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Judicial Review And Its Role In Shaping Public Policy

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Abstract

Judicial review, the power of courts to examine the constitutionality of legislative and executive actions, stands as a cornerstone of constitutional governance. Originating in the United States through Marbury v. Madison (1803), it has evolved into a dynamic tool that not only checks governmental overreach but actively shapes public policy across jurisdictions. This paper explores its conceptual foundations, historical development, and comparative manifestations in the United States, India, and the United Kingdom. Through landmark cases—particularly India’s Public Interest Litigation (PIL) framework it demonstrates how judicial review fills policy vacuums, expands fundamental rights, enforces accountability, and drives systemic reforms in areas such as environment, human rights, and social justice. While judicial activism has yielded transformative outcomes, criticisms of overreach and separation-of-powers concerns persist. The analysis concludes that, when balanced with restraint, judicial review enhances democratic legitimacy and policy efficacy. Recommendations emphasize procedural safeguards to prevent misuse while preserving its constitutional vitality.

Keywords: *Judicial Review, Public Policy, Constitutional Law, Separation of Powers, Judicial Activism, Judicial Restraint, Public Interest Litigation, Fundamental Rights, Constitutional Supremacy, Basic Structure Doctrine,*

Introduction

In modern constitutional democracies, the judiciary occupies a central and distinctive position as the guardian of the rule of law and constitutional supremacy. Judicial review enables courts to assess the constitutionality of legislative enactments and executive actions, ensuring that all organs of the state operate within the limits imposed by the constitution. Through this mechanism, courts do not merely adjudicate disputes but also significantly influence the direction and content of public policy. The judiciary's authority to invalidate unconstitutional measures ensures that fundamental rights remain protected even when majoritarian political processes fail to safeguard them. In contemporary governance, courts have increasingly moved beyond the role of passive interpreters of law to assume a more proactive function, often issuing directives, framing guidelines, and expanding constitutional rights to address legislative gaps and administrative inaction. This transformation reflects a broader understanding of judicial responsibility in constitutional democracies, where courts are seen not only as dispute-resolution bodies but also as institutions that reinforce democratic accountability and institutional balance.

This paper argues that judicial review functions not merely as a negative check on governmental excesses but also as a constructive force in shaping public policy. By examining its historical evolution, conceptual foundations, and comparative development across jurisdictions, the analysis demonstrates that judicial review has played a crucial role in influencing policy outcomes in areas such as civil liberties, environmental governance, labor rights, and administrative accountability. Particular emphasis is placed on the Indian experience of Public Interest Litigation (PIL), which has expanded access to justice and enabled courts to intervene in matters of social and economic policy. At the same time, the paper critically examines concerns regarding judicial overreach and the counter-majoritarian character of judicial power. Ultimately, the discussion highlights the importance of maintaining a balance between judicial activism and judicial restraint in order to preserve democratic legitimacy while ensuring effective constitutional governance.

Conceptual Framework and Historical Evolution

Judicial review is grounded in the principle that the constitution represents the supreme law of the land and that all legislative and executive actions must conform to its provisions. The

doctrine enables courts to examine the legality and constitutionality of statutes, administrative decisions, and, in some jurisdictions, even constitutional amendments. By enforcing constitutional limits on state power, judicial review preserves the separation of powers and protects individual liberties from arbitrary governmental action. It also serves as a mechanism through which constitutional principles are interpreted and applied in changing social and political contexts.

The modern doctrine of judicial review is most commonly associated with the constitutional jurisprudence of the United States. Although the United States Constitution does not expressly mention judicial review, early American courts exercised this power by relying on structural principles embedded within the constitutional framework. Prior to the famous decision in *Marbury v Madison*, several state and federal courts had already invalidated legislative enactments that were inconsistent with constitutional provisions, particularly those affecting judicial independence and federal supremacy. These early cases reveal that judicial review was not an entirely novel innovation but rather a practice rooted in the broader constitutional philosophy of limited government and the rule of law.¹

The landmark decision in *Marbury v Madison* in 1803 formally articulated the doctrine of judicial review in American constitutional law. In that case, Chief Justice John Marshall declared that it is the duty of the judiciary to interpret the law and to invalidate legislative acts that conflict with the Constitution. By striking down a portion of the Judiciary Act of 1789, the Court established the principle that the Constitution is superior to ordinary legislation and that courts possess the authority to enforce this hierarchy.² This decision laid the foundation for the development of a robust system of constitutional adjudication in the United States, allowing courts to scrutinize governmental actions that infringe upon constitutional rights or exceed constitutional authority.

In India, judicial review is explicitly embedded within the constitutional framework through Articles 13, 32, and 226 of the Constitution of India. These provisions empower the Supreme Court and High Courts to review legislative and executive actions for compatibility with fundamental rights and other constitutional provisions. While the Supreme Court initially adopted a cautious approach toward constitutional amendments and legislative powers, its

¹ William Michael Treanor, 'Judicial Review before Marbury' (2005) 58 Stanford Law Review 455.

² *Marbury v Madison* 5 US (1 Cranch) 137 (1803).

stance evolved significantly during the latter half of the twentieth century. The transformative moment came with the decision in *Kesavananda Bharati v State of Kerala*, in which the Supreme Court introduced the “basic structure doctrine,” holding that certain fundamental features of the Constitution—including judicial review itself—cannot be altered even by constitutional amendment.³ This doctrine elevated judicial review to the status of a foundational constitutional principle and enabled courts to exercise oversight over constitutional amendments that threaten the core identity of the Constitution.

The United Kingdom presents a contrasting model due to its uncodified constitution and the doctrine of parliamentary sovereignty. Traditionally, British courts lacked the authority to invalidate Acts of Parliament and instead limited their review to administrative decisions and subordinate legislation. Judicial review in the United Kingdom therefore focused on assessing whether public authorities had acted within their legal powers and adhered to principles of fairness and rationality. The classic formulation of the grounds for review—illegality, irrationality, and procedural impropriety—was articulated in *Council of Civil Service Unions v Minister for the Civil Service*.⁴ Although the enactment of the Human Rights Act 1998 introduced the possibility of issuing declarations of incompatibility where legislation conflicts with human rights standards, Parliament ultimately retains the authority to determine whether such legislation should be amended.

The historical development of judicial review thus reflects differing constitutional traditions and institutional arrangements. While countries such as the United States and India have embraced expansive models of constitutional review, the United Kingdom has maintained a more restrained system that respects parliamentary sovereignty while still promoting administrative accountability.

Judicial Review in Key Jurisdictions

The operation and scope of judicial review vary considerably across constitutional systems. In the United States, judicial review extends to both federal and state legislation as well as executive actions. The Supreme Court has used this authority to shape public policy in significant ways, particularly in areas concerning civil rights and individual liberties. The

³ *Kesavananda Bharati v State of Kerala* (1973) 4 SCC 225.

⁴ *Council of Civil Service Unions v Minister for the Civil Service* [1985] AC 374 (HL).

decision in *Brown v Board of Education* marked a turning point in American history by declaring racial segregation in public schools unconstitutional and thereby catalyzing the civil rights movement.⁵ Similarly, the controversial ruling in *Roe v Wade* recognized a constitutional right to privacy encompassing reproductive choice, illustrating how judicial review can directly influence social policy debates.⁶ Although later jurisprudence has revisited and modified this precedent, the case remains a prominent example of judicial intervention in policymaking.

India represents one of the most expansive models of judicial review in the world. The Supreme Court and High Courts possess broad authority to review both pre-constitutional and post-constitutional legislation, administrative actions, and constitutional amendments that violate the basic structure of the Constitution. Articles 32 and 226 guarantee citizens the right to approach courts for the enforcement of fundamental rights, making judicial review itself a fundamental right. Judicial decisions such as *Minerva Mills v Union of India* and *I R Coelho v State of Tamil Nadu* reaffirmed that constitutional amendments cannot undermine the essential features of the Constitution.⁷ This framework has enabled Indian courts to engage extensively with public policy questions, particularly through the development of Public Interest Litigation.

In contrast, the United Kingdom's system of judicial review operates within the constraints of parliamentary sovereignty. Courts cannot invalidate primary legislation but may review administrative decisions and delegated legislation to ensure that public authorities act lawfully and reasonably. Despite these limitations, judicial review has had a significant influence on administrative practices and human rights protection, particularly following the enactment of the Human Rights Act 1998. The British model demonstrates that even a comparatively limited system of judicial review can play an important role in promoting accountability and fairness within the executive branch.

Theoretical Role in Shaping Public Policy

From a theoretical perspective, judicial review influences public policy through interpretation, enforcement, and institutional dialogue between courts and political branches. Scholars often describe this role through the contrasting concepts of judicial activism and judicial restraint. Judicial activism refers to the willingness of courts to interpret constitutional provisions

⁵ *Brown v Board of Education* 347 US 483 (1954).

⁶ *Roe v Wade* 410 US 113 (1973).

⁷ *Minerva Mills v Union of India* (1980) 3 SCC 625; *I R Coelho v State of Tamil Nadu* (2007) 2 SCC 1.

expansively and to intervene in areas traditionally considered the domain of legislative policymaking. Advocates of this approach argue that courts must actively protect constitutional rights, especially when political processes fail to represent marginalized groups or safeguard minority interests. Judicial restraint, on the other hand, emphasizes deference to democratic institutions and cautions against excessive judicial interference in policy matters.

In practice, judicial review shapes policy in several ways. Courts may invalidate legislation or executive actions that violate constitutional norms, thereby compelling governments to revise policies in accordance with constitutional standards. They may also issue guidelines or directives that effectively function as policy frameworks until formal legislation is enacted. Additionally, judicial decisions often clarify statutory interpretation, influencing how laws are implemented by administrative agencies. Empirical research suggests that judicial review has both direct and indirect effects on policymaking: even when legal challenges do not succeed, the possibility of judicial scrutiny encourages governments to adopt more transparent and procedurally sound policies in order to minimize litigation risks.

Case Studies: Judicial Review Shaping Policy

India's experience with Public Interest Litigation provides one of the most striking examples of judicial review shaping public policy. Beginning in the late 1970s, the Supreme Court relaxed traditional rules of locus standi to allow public-spirited individuals and organizations to file petitions on behalf of marginalized communities. The Court also adopted innovative procedural approaches, including epistolary jurisdiction, under which letters and newspaper reports could be treated as writ petitions. These developments dramatically expanded access to justice and enabled courts to address systemic social issues that had previously remained outside the reach of conventional litigation.

One of the earliest and most influential PIL cases was *Hussainara Khatoon v State of Bihar*, which exposed the plight of thousands of undertrial prisoners languishing in jails for years without trial. The Supreme Court held that the right to a speedy trial is an essential component of the right to life and personal liberty under Article 21 of the Constitution, leading to the release of more than forty thousand prisoners and prompting major reforms in criminal justice administration.⁸ Similarly, in *Bandhua Mukti Morcha v Union of India*, the Court directed the

⁸ *Hussainara Khatoon v State of Bihar* (1979) AIR 1979 SC 1369.

government to identify and rehabilitate bonded laborers, thereby strengthening the enforcement of labor welfare laws.⁹

Environmental policy has also been profoundly influenced by judicial review, particularly through the series of decisions in *M C Mehta v Union of India*. These cases addressed issues ranging from industrial pollution and vehicular emissions to the protection of cultural heritage sites. The Court's directives—including the conversion of Delhi's public transport system to compressed natural gas—demonstrated how judicial interventions could drive environmental governance and urban policy reforms.¹⁰

Another landmark example is *Vishaka v State of Rajasthan*, in which the Supreme Court formulated binding guidelines to prevent sexual harassment in the workplace in the absence of specific legislation. The Court relied on constitutional principles and international conventions to establish a framework for workplace safety and gender equality. These guidelines later formed the basis for comprehensive legislation enacted by Parliament.¹¹ Through such interventions, judicial review has functioned not only as a mechanism of constitutional enforcement but also as a catalyst for legislative and administrative reform.

Comparative Analysis

A comparative analysis of judicial review across jurisdictions reveals significant differences in scope, authority, and policy impact. India's constitutional framework provides the broadest scope for judicial intervention, combining explicit constitutional provisions, the basic structure doctrine, and the procedural flexibility of Public Interest Litigation. This combination enables courts to scrutinize legislative enactments, administrative actions, and constitutional amendments while simultaneously expanding access to justice for marginalized groups.

The United States offers a similarly powerful system of judicial review, although its rigid constitutional amendment process means that judicial interpretations often play a decisive role in shaping constitutional meaning. Landmark Supreme Court decisions have historically driven major social and political transformations, particularly during the civil rights era. However, the

⁹ *Bandhua Mukti Morcha v Union of India* (1984) 3 SCC 161.

¹⁰ *M C Mehta v Union of India* (1987) 1 SCC 395.

¹¹ *Vishaka v State of Rajasthan* (1997) 6 SCC 241.

absence of mechanisms such as PIL means that access to constitutional litigation is generally more restricted than in India.

The United Kingdom represents the most restrained model among the three jurisdictions. While courts cannot invalidate Acts of Parliament, they exercise substantial oversight over administrative actions and delegated legislation. Judicial review in the United Kingdom therefore focuses primarily on procedural fairness, legality, and compliance with human rights norms rather than direct policymaking. Nevertheless, even within these constraints, British courts have contributed to improving administrative governance and protecting individual rights.

Challenges, Criticisms, and the Balance

Despite its contributions to constitutional governance, judicial review has been subject to significant criticism. One of the most frequently discussed concerns is the “counter-majoritarian difficulty,” which refers to the tension between judicial review and democratic decision-making. Critics argue that unelected judges should not possess the authority to invalidate policies adopted by democratically elected legislatures. This concern is particularly pronounced in cases where courts appear to substitute their own policy preferences for those of political institutions.

In India, the rapid expansion of Public Interest Litigation has also generated concerns about misuse. Some petitions have been filed for political or publicity purposes rather than genuine public interest, leading the judiciary to develop stricter procedural safeguards for PIL filings. Excessive judicial activism may also blur the separation of powers by effectively transforming courts into policymakers rather than constitutional adjudicators.

Balancing these concerns requires the development of institutional safeguards that preserve judicial independence while preventing overreach. Mechanisms such as proportionality analysis, procedural scrutiny, and self-imposed doctrines of restraint help ensure that judicial review remains focused on constitutional compliance rather than policy substitution. When exercised responsibly, judicial review enhances democratic legitimacy by safeguarding rights and correcting systemic failures in governance.

Conclusion and Way Forward

Judicial review has emerged as one of the most influential mechanisms for shaping public policy within modern constitutional democracies. Originally conceived as a safeguard against unconstitutional legislation, it has gradually evolved into a dynamic instrument for promoting social justice, protecting fundamental rights, and ensuring governmental accountability. Experiences from jurisdictions such as India, the United States, and the United Kingdom demonstrate that judicial review can drive significant policy reforms, whether through civil rights jurisprudence, environmental protection, or administrative accountability.

At the same time, the legitimacy and effectiveness of judicial review depend on maintaining an appropriate balance between activism and restraint. Courts must remain vigilant against overstepping their constitutional mandate while continuing to fulfill their role as guardians of constitutional values. Future reforms should therefore focus on strengthening access to justice, improving judicial capacity to assess complex policy issues, and promoting empirical research on the impact of judicial decisions on public governance. In an era marked by evolving challenges such as climate change, digital privacy, and economic inequality, a carefully balanced system of judicial review will remain indispensable for ensuring that public policy remains consistent with constitutional principles and democratic ideals.