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## **APPLICATION OF JUDICIAL REVIEW IN SOUTH AFRICA**

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### **I. ABSTRACT**

This article examines the pivotal role of judicial review in upholding constitutional democracy and protecting fundamental rights in post-apartheid South Africa. It traces the historical evolution of judicial review, from the constraints of the apartheid era to its transformative impact under the Constitution of the Republic of South Africa, 1996. The article explores key constitutional provisions and landmark cases that have shaped the judiciary's authority to scrutinize legislation and executive actions. It highlights the contemporary significance of judicial review in safeguarding individual rights, promoting social justice, and ensuring governmental accountability. The article also addresses challenges faced by the judiciary, such as access to justice, enforcement of court decisions, and the need to balance activism with restraint. It concludes by emphasizing the enduring relevance of judicial review in South Africa's ongoing journey towards a more just and equitable society, while acknowledging the dynamic nature of the legal landscape and the importance of continuous dialogue and reflection on the role of the judiciary in shaping the nation's constitutional democracy.

### **II. KEYWORDS**

Judicial review, South Africa, constitutional democracy, apartheid, fundamental rights, landmark cases, and social justice

### **III. INTRODUCTION**

Judicial scrutiny forms the bedrock of constitutional governance in South Africa, profoundly shaped by its turbulent history and the transformative journey from apartheid to a vibrant democracy. Embedded within the framework of the post-apartheid Constitution of the Republic of South Africa, 1996, judicial review stands as

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a pivotal mechanism through which the judiciary upholds constitutional supremacy, safeguards fundamental rights, and ensures governmental accountability<sup>2</sup>.

To fully comprehend the significance of judicial scrutiny in South Africa, one must delve into the historical and legal contexts that preceded its formal establishment. Apartheid, a regime of institutionalized racial segregation and discrimination enforced from 1948 to 1994, left an enduring mark on South African society. Under apartheid, the legal system was weaponized to entrench racial inequality, suppress dissent, and deny basic human rights to the majority, especially black South Africans<sup>3</sup>. Laws were enacted to segregate communities, restrict movement, and limit political participation based on race, perpetuating a system of injustice that deeply affected all facets of daily life<sup>4</sup>.

Amid widespread domestic resistance and international condemnation, the apartheid regime ultimately collapsed, leading to negotiations culminating in the democratic elections of 1994. This historic juncture not only signalled<sup>5</sup> the end of apartheid but also marked the beginning of a new era characterized by aspirations of equality, justice, and reconciliation. Central to this transformative process was the drafting and adoption of a new constitution, widely hailed as one of the most progressive globally<sup>6</sup>.

The Constitution of the Republic of South Africa, 1996, embodies the aspirations of a nation striving to reconcile from its fractured past and build a society grounded in principles of democracy, equality, and human dignity. At its heart lies the Bill of Rights, an extensive charter guaranteeing fundamental freedoms and affirming the rights of all individuals, regardless of race, gender, or creed. This foundational document not only delineates citizens' rights but also establishes the framework for their protection through mechanisms such as judicial review.

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<sup>2</sup> Apartheid: The Facts, (London, International Defence and Aid Fund, 1983)

<sup>3</sup> Apartheid in Practice (New York, UN Institute, January 1976).

<sup>4</sup> Chandhoke, Neera, *The Politics of UN Sanctions*, (Delhi, Gitanjali Publishing House), 1986.

<sup>5</sup> Adam Heribert and Mooley, Kogila, *South Africa without Apartheid: Dismantling Racial Domination*, London (University of California Press, Berkeley) 1986.

<sup>6</sup> Edgar H. Brookes, *Apartheid (A documentary studies of modern South Africa)*, The World Studies Series (Routledge and Kegan Paul), 1968.

Judicial scrutiny in South Africa operates within a context shaped by historical injustices and forward-thinking constitutional principles<sup>7</sup>. It empowers the judiciary, particularly the Constitutional Court, to scrutinize legislative and executive actions, ensuring their alignment with constitutionally enshrined rights and obligations. This transformative approach, often referred to as "transformative constitutionalism," underscores the judiciary's role not only in interpreting laws but also in effecting societal change by addressing historical injustices and promoting social justice<sup>8</sup>.

The significance of judicial review extends beyond mere legal interpretation; it embodies a dedication to the ideals of a democratic society where the rule of law prevails, institutions are held accountable, and individuals are empowered to seek redress for injustices. Through landmark decisions, the judiciary has confronted entrenched discrimination, addressed socio-economic disparities, and upheld the rights of marginalized groups, thus shaping a legal landscape that mirrors the evolving values and aspirations of post-apartheid South Africa.

This article explores the application of judicial scrutiny in South Africa, examining its role in safeguarding fundamental rights, fostering accountability, and contributing to ongoing societal transformation<sup>9</sup>. By analyzing pivotal cases and legal principles, we illuminate the dynamic interplay between the judiciary, the executive, and the legislature in upholding constitutional democracy and advancing principles of justice and equality. Through a nuanced exploration of its challenges and achievements, we aim to underscore the enduring relevance of judicial review in shaping a more inclusive, equitable, and rights-respecting society in South Africa<sup>10</sup>.

The transition from apartheid to democracy in South Africa wasn't just a political milestone; it resonated deeply across legal and moral dimensions. The negotiated

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<sup>7</sup> Gerhart: *Black Power in South Africa* ,(London, University of California Press Ltd.), 1978

<sup>8</sup> Kellner, Peter, "South African Sanctions: Where Thatcher is Right and Wrong", *New Statesman*, 111(2882); June 20, 1986, p. 9.

<sup>9</sup> Krishnamoorthy Dasu, "United Nations: A Unique Responsibility", *World Focus*, Vol.42, June 1983, pp.8-11

<sup>10</sup> Laitin, David D. , "South Africa: Violence, Myths and Democratic Reforms", *World Politics*, 33 (2), April, 1981, pp.258-79.

settlement that ended apartheid delicately balanced justice and reconciliation, grounded in a firm commitment to constitutionalism and the rule of law. Central to this shift was the Truth and Reconciliation Commission (TRC), tasked with uncovering past atrocities while promoting national healing and unity<sup>11</sup>.

The crafting of the 1996 Constitution symbolized these efforts, guided by principles of inclusivity and social equity. Its aim was to address historical injustices and establish a framework for a society built on equality and human dignity. Importantly, the Constitution not only ensured civil and political freedoms but also enshrined socio-economic rights, recognizing the imperative to tackle poverty, inequality, and social exclusion inherited from apartheid.

The adoption of the Constitution marked a significant change in South African legal philosophy, elevating the protection of human rights to a foundational principle of governance. Judicial oversight, integral to this constitutional framework, emerged as a crucial mechanism to uphold the Constitution's supremacy and ensure governmental actions align with its principles. By empowering the judiciary to invalidate unconstitutional laws and decisions, judicial oversight became a safeguard against majority rule and a defender of minority rights in a diverse society.

#### **IV. HISTORICAL DEVELOPMENT OF JUDICIAL REVIEW IN SOUTH AFRICA**

The evolution of judicial review in South Africa is intricately tied to the tumultuous history of the country, notably the era of apartheid. Apartheid, a system of institutionalized racial segregation and discrimination, shaped not only the social fabric of South Africa but also its legal and judicial landscape. During this period, the concept of judicial review operated within the confines of a legal system that often served the interests of the apartheid regime, limiting its ability to function as a robust

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<sup>11</sup> Lillich, Richard B. , "Economic Coercion and the International Legal Order", *International Affairs*, 5(3), July 1975, pp.358-71.

mechanism for the protection of individual rights and the rule of law<sup>12</sup>. Examining the historical evolution of judicial review in South Africa reveals its intricate ties to the country's political and social metamorphosis. Prior to the democratic transition, judicial review encountered formidable constraints, especially during the apartheid era, where the judiciary struggled to assert independence against an oppressive legislative and executive regime<sup>13</sup>.

#### **A. CHALLENGES OF JUDICIAL REVIEW DURING APARTHEID**

Under apartheid, the judiciary often found itself hemmed in by laws upholding racial segregation and discriminatory practices. Legislation like the Group Areas Act and the Population Registration Act systematically marginalized non-white South Africans. Despite occasional challenges from within the judiciary, such as the dissenting voice in *Harris v Minister of Interior* <sup>14</sup>(1952) where Judge Ramsbottom opposed the forced removals of District Six residents, judicial review generally failed to curb apartheid laws' excesses. The judiciary's ability to safeguard fundamental rights was further undermined by the absence of a robust constitutional framework and explicit guarantees for human rights<sup>15</sup>.

#### **B. TRANSFORMATION UNDER THE NEW CONSTITUTION**

The advent of democracy in 1994 precipitated a seismic shift in South Africa's legal landscape, culminating in the enactment of the Constitution of the Republic of South Africa, 1996. This pivotal document not only instituted a new legal framework but also fundamentally reshaped the judiciary's role and expanded the scope of judicial review.

The new constitution empowered the judiciary to scrutinize the constitutionality of all laws and governmental actions, marking a departure from the restricted judicial

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<sup>12</sup> Land Gren S. South Africa: Arms embargo dicomplemented, *Bulletin of Peace Proposals*, 17, (3-4), 1986, pp.455-62.

<sup>13</sup> *Listion America*, Vol.6, No.15, April 12, 1968.

<sup>14</sup> *Harris v Minister of Interior*, [1952] 4 SA 769

<sup>15</sup> John de St Jorre, "South Africa Embattled", *Foreign Affairs*, 1985, pp. 38-63

review of apartheid. Key provisions such as Section 2, affirming the supremacy of the constitution, and Section 172, granting courts the authority to invalidate legislation inconsistent with the constitution, underscore the judiciary's enhanced role as guardian of constitutional rights. Furthermore, Section 39 mandates courts to interpret laws and develop common law in alignment with the spirit, purpose, and objectives of the Bill of Rights, embedding a proactive approach to rights protection in judicial practice<sup>16</sup>.

Landmark cases like *Harris v Minister of Interior*<sup>17</sup> (1952) stand as poignant reminders of the judiciary's struggles during apartheid, highlighting the limitations imposed on judicial review in confronting legislative injustice. The transition to democracy, anchored by the new constitution, has empowered the judiciary to assert its authority and uphold constitutional principles more effectively, fostering a fairer and more inclusive society in post-apartheid South Africa<sup>18</sup>.

The post-apartheid era saw a rise in public interest litigation, facilitated by an expansive view of locus standi (legal standing) by the courts. This enabled civil society organizations and individuals to bring cases in the public interest, ensuring that the judiciary could address a wide range of societal concerns through judicial review. The historical development of judicial review in post-apartheid South Africa stands as a testament to the transformative power of constitutional change. The adoption of a progressive constitution and the establishment of a vigilant Constitutional Court have positioned the judiciary as a guardian of constitutional values, ensuring that the promise of democracy and human rights is realized in the legal and social fabric of the nation.

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<sup>16</sup> Jonathan, Steel "Apartheid's Crumbling Bastions", *Marxism Today*, Sept. 1985, Vol . 29(9), pp. 10-15

<sup>17</sup> *Harris v Minister of Interior*, [1952] 4 SA 769

<sup>18</sup> Kalu E. Ume, "The Origin of Apartheid in South Africa: A Review", *Journal of African Studies*, 18(9), Winter, 1981-82, pp. 176-81.

### **C. TRANSFORMATIVE IMPACT OF THE NEW CONSTITUTION ON JUDICIAL REVIEW**

The Constitution of the Republic of South Africa, 1996, signifies a pivotal moment in the evolution of judicial review within the nation, ushering in an era defined by constitutional supremacy and robust protection of fundamental rights. This seminal document not only dismantled apartheid's legal framework but also redefined the judiciary's role as a vigilant guardian of constitutional democracy<sup>19</sup>.

**Section 2: Pre-eminence of the Constitution:** Section 2 establishes the principle of constitutional supremacy, affirming that the constitution holds the highest legal authority in the Republic. This provision mandates that all legislation and governmental actions must adhere to constitutional principles. It empowers the judiciary to invalidate laws or executive decisions that contravene constitutional norms, thereby reinforcing the rule of law and ensuring governmental accountability.<sup>20</sup>

**Section 172: Declaration of Invalidity:** Section 172 confers upon courts the authority to declare any law or conduct inconsistent with the constitution invalid to the extent of its inconsistency. This provision enables the judiciary to strike down laws that infringe upon fundamental rights or fail to meet constitutional standards. Landmark cases such as *S v. Makwanyane* (1995)<sup>21</sup>, where the Constitutional Court abolished the death penalty, exemplify the transformative impact of Section 172 in aligning South African law with international human rights standards.

**Section 39: Interpretation of Legislation and Development of Common Law:** Section 39 imposes a duty on courts to interpret legislation and evolve common law in a manner that advances the values and rights enshrined in the Bill of Rights. This

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<sup>19</sup> Davidson, B, et al., *Southern Africa: The New Politics of Resolution*, (Harmondsworth, Penguin) 1976.

<sup>20</sup> Draper, Theodore, *The Rediscovery of Black Nationalism* (New York) 1969-70

<sup>21</sup> *S v. Makwanyane and Another* (CCT3/94) [1995] ZACC 3



interpretative mandate encourages a progressive approach to legal interpretation, fostering jurisprudence that reflects societal values and promotes justice<sup>22</sup>.

1. **Minister of Health v. Treatment Action Campaign**<sup>23</sup>, highlight the judiciary's role in interpreting laws to protect the right to access healthcare, thereby addressing historical injustices and promoting social equity.
2. **S v. Makwanyane**<sup>24</sup>: This landmark case decisively positioned the Constitutional Court against the death penalty, asserting that capital punishment violated rights to life, dignity, and freedom from cruel, inhuman, or degrading punishment. The ruling not only abolished the death penalty but also solidified the judiciary's authority to annul laws infringing fundamental rights, establishing a precedent for judicial review in post-apartheid South Africa.
3. **Minister of Health v. Treatment Action Campaign**<sup>25</sup>: In this pivotal case, the Constitutional Court intervened to safeguard the right to healthcare access, particularly concerning HIV/AIDS treatment. The court's decision compelled the government to implement policies ensuring the availability of antiretroviral drugs, illustrating judicial review's role in rectifying systemic inequalities and protecting socioeconomic rights.

The evolution of judicial review in South Africa<sup>26</sup>, catalyzed by the adoption of the new constitution, has empowered the judiciary to uphold constitutional democracy, promote equality, and safeguard human dignity. Through significant cases and constitutional provisions, the judiciary continues to shape a legal framework that upholds the rights and freedoms of all South Africans, marking a profound departure from the constraints of apartheid-era jurisprudence.<sup>27</sup>

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<sup>22</sup> Feit, Edward, *South Africa: The Dynamics of the African National Congress* (London, Oxford University Press) 1962

<sup>23</sup> *Minister of Health and Another v. Treatment Action Campaign and Others* (No. 2) [2002] ZACC 15.

<sup>24</sup> *S v. Makwanyane and Another* (CCT3/94) [1995] ZACC 3

<sup>25</sup> *Minister of Health and Another v. Treatment Action Campaign and Others* (No. 2) [2002] ZACC 15

<sup>26</sup> Gillomee, Hermann, *The Parting of the Ways: South African Policies 1976-1982* (Cape Town, David Philips) 1982

<sup>27</sup> Hatteraley, A.F., *South Africa 1652-1933*, (London, Thornto'n Butterworth Ltd. ) 1933.

## V. CONSTITUTIONAL FOUNDATIONS OF JUDICIAL REVIEW

The judiciary in South Africa plays a pivotal role in enforcing judicial review, ensuring the supremacy of the Constitution, upholding the rule of law, and protecting fundamental rights. This section examines key cases where the Constitutional Court has exercised its powers to strike down legislation or executive actions, thereby shaping the legal and constitutional framework of the country.

### A. ADOPTION OF THE CONSTITUTION OF THE REPUBLIC OF SOUTH AFRICA, 1996

The Constitution of the Republic of South Africa, 1996, establishes a robust framework for judicial review, empowering the judiciary to ensure the supremacy of the constitution, uphold the rule of law, and protect fundamental rights. This section explores key constitutional provisions and their interpretation through pivotal Constitutional Court cases that have shaped the application of judicial review in South Africa.<sup>28</sup>

The adoption of the Constitution of the Republic of South Africa in 1996 marked a watershed moment in the nation's history, ushering in an era of democracy, human rights, and constitutional supremacy. With respect to judicial review, the constitution laid down the foundational principles and mechanisms that transformed the role of the judiciary, empowering it to act as a vigilant guardian of constitutional values<sup>29</sup>.

The 1996 Constitution affirmed the principle of constitutional supremacy, making it clear that the constitution is the supreme law of the land. Section 2 of the Constitution explicitly states that any law or conduct inconsistent with the constitution is invalid, emphasizing the importance of upholding the rule of law<sup>30</sup>. This provision set the stage for an expansive role for judicial review in ensuring the constitutionality of laws and government actions.

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<sup>28</sup> Hoagland, Jim, *South Africa* (London) 1973

<sup>29</sup> Hutt, W.H., *The Economics of Colour Bar*, (Great Britain) 1964.

<sup>30</sup> Kotze, D.A., *African Politics in South Africa* (Pretoria, Van Schaik) 1973

Chapter 2 of the Constitution, known as the Bill of Rights, is a cornerstone of the constitutional order. It guarantees a wide array of fundamental rights and freedoms, including equality, human dignity, and the right to a fair trial. This extensive bill of rights provides the judiciary with a solid foundation for judicial review, allowing it to scrutinize legislation and executive actions against a comprehensive set of constitutional norms.

The Constitution established the Constitutional Court as the highest court in constitutional matters. Section 167(4) of the Constitution grants the Constitutional Court the authority to decide on the constitutionality of any law, binding all other courts. This court, comprising judges appointed for their expertise in constitutional matters, became the primary institution for the adjudication of constitutional disputes and the focal point for judicial review.<sup>31</sup>

Section 172 of the Constitution empowers the courts, including the Constitutional Court, to declare invalid any law or conduct that is inconsistent with the Constitution. This provision gives the judiciary broad powers of judicial review, allowing it to strike down legislation or government actions that violate constitutional principles. The judiciary is thereby positioned as a check on the legislative and executive branches, ensuring their compliance with constitutional norms.<sup>32</sup>

Section 172(1) of the Constitution grants the courts the authority to declare any law or conduct inconsistent with the constitution invalid to the extent of its inconsistency. This provision is pivotal in enabling the judiciary to strike down legislation or governmental actions that contravene constitutional principles, thereby safeguarding fundamental rights and promoting constitutional democracy.<sup>33</sup>

The adoption of the 1996 Constitution reflected a commitment to inclusivity and transformation. The Constitutional Court became an instrument for achieving these

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<sup>31</sup> Mandela, Nelson, *The Struggle is My Life*

<sup>32</sup> Marjorich, Hope and young, James, *The South African Churches in a Revolutionary Situation* (New York, ORBIS Books) 1981.

<sup>33</sup> Panchai, Brijlal, *The International Aspects of the South African Indian Question. 1860-1971* (Cape Town) 1971

objectives, with its judgments contributing to the development of a more just and equitable legal system. Through judicial review, the court addressed historical injustices, affirmed the rights of marginalized communities, and fostered a jurisprudence that promotes the values of a democratic and inclusive society<sup>34</sup>.

Section 233 of the Constitution acknowledges the relevance of international law and may be considered in interpreting the Bill of Rights. This openness to international law provides an additional dimension to judicial review, allowing the courts to draw on international human rights standards when assessing the constitutionality of laws and government actions.

The judiciary in South Africa plays a pivotal role in enforcing judicial review, ensuring the supremacy of the Constitution, upholding the rule of law, and protecting fundamental rights. This section examines key cases where the Constitutional Court has exercised its powers to strike down legislation or executive actions, thereby shaping the legal and constitutional framework of the country.

**S v. Makwanyane**<sup>35</sup>: The case of *S v. Makwanyane* challenged the constitutionality of the death penalty under apartheid-era laws. The Constitutional Court, interpreting the right to life and freedom from cruel, inhuman, or degrading punishment under Sections 9 and 11 of the Constitution, declared the death penalty unconstitutional. This decision abolished capital punishment in South Africa, marking a significant shift towards a rights-based approach to criminal justice and affirming the judiciary's role in safeguarding human rights through judicial review.

The abolition of the death penalty not only aligned South Africa's legal system with international human rights standards but also set a precedent for the Constitutional Court's authority to strike down laws that violate fundamental rights, thereby enhancing the protection of human dignity and promoting constitutional values.<sup>36</sup>

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<sup>34</sup> Plexis, L.J. Du, *Problems of Nationality and Race in Southern Africa*, (The International Studies Publications) 1949.

<sup>35</sup> *S v. Makwanyane and Another* (CCT3/94) [1995] ZACC 3

<sup>36</sup> *Rao, V.K.R.V. , The Nehru Legacy* (Bombay) 1971.

**Minister of Health v. Treatment Action Campaign**<sup>37</sup>: In this case, the Treatment Action Campaign (TAC) challenged the government's policy on HIV/AIDS treatment, particularly the availability of antiretroviral drugs to prevent mother-to-child transmission of HIV. The Constitutional Court, interpreting Section 27 of the Constitution which guarantees the right to access healthcare services, ruled that the government's policy was unconstitutional. The court mandated the government to provide comprehensive antiretroviral therapy to pregnant women, emphasizing the state's obligation to fulfil socio-economic rights.

**Economic Freedom Fighters v. Speaker of the National Assembly**<sup>38</sup>: This case challenged the failure of the National Assembly to hold President Jacob Zuma accountable for violating the Constitution in the Nkandla matter. The Constitutional Court, interpreting the principle of accountability under Section 181(3) of the Constitution, emphasized the importance of adherence to the rule of law and separation of powers. The court ruled that the President had failed to uphold the Constitution by not complying with the Public Protector's remedial actions regarding public funds spent on his private residence.<sup>39</sup>

The decision underscored the judiciary's role in ensuring executive accountability and upholding constitutional principles. It reinforced the Constitutional Court's authority to review and remedy breaches of the Constitution by holding public officials accountable, thereby strengthening constitutional governance and public trust in democratic institutions.

**Albutt v. Centre for the Study of Violence and Reconciliation**<sup>40</sup>: In this case, the Constitutional Court examined the constitutionality of automatic life imprisonment without parole for certain categories of murder convictions. The court, interpreting Section 12(1)(e) of the Constitution which prohibits cruel, inhuman, or degrading

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<sup>37</sup> Minister of Health and Another v. Treatment Action Campaign and Others (No. 2) [2002] ZACC 15

<sup>38</sup> Economic Freedom Fighters v Speaker of the National Assembly and Others (CCT143/15) [2016] ZACC 11

<sup>39</sup> Saxena, S.C., Political Conflicts and Powers in Africa, (Delhi, UDH Publication) 1985

<sup>40</sup> Minister of Correctional Services v. Bester and Others (CCT48/10) [2010] ZACC 8

punishment, held that automatic life imprisonment without the possibility of parole violated this constitutional provision. The court emphasized the need for proportionality in sentencing and the protection of human dignity.

This decision highlighted the judiciary's role in safeguarding individual rights against punitive laws that infringe on human dignity. It contributed to the development of South Africa's jurisprudence on the constitutionality of sentencing laws and underscored the judiciary's commitment to ensuring that legislative measures comply with constitutional standards.<sup>41</sup>

**Doctors for Life International v. Speaker of the National Assembly:** The case involved a challenge to the constitutionality of the Choice on Termination of Pregnancy Act, which legalized abortion in South Africa. The Constitutional Court, interpreting the right to life under Section 11 of the Constitution and reproductive rights under Section 12(2)(a), upheld the Act's constitutionality. The court balanced the rights of pregnant women against the state's obligation to protect the unborn, ultimately ruling that the Act struck a reasonable balance between these competing interests. This decision illustrated the Constitutional Court's role in adjudicating contentious social issues and balancing competing rights under the Constitution. It set a precedent for judicial review in sensitive policy areas and affirmed the judiciary's authority to uphold laws that promote constitutional values while respecting individual rights.

This decision expanded the scope of judicial review to include socio-economic rights and underscored the judiciary's role in enforcing the government's constitutional obligations. It demonstrated the Constitutional Court's willingness to intervene in public health policy to protect vulnerable populations and promote the realization of rights crucial for public health.

**Glenister v. President of the Republic of South Africa<sup>42</sup>:** The case of *Glenister v. President of the Republic of South Africa* addressed the constitutionality of

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<sup>41</sup> Shartna, Shri Ram, *Indian Foreign Policy: Annual Survey* (New Delhi, Sterling Publishers) 1972

<sup>42</sup> *Glenister v. President of the Republic of South Africa and Another* (CCT48/10) [2011] ZACC 6

disbanding the Directorate of Special Operations (the Scorpions), a specialized anti-corruption unit. The Constitutional Court, interpreting Section 9 (equality before the law) and Section 237 (anti-corruption measures) of the Constitution, ruled that the disbandment was unconstitutional. The court emphasized the importance of effective anti-corruption mechanisms and held that the disbandment undermined efforts to combat corruption.<sup>43</sup>

This decision reinforced the judiciary's role in promoting transparency, accountability, and good governance by striking down executive actions that undermine constitutional principles. It underscored the judiciary's authority to review and invalidate governmental decisions that threaten democratic values and the rule of law.

These landmark cases exemplify the judiciary's proactive role in enforcing judicial review in South Africa. By striking down legislation or executive actions that violate constitutional rights and principles, the Constitutional Court has shaped the legal landscape, strengthened constitutional democracy, and protected fundamental rights. These decisions illustrate the judiciary's authority to interpret the Constitution expansively, ensuring that governmental actions adhere to constitutional norms and serve the public interest.<sup>44</sup>

Through these cases, the Constitutional Court has established a robust framework for judicial review that not only safeguards individual rights but also promotes accountability, transparency, and the rule of law in South Africa's democratic governance. The judiciary's exercise of these powers reinforces its pivotal role as a guardian of constitutionalism and a protector of the rights and freedoms enshrined in the Constitution of the Republic of South Africa, 1996.

The Constitutional Court of South Africa has played a crucial role in interpreting and applying constitutional provisions related to judicial review. Through landmark cases

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<sup>43</sup> Thompson, Leonard & Prior, Andrew, *South African Politics* (USA, Yale University Press) 1982

<sup>44</sup> Tweedsmuir, Lord, *The African Colony: Studies in the Reconstruction* (Edinburgh) 1903

such as *S v. Makwanyane*<sup>45</sup>, *Minister of Health v. Treatment Action Campaign*<sup>46</sup>, and *Glenister v. President of the Republic of South Africa*, the judiciary has established a jurisprudence that protects fundamental rights, promotes equality, and ensures governmental accountability. These cases illustrate how Section 172(1) empowers the courts to strike down laws inconsistent with the constitution, thereby reinforcing the rule of law and advancing constitutional democracy in South Africa.<sup>47</sup>

The adoption of the Constitution of the Republic of South Africa in 1996 represented a transformative moment for the nation, particularly with regard to judicial review. The constitution, with its emphasis on constitutional supremacy, the Bill of Rights, the establishment of the Constitutional Court, and the broad powers conferred on the judiciary, laid the groundwork for a robust system of judicial review that plays a pivotal role in upholding the principles of democracy, human rights, and the rule of law in South Africa.<sup>48</sup>

## **B. CONSTITUTIONAL FOUNDATIONS OF JUDICIAL REVIEW**

The constitutional foundations of judicial review in South Africa are deeply embedded in the transformative principles set forth by the Constitution of the Republic of South Africa, 1996. These foundations provide the legal framework for the judiciary to play a central role in upholding the rule of law, protecting fundamental rights, and ensuring the supremacy of the constitution. The following key elements contribute to the constitutional foundations of judicial review in South Africa. The cornerstone of judicial review in South Africa lies in the unequivocal assertion of the supremacy of the constitution. Section 2 of the Constitution explicitly declares that the constitution is the supreme law of the Republic, and any law or conduct inconsistent with it is invalid. This principle establishes the constitution as the ultimate source of

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<sup>45</sup> *S v. Makwanyane and Another* (CCT3/94) [1995] ZACC 3

<sup>46</sup> *Minister of Health and Another v. Treatment Action Campaign and Others* (No. 2) [2002] ZACC 15

<sup>47</sup> Moola M, "ANC and Struggle Against Racial Tyranny", *Mainstream*, May 23, 1987.

<sup>48</sup> Minter William, "South Africa: Straight Talk on Sanctions", *Foreign Policy*, No.65, Winter 1986, pp. 43-63



authority, enabling the judiciary to engage in judicial review and strike down laws or actions that deviate from constitutional norms.<sup>49</sup>

The Constitution enshrines the principle of the separation of powers, delineating distinct roles for the legislative, executive, and judicial branches. Section 1(c) of the Constitution emphasizes the need to secure the impartial administration of justice without fear, favor, or prejudice. The judiciary's role in interpreting and upholding the constitution underscores the importance of maintaining a balance between the different branches of government while ensuring an independent and effective judiciary. Chapter 2 of the Constitution, commonly known as the Bill of Rights, lays the foundation for judicial review by enumerating a comprehensive set of fundamental rights and freedoms. The Bill of Rights includes provisions guaranteeing equality, human dignity, freedom of expression, and the right to a fair trial, among others. These rights serve as benchmarks against which the judiciary assesses the constitutionality of laws and government actions through the mechanism of judicial review.

Section 172 of the Constitution grants the judiciary explicit powers of judicial review. It authorizes the courts, including the Constitutional Court, to declare invalid any law or conduct that is inconsistent with the constitution. This provision empowers the judiciary to scrutinize the actions of the state, ensuring that they align with constitutional principles and do not infringe upon the rights guaranteed by the Constitution. Section 233 of the Constitution recognizes the relevance of international law in interpreting the Bill of Rights. This provision allows the courts to consider international human rights standards and principles when adjudicating cases involving constitutional rights<sup>50</sup>. It broadens the scope of judicial review by providing the judiciary with a rich source of comparative and persuasive authority from the international legal community. The constitutional foundations of judicial review in

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<sup>49</sup> Narso Monty "Quo Vadis South Africa", *Southern Africa Report*, Vol.5 (3), Dec. 1989, pp.14-17.

<sup>50</sup> Ngweno Osolo-Nasubo, "Problems and Constraints' of Political Development in South Africa: The Legacies of Neocolonialism" *Political Science Review*, 20 (3-4), 1981, pp.207-33.

South Africa are not confined to specific areas of law but extend across the legal landscape. Judicial review can be invoked in matters ranging from administrative decisions to the constitutionality of legislation, ensuring that the judiciary acts as a bulwark against abuses of power and violations of constitutional rights<sup>51</sup>. The constitutional foundations of judicial review in South Africa reflect a commitment to constitutional supremacy, separation of powers, the protection of fundamental rights, and an open-minded approach to international law. These foundations provide a solid framework that empowers the judiciary to fulfill its crucial role in safeguarding the constitutional order and promoting a just and democratic society.

### **C. CONSTITUTIONAL RIGHTS**

The Constitution of the Republic of South Africa, 1996, enshrines a comprehensive set of fundamental rights and freedoms within its Bill of Rights (Chapter 2). These rights, designed to protect the inherent dignity and worth of every individual, serve as a cornerstone for judicial review in South Africa. The judiciary plays a pivotal role in safeguarding these rights through the mechanism of judicial review, ensuring that laws and government actions align with constitutional norms. The following key fundamental rights and freedoms are central to the constitutional framework and judicial review process:

1. Section 9 of the Constitution guarantees the right to equality, prohibiting unfair discrimination on various grounds, including race, gender, sex, pregnancy, marital status, ethnic or social origin, color, sexual orientation, age, disability, religion, conscience, belief, culture, and language. Judicial review, in the context of equality, involves scrutinizing laws and government actions to ensure they do not perpetuate unjust distinctions or discriminate against individuals or groups.<sup>52</sup>

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<sup>51</sup> Nuhu Bamali, "Apartheid is a threat to International Peace", *Review of International Affairs*, 15 (350), Nov.1964, pp. 34-35.

<sup>52</sup> "Non Aligned Movement Emerges Stranger", *Current Topic*, 12 (11), Oct. 1986, p.657.

2. Section 10 of the Constitution protects the right to human dignity, emphasizing the intrinsic value of every person. Judicial review often involves assessing whether laws or government actions respect and uphold the dignity of individuals, ensuring that no person is subjected to inhumane or degrading treatment.
3. Section 12 guarantees the right to freedom and security of the person, protecting individuals from arbitrary arrest, detention, or physical harm. Judicial review in this context may involve assessing the constitutionality of legislation or government actions that impinge upon personal liberty, ensuring that any limitations are justifiable and proportionate.
4. Section 14 protects the right to privacy, shielding individuals from unwarranted intrusions into their personal lives. Judicial review may be invoked to examine the constitutionality of laws or actions that infringe upon the right to privacy, striking a balance between individual autonomy and legitimate state interests.
5. Section 16 guarantees the right to freedom of expression, encompassing freedom of the press, artistic creativity, and academic freedom. Judicial review plays a crucial role in protecting this right by scrutinizing laws that may unduly restrict free speech, ensuring that limitations are narrowly tailored and necessary for a legitimate purpose.
6. Section 32 provides the right of access to information, enabling individuals to access information held by the state or private entities that is necessary for the exercise or protection of their rights. Judicial review may be invoked to address disputes related to the denial of access to information and to ensure transparency and accountability.
7. Section 33 protects the right to just administrative action, ensuring that administrative decisions are lawful, reasonable, and procedurally fair. Judicial review, in this context, involves examining administrative actions to ascertain

their conformity with constitutional principles and the principles of administrative justice.

8. Section 35 safeguards the right to a fair trial, encompassing the right to a fair and public hearing, the presumption of innocence, and the right to legal representation. Judicial review in the criminal justice system ensures that legal procedures adhere to constitutional standards, protecting the rights of

The aforementioned fundamental rights and freedoms provide a foundation for the judiciary to engage in judicial review, serving as benchmarks against which the constitutionality of laws and government actions is assessed. The process of judicial review ensures that the rights guaranteed by the Constitution remain dynamic and effective, adapting to the evolving needs of South African society while preserving the core principles of democracy, equality, and human dignity.<sup>53</sup>

## **VI. ROLE OF JUDICIARY IN ENFORCING JUDICIAL REVIEW**

The judiciary in South Africa plays a pivotal and proactive role in enforcing judicial review, ensuring the supremacy of the Constitution, upholding the rule of law, and protecting fundamental rights. The Constitution of the Republic of South Africa, 1996, grants the judiciary extensive powers to scrutinize and strike down laws or government actions inconsistent with constitutional principles.<sup>54</sup>

The judiciary is the ultimate guardian of constitutional supremacy in South Africa. The Constitution expressly states that it is the supreme law of the land, and any law or conduct inconsistent with it is invalid. The judiciary, particularly the Constitutional Court, is empowered to interpret and apply the Constitution, ensuring that all laws and government actions align with its provisions.

At the apex of the judiciary is the Constitutional Court, established by the Constitution as the highest court in matters of constitutional interpretation. The Constitutional

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<sup>53</sup> Nuhu Bamali, "Apartheid is a threat to International Peace", *Review of International Affairs*, 15 (350), Nov.1964, pp. 34-35.

<sup>54</sup> Stevens, B. "Struggle for Life: Apartheid and Health" *Sechaba*, Feb. 1986, pp.8-12.

Court has the authority to decide on the constitutionality of any law, executive action, or administrative decision. Its judgments set precedent and guide lower courts in their application of constitutional principles, effectively shaping the landscape of judicial review. The judiciary exercises the power of judicial review to assess the constitutionality of legislation. When faced with a constitutional challenge, courts can declare laws invalid if they are found to infringe upon fundamental rights or violate constitutional norms<sup>55</sup>. Landmark cases, such as the Certification of the Constitution of the Republic of South Africa, 1996 (1996), exemplify the judiciary's role in reviewing and validating the constitutionality of the entire constitutional text.<sup>56</sup>

The judiciary also reviews executive and administrative actions to ensure they comply with constitutional standards. This includes scrutinizing decisions of government officials, administrative bodies, and other state actors. The principles of legality, reasonableness, and procedural fairness guide the courts in assessing the lawfulness and constitutionality of executive actions. South African courts have been receptive to public interest litigation, allowing citizens and civil society organizations to bring cases challenging laws or government actions that impact the public interest. This openness extends the reach of judicial review to a broader range of issues, contributing to a more inclusive and participatory legal system.

When the judiciary finds a law or government action to be unconstitutional, it has the authority to declare it invalid. The courts may also provide remedies, such as striking down specific provisions, suspending the declaration of invalidity to allow for legislative correction, or issuing interim relief to protect individual rights immediately. These remedies reinforce the judiciary's role in shaping and correcting constitutional violations. The judiciary, through its decisions in various cases, contributes to the development of constitutional jurisprudence. This evolving body of law guides future cases and provides clarity on constitutional principles, enhancing

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<sup>55</sup> Svetic Filip, effective", "Sanctions are nevertheless Review of International Affairs, 36 (857), 1985, pp.17-20

<sup>56</sup> Terult W.Andrew, "South African Arms Sales and Strengthening Apartheid", Africa Today, II Quarter, 1973, pp.11-12

the effectiveness of judicial review. Landmark cases, such as *Minister of Health v. Treatment Action Campaign* (2002), have set important precedents in areas like the right to access healthcare.<sup>57</sup>

The judiciary in South Africa is open to drawing on international law and comparative jurisprudence when interpreting constitutional rights. This enriches the analysis in judicial review cases, allowing the courts to consider global human rights standards and learn from legal developments in other jurisdictions. The judiciary in South Africa, and particularly the Constitutional Court, plays a central and proactive role in enforcing judicial review. Through constitutional interpretation<sup>58</sup>, scrutiny of legislation, review of executive actions, and the development of jurisprudence, the judiciary ensures that the constitutional principles embedded in South Africa's legal framework are upheld, fostering a just, democratic, and rights-respecting society.<sup>59</sup>

#### **A. LANDMARK CASES**

Judicial review cases in South Africa provides insights into the evolution of constitutional principles, the protection of fundamental rights, and the role of the judiciary in shaping the legal landscape. Several landmark cases have played a crucial role in defining the scope and application of judicial review in the post-apartheid era.

#### **B. MINISTER OF HEALTH V. TREATMENT ACTION CAMPAIGN<sup>60</sup>**

The Treatment Action Campaign (TAC) challenged the South African government's policy on the prevention of mother-to-child transmission of HIV, which limited the availability of antiretroviral drugs. This case marked a watershed moment in the protection of socioeconomic rights. The Constitutional Court held that the government's policy violated the right to access healthcare, emphasizing the state's constitutional obligation to take reasonable legislative and other measures to achieve

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<sup>57</sup> Harris. Colin, "Political and Economic Effects of Sanctions on Rhodesia", *World Today*, 23(1), Jan.1967, ,pp.1-4

<sup>58</sup> Gupta Anirudha, "Sanctions Against South Africa: Some Issues and Implications ", *Indian Quarterly*, XLII(3), July, Sept. 1986, pp.274\*83.

<sup>59</sup> Hiro, Dilip, "Margaret Thatcher and "Sanctions", *Mainstream*, 24(48), Aug. 2,1986, pp.2-3,33

<sup>60</sup> *Minister of Health and Another v. Treatment Action Campaign and Others* (No. 2) [2002] ZACC 15

the progressive realization of the right to health. The judgment underscored the judiciary's role in holding the government accountable for its obligations under the Constitution.

### **C. S V. MAKWANYANE<sup>61</sup>**

This case dealt with the constitutionality of the death penalty in South Africa. The accused argued that the death penalty violated various constitutional rights, including the right to life and freedom from cruel, inhuman, or degrading punishment. The Constitutional Court abolished the death penalty, holding that it was inconsistent with the constitutional rights to life, dignity, and security of the person. This decision demonstrated the court's commitment to interpreting the Constitution in a manner that promotes human rights and dignity, setting a precedent for the protection of fundamental rights in the post-apartheid era<sup>62</sup>.

### **D. ECONOMIC FREEDOM FIGHTERS V. SPEAKER OF THE NATIONAL ASSEMBLY<sup>63</sup>**

This case challenged the failure of the National Assembly to hold President Jacob Zuma accountable for violating the Constitution in the Nkandla matter. The Constitutional Court emphasized the importance of accountability, transparency, and adherence to the rule of law. The judgment clarified the role of the judiciary in ensuring that the executive branch is held accountable for constitutional violations. It established that the National Assembly has a duty to hold the President accountable for breaches of the Constitution, reaffirming the principles of constitutional supremacy and the separation of powers.

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<sup>61</sup> S v. Makwanyane and Another (CCT3/94) [1995] ZACC 3

<sup>62</sup> Khazanov A. "The Peoples of South Africa in the Struggle Against Colonialists", International Affairs, Moscow, April 1974, pp.29-34

<sup>63</sup> Economic Freedom Fighters v Speaker of the National Assembly and Others (CCT143/15) [2016] ZACC 11

### E. GLENISTER V. PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA<sup>64</sup>

This case challenged the constitutionality of legislation disbanding the Directorate of Special Operations (the Scorpions) and transferring its functions to the South African Police Service. The Constitutional Court held that the disbandment of the Scorpions was inconsistent with the Constitution, emphasizing the importance of effective and independent anti-corruption mechanisms. The judgment underscored the judiciary's role in protecting institutions that promote accountability, transparency, and the fight against corruption.

### F. ALBUTT V. CENTRE FOR THE STUDY OF VIOLENCE AND RECONCILIATION<sup>65</sup>

This case dealt with the constitutionality of the automatic life imprisonment sentence for murder in South Africa. The Constitutional Court held that the automatic imposition of a life sentence without the possibility of parole violated the constitutional prohibition on cruel, inhuman, or degrading punishment. The judgment exemplified the court's commitment to interpreting laws in a manner that aligns with constitutional rights and values, demonstrating its role in striking a balance between punishment and the protection of human dignity.

These significant judicial review cases in South Africa showcase the judiciary's pivotal role in interpreting and applying the Constitution to protect fundamental rights, promote accountability, and ensure adherence to constitutional principles. Through these landmark decisions, the judiciary has contributed to the development of a robust constitutional jurisprudence that reflects the values and aspirations of post-apartheid South Africa.

1. **Minister of Police v. McBride:** This case centered on the legality of the suspension of Robert McBride, head of the Independent Police Investigative Directorate (IPID), by the Minister of Police. The Constitutional Court ruled the suspension

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<sup>64</sup> Glenister v. President of the Republic of South Africa and Another (CCT48/10) [2011] ZACC 6

<sup>65</sup> Minister of Correctional Services v. Bester and Others (CCT48/10) [2010] ZACC 8



unlawful, emphasizing the necessity for independence and impartiality in institutions overseeing law enforcement accountability. The ruling reaffirmed the judiciary's role in restraining executive overreach and ensuring autonomy in institutions tasked with upholding the rule of law and investigating misconduct.

2. **Democratic Alliance v. President of South Africa:** In this instance, the Constitutional Court deliberated on the lawfulness of the President's dismissal of Pravin Gordhan, then Minister of Finance, and his deputy. The Court found the dismissals unconstitutional, citing procedural irregularities and inadequate justification for executive actions. The case underscored the judiciary's responsibility in scrutinizing executive decisions to ensure adherence to constitutional principles of due process, fair administrative action, and public accountability.
3. **Association of Mineworkers and Construction Union v. Chamber of Mines of South Africa:** This case addressed workers' rights to strike and engage in collective bargaining within the mining sector. The Constitutional Court upheld the importance of safeguarding workers' rights to organize and bargain collectively, striking down provisions that excessively restricted these rights. The ruling highlighted the judiciary's role in balancing economic interests with labor rights, promoting social justice, and safeguarding constitutional guarantees of freedom of association and equitable labor practices.

## VII. CONTEMPORARY SIGNIFICANCE AND CHALLENGES

### A. CONTEMPORARY SIGNIFICANCE:

Judicial review continues to be of paramount importance in South Africa for safeguarding fundamental rights and freedoms. The Constitution's Bill of Rights, with its inclusive and expansive provisions, empowers the judiciary to protect citizens from unjust laws and government actions. The courts play a vital role in ensuring that individuals' rights to equality, dignity, freedom of expression, and other constitutional guarantees are upheld and defended.

In recent times, the role of judicial review in South Africa has been pivotal in safeguarding fundamental rights and advancing social justice amidst evolving societal dynamics. Several recent cases and developments underscore the enduring significance of judicial review in upholding constitutional values and addressing critical social issues.<sup>66</sup>

Judicial review is a linchpin in the promotion and sustenance of constitutional democracy in South Africa. The judiciary acts as a check on the exercise of governmental powers, ensuring that the principles of separation of powers are maintained. By holding government actions accountable to constitutional standards, the judiciary contributes to the stability and resilience of South Africa's democratic institutions.

The judiciary, through judicial review, has been an instrument for societal transformation and the pursuit of social justice. Landmark decisions have addressed historical injustices, discriminatory practices, and systemic inequalities. The transformative constitutionalism envisaged in the post-apartheid era finds expression through judicial decisions that seek to reshape the legal landscape in line with the principles of equality, ubuntu, and human dignity. The judiciary's openness to public interest litigation allows citizens and advocacy groups to bring cases that impact broader societal interests. This inclusivity enhances the democratic nature of judicial review, making it a tool not only for legal experts but also for individuals and communities seeking redress for grievances and protection of their rights<sup>67</sup>.

Contemporary judicial review often involves delicate balancing acts, particularly when rights conflict with public interests. The courts navigate complex scenarios to ensure that individual rights are protected without unduly impinging on the broader interests of society. Striking the right balance requires nuanced legal reasoning and a thorough understanding of the contextual nuances of each case.

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<sup>66</sup> Van Zyl Slabbert E., and David Welsh, *South Africa's Options*, (Cape Town: David Philip) 1979.

<sup>67</sup> Wetherell, Violet, *The Indian Question in South Africa* (Cape Town) 1947.

## **B. CHALLENGES**

Despite its critical role, the South African judiciary encounters several challenges that hinder effective implementation of judicial review and access to justice:

## **C. ACCESS TO JUSTICE**

Despite the constitutional openness to public interest litigation, challenges persist in ensuring broad access to justice. Socioeconomic disparities can hinder individuals or marginalized communities from effectively engaging in judicial review due to financial constraints or lack of legal representation. Addressing these disparities remains a challenge for a more inclusive and accessible justice system<sup>68</sup>. Many South Africans, particularly marginalized communities and indigent individuals, confront barriers to accessing justice due to financial constraints, geographical distances to courts, and limited legal representation. This inequality undermines the principle of equal treatment before the law and restricts the judiciary's capacity to provide redress to those whose rights have been violated.

## **D. BACKLOG AND DELAY IN ADJUDICATION**

The judiciary faces challenges related to case backlog and delays in the adjudication of matters. The sheer volume of cases, coupled with resource constraints, can result in prolonged waiting periods for resolution. This delay can impact the effectiveness of judicial review, especially in cases where timely interventions are crucial to protecting constitutional rights. Judicial review is a linchpin in the promotion and sustenance of constitutional democracy in South Africa.

Instances persist where government entities or officials<sup>69</sup> delay compliance with court rulings, particularly in politically sensitive or administratively complex cases. This undermines judicial authority and diminishes public confidence in the rule of law.<sup>70</sup>

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<sup>68</sup> Atove, Turkaya, "President Reagan's Policy in Respect to South Africa", *Democratic World* 14(11) March 17, 1985, 7-10, 17: 14(14): April 17, 1985: 9-11; 14(15); April 14, 1985, pp. 11-15.

<sup>69</sup> Baldwin, D.A., "The Power of Positive Sanctions", *World Politics* 24(1) Oct, 1971, pp. 19-38.

<sup>70</sup> Bhanumathy, K. P . , "Why Britain Against Mainstream, 26(20), Feb. 27, 1988, p. 27. Sanctions",

### **E. EXECUTIVE COMPLIANCE**

While judicial review empowers the judiciary to scrutinize executive actions, ensuring compliance with court decisions can be challenging. Some government entities may resist or delay implementing court orders, posing a threat to the efficacy of judicial review. Strengthening mechanisms for the enforcement of court decisions remains an ongoing challenge.

### **F. BALANCING JUDICIAL ACTIVISM**

The question of judicial activism, where the judiciary actively shapes social policy through its decisions, is a recurring challenge. Striking the right balance between an engaged judiciary and potential accusations of overreach requires careful consideration. Some argue that an overly activist judiciary may encroach on the domain of elected representatives, sparking debates about the appropriate role of the judiciary in shaping policy.

### **G. COMPLEX CONSTITUTIONAL INTERPRETATION**

The complexity of constitutional interpretation poses challenges for the judiciary. Issues related to the interpretation of rights, the scope of limitations, and the balancing of competing interests demand nuanced legal analysis. The evolving nature of societal norms and values adds layers of complexity, requiring the judiciary to adapt legal principles to contemporary realities. The contemporary significance of judicial review in South Africa lies in its role as a bulwark for fundamental rights, democratic principles, and societal transformation. However, challenges such as access to justice<sup>71</sup>, delays in adjudication, and the ongoing need to strike a balance between rights and public interests underscore the dynamic nature of the judicial review landscape in the country. Addressing these challenges is essential for ensuring that judicial review continues to fulfill its vital role in shaping a just and democratic South Africa.

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<sup>71</sup> Child, Chris "Economic Colloboration and the Case for UN Comprehensive Mandatory Sanctions Against South M Af rica ,Cent re Against Apartheid, No.6184, July 1984, pp. 1-60

Judicial review remains a cornerstone of South Africa's constitutional framework, ensuring the preservation of democratic principles, human rights, and the rule of law. By addressing challenges related to access to justice and enforcement of court decisions, the judiciary can strengthen its role in protecting fundamental rights, promoting social equity, and sustaining public confidence in democratic institutions. Through sustained vigilance, innovation, and collaboration, South Africa's judiciary can navigate these challenges and uphold its mandate to safeguard constitutional principles for all citizens.

#### **H. ADDRESSING CHALLENGES AND STRENGTHENING JUDICIAL REVIEW**

**Improving Access to Justice:** Expand funding and resources for legal aid organizations to offer free or subsidized legal assistance to disadvantaged individuals and communities. Introduce mobile court facilities to reach remote areas and facilitate easier access to legal proceedings for rural populations. Raise awareness about legal rights and avenues for seeking justice through public education initiatives and community outreach programs.

**Enhancing Enforcement of Judicial Decisions:** Strengthen mechanisms for judicial supervision to ensure prompt and effective enforcement of court orders by monitoring compliance and imposing penalties for non-compliance. Provide training for public officials on the significance of judicial independence and the rule of law, emphasizing their duty to respect and implement court judgments<sup>72</sup>.

**Technology and Innovation:** Invest in technological advancements to modernize court procedures, streamline case management, and reduce backlog, thereby enhancing efficiency and access to justice. Develop digital platforms offering legal information, forms, and resources to empower individuals to navigate the legal system independently.<sup>73</sup>

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<sup>72</sup> Dhamagare, D.N., "Apartheid its Theory and Practice in South Africa", *Indian Quarterly*, 23(4), Dec. 1967, pp.338-61

<sup>73</sup> Editorial, "Showing Solidarity with the Peoples of South Africa", *Sechaba*, Dec. 1985, p. 1

Collaboration and Dialogue: Foster partnerships between the judiciary, civil society organizations, legal professionals, and governmental agencies to encourage dialogue, exchange best practices, and collectively address systemic challenges. Advocate for legislative reforms that reinforce judicial independence, clarify procedural rules, and bolster the judiciary's ability to adjudicate complex constitutional matters effectively.

## **VIII. CONCLUSION**

The recent developments and upcoming cases in South Africa highlight the dynamic nature of judicial review and its critical role in shaping the country's legal and social landscape. Cases such as *Minister of Police v. McBride* and *Democratic Alliance v. President of South Africa* exemplify the judiciary's commitment to ensuring government accountability and protecting fundamental rights. As the judiciary continues to address contemporary challenges, including issues of access to justice and enforcement of court decisions, its role remains pivotal in promoting social justice and upholding constitutional values.

Looking ahead, upcoming cases that tackle issues such as land reform, environmental justice, and the rights of marginalized communities have the potential to further define and expand the scope of judicial review. These cases will not only test the judiciary's capacity to balance competing interests but also its ability to adapt legal principles to evolving societal norms and values.

The potential impact of these developments on the evolution of judicial review is profound. They will likely influence the interpretation of constitutional provisions, set new precedents, and reinforce the judiciary's role as a guardian of democracy and human rights. The outcomes of these cases will shape the future of South African jurisprudence and have lasting implications for the protection of fundamental rights and the promotion of social justice.

As we reflect on the ongoing evolution of judicial review in South Africa, it is essential to consider the broader implications of these legal developments. How will the judiciary navigate the complex interplay between upholding individual rights and

addressing collective societal needs? What role will judicial review play in fostering a more inclusive and equitable society in the face of new challenges? These questions underscore the importance of continuous dialogue and reflection on the role of judicial review in shaping the future of constitutional democracy in South Africa.

The journey towards a more just and democratic society is ongoing, and the judiciary's unwavering commitment to upholding constitutional principles will remain crucial. As South Africa continues to confront its past and strive towards a better future, judicial review will undoubtedly serve as a beacon of hope and a catalyst for positive change, ensuring that the promises of the Constitution are realized for all citizens.

## **IX. REFERENCES**

- Constitution of the Republic of South Africa, 1996.
- Minister of Health v. Treatment Action Campaign, CCT8/2002 [2002] ZACC 15.
- S v. Makwanyane, CCT3/94 [1995] ZACC 3.
- Economic Freedom Fighters v Speaker of the National Assembly, CCT143/15 [2016] ZACC 11.
- Glenister v President of the Republic of South Africa, CCT48/10 [2011] ZACC 6.
- Albutt v Centre for the Study of Violence and Reconciliation, CCT76/09 [2010] ZACC 4.