridge Univ. Press 2012).

⁵²Om Kumar v. Union of India, (2001) 2 SCC 386.

⁵³(2017) 10 SCC 1.



filling the gaps where the Constitution or statutes remain silent on the degree and limits of State power.⁵⁴ Under this doctrine, every State action that restricts a fundamental right or affects individual liberty must satisfy a threefold test: the measure must pursue a legitimate objective, it must be suitable to achieve that objective, and it must not be more restrictive than necessary.⁵⁵ India, proportionality has been gradually absorbed into the structure of judicial review, particularly under Articles 14, 19, and 21 of the Constitution.⁵⁶ The doctrine also found its strongest articulation in *Justice K.S. Puttaswamy (Retd.) v. Union of India*⁵⁷ where the Supreme Court linked proportionality to the protection of privacy and liberty in the digital age.⁵⁸ As a “silence finder,” proportionality bridges the constitutional gaps by offering a principled method for balancing competing interests, individual rights and collective goals, where textual guidance is absent. Through judicial review, it transforms abstract constitutional values into enforceable norms, reinforcing the rule of law and preventing administrative or legislative overreach.⁵⁹

The Doctrine of Legitimate Expectation and Judicial Review

This doctrine is an important principle in administrative law, acting as a check on arbitrary exercise of power by the State and its authorities. Rooted in the principles of fairness, reasonableness, and non-arbitrariness, it ensures that public authorities honour the promises, representations, or consistent practices that have created an expectation in the minds of citizens.⁶⁰ While it does not confer a legal right in the strict sense, it offers protection against arbitrary deviation from established policies or assurances without a fair hearing or rational justification.⁶¹ In India, the doctrine has been judicially recognised as part of the broader framework of **Article 14** and **judicial review**. By judicial review, the courts maintain a delicate balance between

⁵⁴Ranjit Thakur v. Union of India, (1987) 4 SCC 611; Modern Dental College & Research Centre v. State of Madhya Pradesh, (2016) 7 SCC 353; Justice K.S. Puttaswamy (Retd.) v. Union of India, (2017) 10 SCC 1.

⁵⁵Anuradha Bhasin v. Union of India, (2020) 3 SCC 637.

⁵⁶Council of Civil Service Unions v. Minister for the Civil Service, [1985] AC 374 (HL).

⁵⁷Maneka Gandhi v. Union of India, (1978) 1 SCC 248.

⁵⁸A.K. Gopalan v. State of Madras, AIR 1950 SC 27 (distinguished in Maneka Gandhi).

⁵⁹Olga Tellis v. Bombay Municipal Corporation, (1985) 3 SCC 545; Justice K.S. Puttaswamy (Retd.) v. Union of India, (2017) 10 SCC 1.

⁶⁰I.R. Coelho v. State of Tamil Nadu, (2007) 2 SCC 1.

⁶¹Francis Coralie Mullin v. Administrator, Union Territory of Delhi, (1981) 1 S.C.C. 608 (India).



administrative flexibility and fairness, ensuring that governance remains accountable while not unduly fettering executive discretion. Therefore, this doctrine reinforces the citizens' faith in administrative justice.⁶²

The Golden Triangle and Judicial Review

The corner stone of the protection of fundamental rights as well as the doctrine of judicial review lies in the concept of the Golden Triangle that is inherent in the Indian Constitution; in the Articles 14, 19 and 21. The Supreme Court, in a series of historic decisions, has interpreted these three Articles as a triad of inseparable Articles that guarantee equality, liberty and the protection of life and serving the judiciary with the responsibility of being custodians of constitutional justice. In *Maneka Gandhi vs Union of India* the Court stated that procedure made by the law under Article 21 must be just, fair and reasonable thus the inclusion of the principle of equality under Article 14 and the principle of freedom under Article 19 to the terms of personal liberty.⁶³ This interpretation gave judicial review a substantive constitutional foundation, ensuring that every law or executive action affecting life or liberty must pass the tests of reasonableness, non-arbitrariness, and due process.⁶⁴ Through this expanded judicial lens, the Court transformed Article 21 from a narrow procedural right into a dynamic source of socio-economic entitlements, such as the rights to livelihood, privacy, health, and dignity.⁶⁵ The Golden Triangle doctrine, therefore, not only strengthened individual rights but also reaffirmed the judiciary's role as the ultimate interpreter of the Constitution, ensuring that legislative and executive powers remain subject to constitutional limitations.⁶⁶ In this way, judicial review operates as the soul that breathes life into the Golden Triangle, harmonizing liberty, equality, and justice as the core values of the Indian constitutional order.⁶⁷

⁶²Uday Mehta, "Indian Constitutionalism: Crisis, Unity, History," in THE OXFORD HANDBOOK OF INDIAN CONSTITUTION 89 (S Chaudhary, M Khosla, P.B. Mehta, ed. Oxford univ. print 2016)

⁶³AK Gopalan v. State of Madras, 1950 INSC 13.

⁶⁴Chintan Chandrachud, "Constitutional Interpretation," in THE OXFORD HANDBOOK OF THE INDIAN CONSTITUTION 122 (Sujit Choudhry, Madhav Khosla & Pratap Bhanu Mehta eds., Oxford Univ. Press 2016).

⁶⁵*Ibid.*

⁶⁶A.D.M. Jabalpur v. Shivkant Shukla, (1976) 2 SCC 521.

⁶⁷P. Ramachandra Rao v. State of Karnataka, (2002) 4 SCC 578.s



V. The Expanding Horizon of Article 21: From Procedure to Substance

Article 21 of the Indian Constitution has gone through a remarkable reformation that has seen a shift towards a limited procedure safeguard into a wide spread guarantee of life with human dignity. The dynamic interpretation of the Supreme Court has far extended its scope beyond just physical survival or animal existence and has realized that it is the same keystone to human rights in India. In *Maneka Gandhi v. The Court in Union of India*, stated that the procedure defined by the law should be fair, reasonable and just and therefore gave substantive due process to the Indian constitutional jurisprudence.

Article 21 was later expanded to include socio-economic rights including livelihood, shelter, health, and education. The Court has also identified various civil and procedural rights that are inherent in a right to life and personal liberty and they include civil and procedural rights such as the right to fair trial, legal assistance, and absence of torture or unjustified arrest. A new peak of the jurisprudence was also marked by the case of Justice K.S. Puttaswamy which stated that the right to privacy was inherent to life and liberty and in the case of *Common Cause (A Regd. Society) vs Union of India*, right to die with dignity was recognized. In *Navtej Singh Johar v. Union of India* and *Joseph Shine v. Union of India* there is the transition of textual originalism into a paradigm of living constitutionalism, which is responsive to changing conceptions of justice, fairness and societal development.

The evolution of the concept of “Procedure Established by Law” in Indian constitutional law reflects a gradual shift from legislative supremacy to a more balanced doctrine of fairness and justice. Initially, B. N. Rau borrowed the phrase from the Japanese Constitution (1889) to avoid the expansive “Due Process” clause and limit judicial activism. Influenced by Justice Felix Frankfurter’s advocacy for judicial restraint, Rau preferred legislative supremacy. In contrast, the U.S. “Lochner Era” (1905–1937) showcased the dangers of judicial overreach, as courts struck down social legislation under the doctrine of substantive due process. The U.S. model of “Due Process of Law,” found in the 5th and 14th Amendments, emphasized both procedural and substantive fairness. In India, *A.K. Gopalan v. State of Madras* (1950) upheld the validity of laws enacted by the legislature, interpreting “Procedure Established by Law” narrowly and ignoring fairness. However, *Maneka Gandhi v. Union of India* (1978) reinterpreted Article 21 by fusing “Procedure” with “Due Process,” requiring that laws be just, fair, and reasonable. The modern post-Maneka understanding of Article 21



now embodies a balanced doctrine that integrates substantive due process, ensuring justice, fairness, and reasonableness within the Indian constitutional framework.

Living Constitutionalism and the Voice of Constitutional Silences

Constitutions are living documents that constantly create new textual references. They are strongly linked to other legislative and constitutional precedents, possibly more so than any other instrument of the State.⁶⁸

Broadly, there are two schools of constitutional interpretation: textualist and living constitutionalist. The former concentrates on the text at hand, as the *Gopalan case*⁶⁹ demonstrates. Under the textualist approach, the text and the intentions of the framers are decisive. However, the living constitutionalist method considers several variables to help interpret the text, even as it acknowledges the significance of the text. Scholars have added additional nuance to this interpretation method depending on the factors used.⁷⁰ In his book *Constitutional Interpretation* the author, Philip Bobbitt, describes six approaches to interpretation of the constitution that is, historical, textual, prudential, doctrinal, structural and ethical in his book. It is a continuation of his earlier book, *Constitutional Fate*.⁷¹ The Supreme Court has gradually come to embrace a live constitutionalist philosophy. The constitutional text has been interpreted in a variety of ways. For example, it has been interpreted in light of liberal democratic ideals, which serve as the cornerstone of our text; it has also been interpreted in light of a variety of cultural, social, political and historical ethos surrounding our text.

One major concern is judicial supremacy, wherein courts, by striking down legislative enactments, may override the democratic will of the people and disturb the delicate balance between the organs of the State.⁷² The tension between judicial activism and overreach further complicates this issue, as excessive judicial intervention in policy matters may amount to judicial legislation,

⁶⁸Rameshwar Prasad v. Union of India, (2006) 2 SCC 1.

⁶⁹Divisional Manager, Aravali Golf Club v. Chander Hass, (2008) 1 SCC 683.

⁷⁰State of Haryana v. State of Punjab, (2002) 2 SCC 507.

⁷¹Common Cause (A Regd. Society) v. Union of India, (1999) 6 SCC 667.

⁷²Hussainara Khatoun v. Home Secretary, State of Bihar, (1980) 1 SCC 81.



undermining the authority of elected representatives.⁷³ Moreover, the increasing trend of litigation and judicial interference in administrative decisions can lead to delays in governance, impeding timely implementation of governmental policies.⁷⁴ The judiciary's lack of direct accountability, since judges are unelected and enjoy security of tenure, raises concerns about the legitimacy of unelected bodies influencing public policy.⁷⁵ Additionally, the possibility of subjectivity in constitutional interpretation means that outcomes often depend on the individual philosophy or ideology of judges rather than consistent constitutional principles.⁷⁶ Such tendencies may result in a conflict with the doctrine of separation of powers, blurring the boundaries between legislative, executive, and judicial functions.⁷⁷ Critics also argue that the judiciary sometimes exhibits a conservative bias, showing reluctance to advance progressive or socio-economic reforms that require policy-level intervention.⁷⁸ Furthermore, resource constraints limit the judiciary's capacity to ensure effective enforcement of its rulings across the administrative spectrum.⁷⁹ The high cost of litigation similarly restricts access to judicial review, rendering it a privilege for those with sufficient means.⁸⁰ Finally, unpredictability arising from divergent judicial interpretations can create uncertainty in the law, thereby weakening the stability of constitutional governance.⁸¹ Critics argue that judicial review risks transforming judges into unelected legislators. The doctrine of judicial overreach is often invoked when courts enter the policy-making domain.⁸²

VI. Conclusion

The Constitution is a sacred and supreme legal document as well as a social

⁷³Subramanian Swamy v. Director, CBI, (2014) 8 SCC 682.

⁷⁴Divisional Manager, Aravali Golf Club v. Chander Hass, (2008) 1 SCC 683; where the Court cautioned against judicial encroachment into executive functions.

⁷⁵State of West Bengal v. Anwar Ali Sarkar, AIR 1952 SC 75 : 1952 SCR 284.

⁷⁶V. R. Krishna Iyer, Law and the People (1972) 3 SCC (Jour) 3.

⁷⁷Dieter Grimm, Constitutional Adjudication and Constitutional Interpretation: Between Law and Politics," 4 N.U.J.S. L. Rev. 15 (2011).

⁷⁸Anne Meuwese & Marnix Snel, Constitutional Dialogue: An Overview, 9(2) UTRECHT L. REV. 128 (2013), quoted in Gujarat Urja Vikas Nigam Ltd. v. Amit Gupta, 2021 INSC 163 (India).

⁷⁹Leszek Garlicki, Constitutional Courts versus Supreme Courts 5(1) INT'L J. CONST. L. 44, 66 (2007).

⁸⁰ Gujarat Urja Vikas Nigam Ltd. v. Amit Gupta, 2021 INSC 163 (India).

⁸¹Jorge Farinacci-Fernós, Constitutional Courts as Majorsitarian Instruments, 14(4) I.C.L. J. 379, 382 (2020).

⁸²Olga Tellis v. Bombay Mun. Corp., (1985) 3 S.C.C. 545 (India); Paschim Banga Khet Mazdoor Samity v. State of West Bengal, (1996) 4 S.C.C. 37 (India).



and political instrument that must be applied with wisdom to fulfil the constitutional vision of justice and remain practically workable. The theory behind judicial review recognizes that certain aspects of national life must remain beyond the control of shifting majorities or electoral outcomes. When conflicting truths arise, it is wiser to see them as complementary rather than exclusive. This process of balancing and reconciling opposing ideas extends beyond the legal system into broader spheres of human life.⁸³

The rapid advancement of science and technology, including artificial intelligence, along with the interaction of economics, social sciences, and law, has a profound impact on political and legal institutions. These developments create new challenges and opportunities for judicial review, requiring its robust yet balanced exercise. To fulfil the role of constitutional trustees, courts must harmonize enduring constitutional values with the evolving realities of society, adapting from time to time to the changing conditions and needs of the world.⁸⁴ The legislators should recognise that judicial review is the safety valve that prevents authoritarianism from overpowering constitutionalism, and that the Constitutional Court is merely applying a necessary course correction when it strikes down or reads down any act of the legislature or the executive.

The Doctrine of Judicial Review remains the soul that animates the Indian Constitution and the silence tracker that deciphers its deeper meanings. It bridges the gap between the written text and the living society it governs. By interpreting, protecting, and sometimes reconstructing constitutional meaning, the judiciary ensures that India's constitutional democracy remains responsive, resilient, and rooted in justice. As Justice V. R. Krishna Iyer eloquently remarked, "The Constitution is not a mere lawyer's document; it is a vehicle of life."⁸⁵ It is therefore extremely important to accept the importance of judicial review and must be constantly valued and readjusted.⁸⁶ The main command of the constitutional discourse between the court and the legislature is that they are on a substantive dialogue about the interpretation of the constitution, and both sides should listen to one another so as to gain insights on the views of the other..⁸⁷

Shift from "negative legislators to constructive constitutional actor"⁸⁸:
The idea of separating powers can be applied more effectively when **all branches of government communicate and cooperate with each other**

⁸³B.R. Ambedkar, *Constituent Assembly Debates*, vol. XI (25 November 1949).

⁸⁴JUSTICE V.R. KRISHNA IYER, *LAW AND THE PEOPLE* 67 (Deep & Deep Publications 1980).

⁸⁵*Kesavananda Bharati v. State of Kerala*, (1973) 4 SCC 225.



in a respectful and balanced way instead of acting in isolation.⁸⁹ The Court can tread the middle path between abdication and usurpation to ensure that arbitrariness, majoritarianism, authoritarianism and nepotism do not creep into the functioning of a democratic government.⁹⁰ In a welfare and transformative Constitution, the judiciary must wherever situation demands fill constitutional silences and enforce fundamental rights where the legislature fails to act.⁹¹

The central role of courts is to give expression to the constitutional silences through judicial review, thereby keeping the Constitution alive and relevant across generations. Judicial review enables the Constitution to function as a living document, without a sunset clause, capable of adapting to changing times. The true challenge lies in uncovering these silent provisions and evolving their meaning while embedding constitutionalism in all state actions, strengthening democratic values, and realizing the constitutional vision of justice within the limits of separation of powers. Ultimately, the strength of the Constitution lies not merely in its text but in its dynamic interpretation, and the effective enforcement of rights and duties depends on a strong judiciary sustained by public confidence.

Judicial review is an essential component of constitutional governance, justified by the need to protect certain fundamental aspects of national life from the will of shifting majorities or electoral outcomes. These enduring constitutional values are entrusted to the courts for preservation. The strength and survival of the Constitution lie not merely in its written text but in the faith of the people and the judiciary in its spirit, which forms the true soul of constitutional democracy.⁹² In India, judicial power must be used wisely and fairly, because the best guarantee of justice lies in the integrity and character of the judge.⁹³ Such a personality can be developed only through constitutional discipline, and the power of judicial review must always be exercised within this framework.⁹⁴