

Constitutional Supremacy vs Parliamentary Sovereignty

By Aaron S John¹

Introduction

The three pillars of government are the judiciary, legislative branch, and executive branch, and all three must work together for the government to function efficiently and smoothly. There has always been a debate on which of these organisations are superior. From time and again, this question has been raised, and the answers have varied. Still, for the most part, it has been established that all the three organs complement each other, where the judiciary has a different role which is to maintain a healthy balance between the organs and to keep them in check. This power of the judiciary is known as the "judicial review". Hence few consider the judiciary to be superior. Judicial review is a notion that permits the judiciary to examine the activities of the other two departments. This notion enumerates the principles of the rule of law and upholds the separation of powers principle.

Organs of Government

The Indian government is modelled after the *west minister's* system. The state comprises three organs in this system: the executive, the legislative, and the judiciary. The Prime Minister, Parliament, and the Supreme Court- the epitome of these organisations exercise the following powers:

Executive

At the federal and state levels, it consists of the President or a council of ministers. It, along with the administration, carries out and enforces the legislature's laws. In addition, this organ is responsible for implementing the laws and ensuring that they are executed in the states.

Legislature

This organ is responsible for forming laws and procedures. It also examines various administrations and comes up with resolutions. However, its primary function is to enact laws.

Judiciary

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At the top is the Supreme Court, and at the bottom are the Community Courts. The principal purpose of this body is to interpret laws and resolve various conflicts to provide justice to all residents. The judiciary is also considered to be the watchdog of democracy and the guardian of the constitution.

Parliamentary Supremacy and Judicial Review: Indian Perspective

To understand this debate in a much deeper way, we will have to understand the history of judicial review. Judicial review is a procedure in which the judiciary examines an executive or legislative action. This aids the court in maintaining the separation of powers between the three organs by providing a check and balance. The judiciary also has the jurisdiction to supervise the legislative and executive branches if they overstep their bounds.

The first instance of judicial review originates in 1803 in the United States under the Marbury vs Madison case. Under this case, it was held that the American courts have the power to strike down any laws and statutes that they find is violating the constitution. This was a watershed moment in Indian legal history, influencing the concept of judicial review and constitutional revisions.

In Canada, the judicial review began shortly after the Canadian federal constitution was drafted and implemented soon after the Imperial government approved the British North America Act. Because there is no written constitution in the United Kingdom, the concept of judicial review is not well-established.

In India, judicial review was first used by the British before the Indian Constitution was enacted. A landmark case in India was Shankar Prasad versus Union of India; the Hon'ble Supreme Court ruled that Article 368's provisions are faultless and permit parliament to modify the constitution without any exclusions. Another prominent case law was the Kesavananda Bharati v. the State of Kerala. The judicial review was deemed to be a component of the Indian Constitution's essential framework due to this. The constitution's essential structure includes unity, sovereignty and democracy.

This same idea was stated in the S.P. Sampath Kumar v. Union of India case. In this case, justice PN Bhagwati relied on the judgement of Minerva Mills v. Union of India and declared that judicial review forms the basic structure of the Indian Constitution. Again, in L Chandra Kumar vs Union of India, the Supreme Court ruled that judicial review powers under Articles 32 and 226 are an essential and fundamental part of the constitution's basic framework. Judicial review has been portrayed and used as a specialised mechanism for maintaining balance and justice in

our democracy on numerous occasions. Its significance cannot be overstated; it has repeatedly shown to be one of the most crucial characteristics of our constitution's basic framework.

Features of Judicial Review

A person can contact the high court under Article 226 if their fundamental rights or legal rights have been violated. Likewise, a person can approach the Supreme Court under Article 32 if his fundamental right has been violated.

Following are the features of the Judicial Review.

- [Both state and federal legislation are subject to court review. All laws, including the order by-laws, ordinances, and constitutional amendments, as well as other notifications, are subject to judicial review and are covered under Article 13 clause 3 of the Indian Constitution.](#)
- The judicial review has to be filed by a citizen or any other body; the Supreme Court cannot file for judicial review.
- Judicial review is based on Article 21 of the Indian Constitution, which states that a "process established by law" must be followed. This law must pass the constitutionality test; if it does, it can be passed into law. If it doesn't, then the court can declare it as null or void law

Important Case laws in detail

[Kesavananda Bharti V. State of Kerala AIR 1973 SC 1461](#)

This was one of India's most important landmark decisions. The 24th and 25th Amendment Acts of 1971 were challenged in this case, and a 13-judge panel was created. The majority of judges stated that the ability to modify the constitution is mentioned under Article 368, and the judges had a 7:6 ratio. They also clarified the distinction between ordinary legislation and constitutional amendments. Finally, the judges ruled that the parliament cannot change or repeal the constitution's core structure.

[Indira Nehru Gandhi V. Raj Narain AIR 1975 SC 865](#)

The plaintiff, in this case, disputed the 39th amendment clause. He said that it prevents the Speaker and Prime Minister from being challenged or elected. It was later overturned, and the court ruled that it was unlawful.

[Minerva Mills V. Union of India AIR 1980 SC 1789](#)

This was yet another significant case. The Hon'ble Supreme Court of India held in this judgement that judicial review is part of the constitution's basic framework and also specified what is contained in the basic structure of the Indian Constitution. It also indicated the principles encompassed by the fundamental structure, which are as follows-

1. The rule of law.
2. Separation of powers between the federal government and the state government.
3. The balance between the Fundamental Rights and the State's Directive Principle.
4. The right to participate in a free and fair election.
5. The parliamentary governance system.
6. The parliamentary system of government.
7. [Articles 32](#), [136](#), [142](#) and [147](#) of the Indian Constitution provide the Supreme Court specific powers.
8. Powers of the High Court under [Article 226](#) and [227](#) of the Indian Constitution.
9. The right to equality is guaranteed by [Article 14](#) of the Constitution.
10. The parliament's ability to modify the Constitution is limited.
11. Unity and Integrity of the nation.
12. Secularism and Socialism.
13. Preamble

[Shayara Bano vs Union of India W.P.No. 118 of 2016](#)

The constitutionality of triple talaq was called into doubt in this instance. The power that the husband possessed over the woman was the fundamental problem with triple talaq. If the husband wants to divorce his wife, he might do it anytime and in any location. According to Justice Nariman, this idea violated Article 14 of the Indian Constitution under the Doctrine of Manifest Arbitration.

[Supreme Court of India in P.U.C.L. & others v. U. O. I. AIR 2003,](#)

This case concerned the right to know about an election candidate, which is covered by the right to information. The court stated in this instance that it could not intervene in any political concern about policy matters unless it is necessary for judicial review. The administration must avoid any form of violence within an Indian Constitutional establishment.

Conclusion

The concept of judicial review has proven to be highly beneficial in India. However, the judiciary does not utilise its full ability because if it does, the entire system of balance and separation of powers will implode. Therefore, this function must be employed with caution and strategy. Its significance expanded once it was included in the basic structure of the Indian Constitution. Its role was to keep the other two organs in check and protect the legality of the Indian Constitution whenever it was invoked. Although judicial review may seem absolute, it does have its limitations. The notion of judicial review is only relevant to administrative and legislative activities and analysing other constitutional revisions that fall under the terms of the constitution. It serves as a powerful instrument for monitoring public bodies and organs by enforcing current rules and making required modifications.