



A Comparative Analysis of The Doctrine of Judicial Review in India, US And UK

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ABSTRACT

The present work undertakes a comprehensive investigation and comparative assessment of the doctrine of judicial review in the nation of India, the US, and the United Kingdom. Judicial review is a legal principle that empowers the judiciary to scrutinise and invalidate actions undertaken by both the legislative and executive wings of government which are inconsistent with the constitution and violate fundamental rights. The study begins by examining the historical evolution of the doctrine of judicial review in each country, highlighting the differences and similarities in the legal framework and constitutional provisions that underpin the doctrine. The study thereafter evaluates the implementation of the doctrine of judicial review in every country, with a specific emphasis on the judiciary's role, the extent of review, and the criteria for review. This study will provide a thorough examination of judicial review within India, including the necessary procedures, in order to offer a clear and concise understanding of the concept. This analysis will include the historical background, aim, and extent of judicial review within the Indian legal system. The study also examines the influence of the doctrine of judicial review in each country on the division of powers, democratic governance, and the safeguarding of basic rights. The text examines the difficulties and constraints associated with the notion of judicial review in different countries and proposes suggestions for enhancing its effectiveness. In addition, the study will analyse the present condition of judicial review within each of the three nations, and will investigate the challenges and issues now confronting the idea in each country. The paper concludes by doing a comparative examination of the idea of judicial review within India, the United States of America, and the UK, emphasising both the similarities and differences. The study emphasises that while the three countries are committed to upholding the rule of law and protecting fundamental rights, the implementation and interpretation of the concept of judicial review differ in each jurisdiction. The chapter also mention some suggestions like courts must analyse the constitutionality of cooperative federalism in conflicts involving federal legislation, such as power distribution and interstate trade. This will enhance the cohesion of federal democracies. Judicial review is designed to interpret and enforce current laws. Furthermore, the autonomous nature of the judiciary is a crucial factor whenever the court possesses the power to examine any statute. A judiciary that lacks dependence is unable to deliver a just and impartial verdict.

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Introduction

Law is essential to modern civilization. People gave up some of their freedoms so that the government could shield them from harm. This hypothesis was first put out by Hobbes. In this kind of Rule of Law, law without justice runs the risk of being arbitrarily applied and misused. Furthermore, Judicial Review ensures that the courts are diligently monitoring the activities of both the executive and the legislative branches. Through the process of judicial review, unconstitutional legislation are struck down. Judicial review encompasses both constitutional and statutory changes, as well as legislative actions.¹ When assessing its practical operation, Judicial Review plays a crucial role in preserving constitutionalism through three primary mechanisms. First and foremost, it ensures an equitable distribution of authority between the two levels of government within a federal system. Furthermore, it maintains a balance between the executive and legislative branches at the identical level of government. Lastly, it ensures the protection of essential human liberties and serves as a protector of treasured principles of life. In a federal state that adheres to the principle of separation of powers and ensures certain fundamental liberties for its residents, it is possible for all three elements of the use of Judicial Review power to coexist. Occasionally, certain constitutions may only exhibit one of the three qualities of the others. Nevertheless, it is essential to bear in mind that each of these three components carries significant significance within the specific contexts to which they are applicable.²

This study investigates the origins, development,

distinctive features, and instances of judicial review in the nation of India, the US, and the UK. The Indian government is comprised of three parts: the Legislative, Executive, and Judicial. The Indian Constitution creates three separate departments of government, which are the Legislative branch, the executive branch, and the Judiciary. The ability for these two entities to remain within their respective jurisdictions is facilitated by the division of powers.³ Power distribution in India is outlined in Article 50 of the Constitution. India's democratic system may be unique in that the Court has forbidden the Parliament from changing some crucial Constitutional clauses that are unknown to the legislature. Rajeev Dhavan correctly notes that Keshavananda had incited judges to engage in public politics. To the point of questioning the Court, "Will it also contest election," . Judicial Review's original concept is not as carefully adhered to as in the United States. The Constitution explicitly guarantees the right to a judicial review of government actions. If a measure passed by Parliament is found to be in violation of the Indian Constitution, it might be thrown down by the courts. If the Supreme Court determines that a legislatively passed law breaches the Constitution, such law will be struck down. According to Article 13(2) of the Indian Constitution, any legislation passed by parliament that restricts rights guaranteed in Part 3 is null and invalid from the start.⁴ The Indian Constitution is fully interpretable by the judiciary. There will be no threats to India's Constitution. Articles 13, 32, 131-136, 143, 226, 246-251, 254, and 372 all provide the courts the authority to examine cases.⁵ Article 372.1 of the

Indian constitution deals with the process of reviewing laws that were in effect before the adoption of the current constitution by judicial means. Upon the implementation of the Constitution, any laws passed by parliament are rendered null and void in accordance with Article 13(2). Rights guaranteed by the constitution are guarded by the Supreme Court and the High Court. Articles 32 and 226 of the Constitution provide legal recourse for victims of basic rights violations in case of a conflict between a law passed by the central government (union law) and a law enacted by a state government, the union law prevails and the state law becomes invalid. This is according to the provisions stated in Article 251 and 254 of the constitution.⁶

The notion of judicial review is deeply rooted in the United States Constitution and has been utilised by the highest court in the land to nullify acts that violate the provisions of the Constitution. The study analyses the significant ruling of *Marbury v. Madison*, that established the jurisdiction of the Supreme Court to assess and determine the constitutionality of laws. It also investigates later judgements that have shaped the scope and limitations of this legal principle. The report also examines the accusations that have been made against the United States court, including claims of judicial activism and the politicising in the judicial process.

In the UK, the doctrine of judicial review has traditionally been less prominent than in India or the US, as the UK does not have a written constitution. However, the paper notes that the UK judiciary has increasingly exercised judicial review

powers, particularly in matters of administrative law.⁷ The paper discusses *Bonham's Case*, which expanded the scope of judicial review within the UK, and examines the criticisms levelled against the UK judiciary for its perceived lack of independence and accountability.

The extent of judicial review in India is wider than that of the US and UK due to the unique features of their respective constitutions. The US Constitution employs a concise language that is often vague and general in nature. It is also widely regarded as the most rigid constitution in the world, burdened by complex and restrictive provisions. On the other hand, the Indian Constitution is considered both rigid and flexible, with detailed provisions that utilize specific and precise language. In comparison, the UK does not possess a written constitution, leading to a narrower scope of judicial review. Thus, India's constitution is often considered the most comprehensive and precise among these three nations.⁸

This study presents a meticulous and comparative examination of the doctrine of judicial review in India, the US, & UK. The paper highlights the historical evolution, legal framework, and criticisms of the doctrine in each jurisdiction and examines the similarities and differences between them. The paper ultimately emphasizes the need for ongoing scrutiny and critical analysis of the doctrine's application in light of the challenges facing the judiciary in each country.⁹

Research Questions

1. Whether Judicial Review is violative to the Doctrine of separation of powers?

2. What does the Indian Constitution say about reach of judicial review, & why has its purview been expanded?
3. Has the judiciary abused its power of review by applying the 'Basic Structure Doctrine' as a criterion to evaluate legislative actions?
4. Is the court preventing our society from progressing socially and economically by developing new theories or doctrines when conducting judicial review?

Judicial Review: A Study

Judicial review pertains to the power of a court to scrutinise and potentially invalidate a law or governmental action if it is determined to be in contravention of the constitution. The practice of judicial review differs between jurisdictions, with some countries having a stronger tradition of judicial review over others.¹⁰ The authority of judicial review was created in the United States through the landmark Supreme Court case *Marbury v. Madison* in 1803. Subsequently, the Supreme Court used this authority to invalidate both federal and state legislation that it deems to be contradictory to the Constitution. The U.S. system of judicial review is often regarded as one of the most robust globally, as the Supreme Court holds ultimate authority in determining the constitutionality of legislation government activities.¹¹ In Canada, the authority of judicial review is derived from the Constitution, specifically the Canadian Charter of Rights and Freedoms. However, the scope of the courts' involvement in assessing government operations is not as extensive as it is in the US. The Supreme

Court of Canada has the power of judicial review, but it usually shows prudence and defers to the decisions taken by elected officials. It only intervenes where there are clear violations of basic values.¹²

In the UK, the concept of judicial review is not entirely new and was established with the enactment of the Human Rights Act in 1998. Courts employ the power of judicial review, and it's limited to examining whether government actions comply with human rights laws. Unlike the US and Canada, the courts in the UK do not possess the power to nullify laws that they consider to be unconstitutional.

In India, the authority of judicial review comes from the Constitution. The Supreme Court of India possesses the jurisdiction to examine and nullify legislation & governmental actions that it deems to be in violation of the Constitution. The Indian system of judicial review is often regarded as strong, with the Supreme Court aggressively exercising its authority to protect citizens' rights and ensuring that government actions adhere to the Constitution.¹³ In general, various jurisdictions adopt varied approaches to the idea of judicial review, with certain countries having more robust tradition of judicial review compared to others. The United States possesses the most vigorous system for judicial review, wherein the Supreme Court holds ultimate authority in determining the legality of legislation and government activities. nations like India, Canada, and the United Kingdom also possess robust systems for judicial review, although the courts in these nations do not have as broad a role as in the United States.¹⁴

Origin of Judicial review in India

The notion of Judicial Review that originated in the US, has had a significant impact on other countries, such as India. In India, the principle of Judicial Review is based on the Rule of Law, which is derived from the nation's diverse cultural and socioeconomic customs.¹⁵ At first, Judicial Review was not included in India's legal system since certain statutes restricted the Governor General's authority to prevent legal examination. Nevertheless, in 1877, *Emperor v. Burah* introduced the notion of Judicial Review in India, granting the right to aggrieved persons to contest the validity of legislative acts. Subsequent legal proceedings further clarified and solidified the restricted extent of Judicial Review in India.

The Indian Constitution currently incorporates the concept of Judicial Review clearly in several provisions, namely 13, 32, 131-136, 143, 226, 227, 245, 246, & 372. Although the Government of India Act of 1935 did not include a particular provision for Judicial Review, the Indian courts' encounter with constitutional matters made it necessary to apply this principle in a wider framework. In India, the development of Judicial Review has been influenced by a range of historical and legal causes, yet its core idea has remained consistent.¹⁶

The origin of judicial review in United States

Judicial review is an essential and fundamental element within the Constitutional system of the U.S. The case of *Dr. Bonham* is widely recognised as a significant contribution to the American system of judicial review. However, the idea established in Coke's dicta was extensively

acknowledged in the U.S. and thrived to the point which the Supreme Court in the U.S. embraced it in pertinent cases.¹⁷ In 1794, the United States Supreme Court delivered a ruling in the case of *U.S. v. Tale Todd*, holding that an Act of Congress was null and void. According to sources, this was the first time the Supreme Court declared a government act illegal. In 1796, Chief Justice Chase, in the case of *Hylton v. United States*, discussed the necessity of determining whether the court possesses the constitutional power to nullify a statute enacted by Congress if it is discovered to be contradictory to and in breach of the Constitution. Chase expressed his willingness to utilise the court's powers if they do exist, namely in cases when the infringement is clearly apparent.¹⁸ In the landmark case of *Marbury v. Madison*, which occurred in 1803, the judiciary utilised the power of judicial review to establish its authority & announce the Act of Congress null & void.¹⁹

Origin of Judicial review in England

Judicial review was established in England with the landmark case of *Dr. Bonham v. Cambridge University*. However, Chief Justice Holt's statement in *City London v. Wood*, "An Act of Parliament can do no wrong, though it may do a great many things that look very odd," laid down the principle of Parliamentary Sovereignty. Under this view, the courts lack the authority to ascertain the validity of parliamentary statutes.²⁰ Prior to the formation of the European Convention on Human Rights, the UK lacked the ability to engage in judicial review. The enactment of the Human Rights Act of 1998 expanded the scope for judicial review in the UK following the creation of the

European Convention. This Act requires domestic courts to safeguard individual rights. Unlike many other countries, the UK does not have a written constitution and instead follows the principle of Parliamentary Sovereignty. This means that, in theory, all power is derived from the people, who delegate authority to the monarch, who in turn answers to Parliament. However, in practice, Parliament has almost unlimited power to legislate on any subject, without any restrictions or accountability. Primary legislation, which is passed by Parliament, cannot be subject to judicial review. Secondary legislation, which is delegated by Parliament to the executive branch, is subject to judicial review as it is administrative in nature.²¹ Parliament is responsible for creating fundamental laws, whereas specific government departments are responsible for creating secondary legislation. Secondary legislation can take several forms such as rules, regulations, directives, or acts. In the UK, main legislation is generally not open to judicial review, unless it contradicts European Community law or human rights law. This has been the situation since the European Union & Human Rights Act of 1998 was enacted. Secondary legislation, unlike primary legislation, is always susceptible to court review without any exemptions. Consequently, all executive & administrative activities, rules, and regulations might be contested and deemed illegal. The UK's insertion in the European Community has led to in significant amendments to the English legal system as well as the nation's constitution. Consequently, individuals have the ability to utilise the direct impact of Community law to contest national

measures and declare them unlawful, as affirmed by the Court in the case of *R v. Secretary of State of Transport* before the Administrative Court.²² Furthermore, it was observed that all national measures, encompassing primary legislation, secondary regulations, and administrative decisions, can be subject to judicial examination if they are found to be incompatible with Community law.²³

What is Judicial Review in Constitutional Democracy

Within a democracy based on the Constitution, judicial review pertains to the rule of a court to scrutinise and potentially invalidate a legislation or action by the government that it determines to be in breach of the constitution. The exercise of judicial authority is an essential component of a democracy with a constitution, as it serves as a protective measure against the actions of the other parts of government and ensures that legislation and government operations comply with the Constitution.²⁴

By giving the courts the power to review and invalidate laws and government actions that are in conflict with the Constitution, the judiciary is able to uphold the rights and freedoms of citizens and ensure that government actions are in compliance with the Constitution.²⁵ Judicial review functions as a mechanism to scrutinise and evaluate the activities undertaken by the other arms of government. The legislature has the authority to enact a legislation that contradicts the Constitution, however, the courts possess the ability to invalidate such a statute and prohibit its implementation. Likewise, the executive branch has the ability to

engage in actions that contradict the Constitution, however, the courts possess the authority to nullify such actions and hinder their execution.

Judicial review not only acts as a means of oversight for the actions of the other arms of government, but also serves to guarantee that government actions adhere to the Constitution. The Constitution constitutes a dynamic text that allows for several interpretations, and it is the responsibility of the courts to interpret its provisions and establish their significance. This aids in guaranteeing that the Constitution stays pertinent and adaptable to the evolving requirements of society.²⁶

Judicial review is essential in constitutional democracy since it acts as a means to monitor and restrain the actions of the other arms of government, guaranteeing that government actions adhere to the Constitution. Judicial review is a crucial component of a constitutional democracy, as it safeguards the rights and liberties of citizens and verifies that government actions align with the Constitution.²⁷

Is the court preventing our society from progressing socially and economically by developing new theories or doctrines when conducting judicial review?

In a constitutional democracy, the judiciary has a crucial function of exercising judicial review to guarantee that legislation and government acts adhere to the Constitution. However, it is a matter of debate whether or not the judiciary is proving to be a roadblock to social and economic progress by propounding various doctrines or theories while exercising this power.²⁸ On one hand, some argue

that the judiciary's use of doctrines and theories, such as the "doctrine of reasonable classification" or the "theory of proportionality," helps to ensure that laws and government actions are fair and just, and that they do not discriminate against certain groups of people. These beliefs and philosophies ensure that government activities adhere to the Constitution and facilitate advancement in society and the economy. However, there are many who contend that the judiciary's application of these concepts and hypotheses may result in the postponement of the enforcement of regulations and governmental activities, thereby impeding social and economic advancement. For instance, if a law as well as government action is contested in court based on allegations of discrimination, it may experience a delay as the court evaluates the challenge, thus impeding the advancement of the nation.²⁹

Furthermore, there are many who contend that the judiciary's application of these doctrines & theories might be excessively limiting and hinder the government's ability to undertake essential measures in order to further social and economic development. For instance, the judiciary's rigorous interpretation of specific parts of the Constitution could hinder the government's ability to enact essential policies crucial for the country's progress.³⁰ Moreover, there is a contention that the judiciary's inclination to exceed its jurisdiction and interfere in policy-making, typically the purview of the administration and the legislative, might have adverse effects on the social and economic advancement of the nation. The judiciary's lack of experience or resources may hinder its ability to

make well-informed decisions on policy problems, perhaps causing delays and confusion if they were to intervene.³¹

It's important to mention that the judiciary, being an important institution in a constitutional democracy, has a responsibility to protect the rights & liberties of citizens and ensure that government actions are in compliance with the Constitution. However, it's also important for the judiciary to strike a balance between protecting these rights and allowing the government to take necessary actions to promote social and economic progress.³²

In conclusion, whether or not the judiciary is proving to be a roadblock to social and economic progress by propounding various doctrines or theories while exercising the power of judicial review is a matter of debate. While some argue that these doctrines and theories help to ensure that laws and government actions are fair and just, others argue that they can lead to delays and prevent the government from taking necessary actions to promote social and economic progress. The judiciary must maintain a delicate equilibrium between safeguarding citizens' rights and permitting the government to undertake essential measures for the advancement of social and economic development.³³

Power of Judicial Review: To Whom It Is Accountable

Judicial scrutiny and judicial accountability stem from the fundamental concept that power has a tendency to corrupt, and complete authority has a tendency to corrupt completely. Insofar as both

judicial responsibility and judicial reviews are control mechanisms, the two concepts are comparable. Both include maintaining a check on the various branches of government, which is vital for a healthy democracy. Despite being theoretically plausible, the concept of judicial accountability, specifically the system for holding judges accountable, is practically non-existent in India.³⁴

Judiciary is the only branch of the Indian government exempt from public accountability due to its immense power. Nonetheless, Parliamentary democracy flourishes and endures via mutual confidence and cooperation across the government's organs. Tolerance is the guiding principle in the work of constitutional officials. It is impossible to realise the goals of a welfare society in the absence of cooperation and coordination between the government's many branches. Sabita Bandyopadaya, an attorney, remarked, "The accountability of judges is a difficult topic, but the method for measuring it has not yet emerged. Yet, there should be some process through which judges are held accountable to society."³⁵

According to R. Lakshminarayan and Krishna Kumar, advocates, the position of judges' accountability in western countries, particularly the United States, is that "there is a system called the Judicial Performance Commission, which investigates individual complaints to determine if judges are acting in a manner other than judiciously. Such a process within the legal system had become essential in India. Having a transparent procedure for dispensing justice also protects the public's faith in the judicial system. Currently,

there is a demand for judicial accountability in India.³⁶

Dr. Asha Gupta remarked, "Strong actions must be made to make the court responsible without compromising its independence. In sum, judges must be shielded from the pressures of direct majorities, while also being answerable to the other two checks and the people."³⁷ A lawyer, Sri Kelu Nambir, further highlighted that "Indian Solomon is accountable to the Indian people." Sri Kamalashwarnath made a nice recommendation, which may be examined by the authority; he proposed appointing a "ombudsman" and allowing the press and public, who operate as watchdogs, to criticise freely. That would be the simplest way to control the judges, but he expresses scepticism about the press and public scrutiny because the majority of the population is uneducated.³⁸

The need of judicial review in the current evolving world

The necessity for judicial review within the current changing world is vital to ensure that regulations and governmental actions are in line with the Constitution & the preservation of the liberties and rights of citizens.

In the current dynamic global landscape, several new problems and obstacles are arising, necessitating governmental intervention to effectively tackle them. Nevertheless, it is imperative to ensure that these measures are carried out in accordance with the provisions of the Constitution & do not violate the rights and liberties of individuals. The court plays a crucial role in guaranteeing this by utilising its jurisdiction of judicial review.³⁹

For example, the advancement of technology and the rise of the internet have brought about new issues related to privacy and data protection. The government may need to take actions to address these issues, but these actions must be in compliance with the Constitution and must not infringe on the rights and freedoms of citizens. The judiciary, through the power of judicial review, can ensure that government actions related to these issues are constitutional.

Additionally, the current global economic conditions and the rise of economic inequality are leading to new challenges for governments. The government may need to take actions to address these challenges, but these actions must be in compliance with the Constitution and must not infringe on the rights and freedoms of citizens. The judiciary, through the power of judicial review, can ensure that government actions related to these issues are constitutional. Furthermore, the current global political climate is marked by the resurgence of authoritarianism and the erosion of democracy in some countries. In such situations, the court assumes a crucial function in safeguarding the fundamental rights and liberties of individuals, as well as ensuring the other departments of government are held responsible.⁴⁰

Ultimately, the imperative for judicial review within the ever-changing contemporary environment is crucial to guarantee that laws and governmental activities adhere to the Constitution and safeguard the rights and liberties of individuals. In today's dynamic and swiftly evolving world, the judiciary's function as a safeguard against the activities of the other arms of

the government as well as an arbiter under the Constitution is exceedingly crucial.

Review of the Judiciary in the U.S.

The U.S. has an established system involving judicial review that is enshrined in its constitution. The US Supreme Court holds the ultimate jurisdiction over the validity of laws & presidential actions. The Supreme Court's authority of judicial review was established in the landmark decision of *Marbury v. Madison* in 1803. The doctrine of judicial review in the U.S. is based on the fundamental premise of the separation of powers. The Constitution delegates power to the three branches of the government. The court's primary responsibility is to interpret the Constitution and ensure that the other branches of government comply with its constraints.⁴¹

The Supreme Court, exercised judicial review & has declared certain statutes unconstitutional due to their violation of the terms of the United States Constitution. The Supreme Court ruled in the case of *Brown v. Board of Education* (1954) that the practice of segregating public schools was in violation of the equal protection provision of the 14th Amendment. Similarly, in the 1973 ruling of *Roe v. Wade*, the US Supreme Court determined that a state's limitation on abortion infringed upon the right to privacy.

Judicial Review in U.K.

As there isn't a written constitution within the U.K., the concept of judicial review is not defined in detail in any constitutional document. Nevertheless, the British courts have established an effective system of judicial review founded on the ideas of common law.

In the United Kingdom, the judiciary is responsible for interpreting and enforcing the law. The courts have the authority to assess the legality of executive actions and administrative body decisions. However, courts cannot invalidate legislation passed by Congress.

The British system of judicial review is founded on the notion of *supra vires*. Executive acts and administrative decisions can only be invalidated by the courts if they exceed the authority allocated to them by law. The judiciary cannot interfere with the executive or legislative branches' policy decisions.⁴² In the United Kingdom, there has recently been a rising discussion over the necessity to codify the theory of judicial review in recent years. According to certain legal experts, the absence of a written constitution has resulted in a lack of clarity and uniformity in the implementation of judicial review.

Judicial Review in India

The Indian constitution as written specifically has mechanisms for judicial review. Indian Supreme Court has the final authority to determine the validity of laws & executive actions. In India, the authority of judicial review is derived from the idea of the Constitution's supremacy. The Supreme Court of India, utilising its authority of judicial review, has deemed certain laws as unlawful due to their infringement upon the terms of the Constitution. In the 1973 case *Kesavananda Bharati v. State of Kerala*, the Supreme Court ruled that the Parliament's authority to alter Constitution was not boundless and that certain fundamental aspects of the Constitution were considered sacred and inviolable.

The Indian system of judicial review is based on the concept of fundamental structure. This idea asserts that the core structure of the Constitution is immutable and cannot be changed. The Supreme Court has ruled that certain aspects of the document known as the Constitution, such as the division of powers and the essential rights, form the fundamental framework and are not subject to amendment.⁴³

Comparative analysis. The judicial review systems in the US, the UK, and India exhibit both similarities and differences. A crucial element of the US system of judicial review is the fact that judiciary possesses the power to nullify legislation that has been authorised by the legislative branch. Unlike the governments of England and India, the US Constitution explicitly confers this power to the judiciary. The Supreme Court's authority to execute judicial review over the legislature is essential for maintaining the Constitution and prohibiting the other branches of government from surpassing their constitutional limits.

The flexibility with which legal principles can be interpreted and used is one of the benefits of the judicial review system in the U.K. According to the lack of codification, the judge has greater latitude in interpreting legal principles. Nonetheless, this freedom might result in confusion and inconsistent interpretation of the law.⁴⁴

India, the U.K., and the U.S. each has unique judicial review systems that are characterised by various constitution and legal frameworks, political systems, and legal cultures. This research project aims to evaluate the efficacy of various systems in safeguarding individual rights and ensuring

government accountability. The article examines the scope of judicial review, level of judicial autonomy, and the effectiveness of the system in enforcing judicial decisions. The article assesses the comparative effectiveness of the judicial review systems in India, the UK, and the United States in safeguarding individual rights and upholding government accountability.

Scope

Comparing the effectiveness or superiority of judicial review system in India, UK, and the U.S. is not relevant. The judicial review system of each nation is based on its unique constitutional & legal structures, political structure, & legal culture. Every country's system of judicial review possesses distinct advantages and disadvantages. The United States' system of judicial review offers a strong mechanism to guarantee that policies and laws conform to the Constitution. The authority of the Supreme Court to nullify laws passed by the legislature is a vital element of the US system of judicial review. However, this power might present difficulties and be susceptible to political influence. The judicial review system in the United Kingdom allows for some freedom in the interpretation and implementation of legal concepts, but it also has restrictions. Parliament-enacted laws cannot be overturned by the courts, limiting the judiciary's ability to evaluate the legislative branch's acts.⁴⁵ The legal framework of judicial review in India serves as a proficient instrument to guarantee that laws and executive actions conform to the Constitution. The Supreme Court's power of judicial review is derived from the constitutional principle of supremacy, which is a fundamental

feature of the legal system of India. However, Indian system of judicial review faces challenges such as a large number of pending cases and concerns about the autonomy of the judiciary.⁴⁶

In the end, the effectiveness and applicability of each country's system of judicial review depend on a variety of factors, including the legal and constitutional framework, political system, and legal culture of the country. Rather than making broad comparisons, it is vital to analyse each system in its own unique context. However, we may compare the systems according to certain criteria, such as the extent of judicial review, the amount of judicial independence, and the system's efficacy in preserving individual rights and guaranteeing government responsibility.⁴⁷

Level of The Judicial Independence

Judicial autonomy is a necessary requirement for effective working of the process of judicial review. Judicial independence is the extent to which the court is devoid of external coercion and manipulation, allowing it to provide verdicts solely according to the law & the factual circumstances of the case. The degree of judicial autonomy might differ based on factors such as the process of selecting judges, the length of their term, and the level of financial and administrative autonomy of the court.

The appointment of federal judges in the United States is a political procedure involving the president and the Senate. Especially during periods of partisan polarisation, this might make the judiciary susceptible to political interference. However, federal judges are appointed for life, which affords them independence and protection

from external pressure.⁴⁸

In the U.K., the Crown appoints judges based on the advice of an independent agency, the Judicial Appointments Commission. Judges enjoy tenure security until the age of 70, which affords them a degree of freedom. However, the judiciary is not financially or administratively autonomous and is subject to government-imposed budgetary restrictions and administrative choices.⁴⁹ In India, the President appoints the Supreme Court & High Court judges in conjunction with a collegium of experienced judges. The judiciary is financially and administratively autonomous, and judges have tenure security until age 65. However, there are issues over the transparency and accountability of the collegium method of nominations, which may have an impact on the amount of judicial independence.⁵⁰

Protection of Individual Rights and Assurance of Government Accountability

A system of judicial review can be deemed effective based on its capacity to defend rights of the individual and maintain government accountability. This can be determined based on the quantity and variety of cases brought before the courts, the speed & effectiveness of the judicial process, and the degree to which the government adheres to judicial decisions.

In major decisions such as *Brown v. Board of Education* & *United States v. Nixon*, the system of judicial review has been effective in preserving rights of the individual and maintaining government accountability in the U.S.. However, the system may be lengthy and burdensome, with cases frequently taking years to reach their

conclusion.⁵¹

Examples

Let us examine real-life instances to have a deeper understanding of practicality of these methods. Supreme Court in United States plays a vital role in evaluating the Constitution and safeguarding individual rights. In landmark decision of *Brown v. Board of Education*, which saw the Supreme Court eliminated race discrimination in public schools, serves as a prime example. This case played a significant role in setting a standard for the fight for civil rights and expanding the extent of judicial review within the US.⁵²

Another example of the effectiveness of the US system of judicial review in the case of *Obergefell v. Hodges*, in which the Supreme Court legalized marriage within same-sex nationwide. This decision was a victory for LGBT rights and showed the power of the courts to protect individual rights and ensure government accountability.⁵³

In India, the courts have been effective in protecting fundamental rights and promoting social justice through mechanisms such as public interest litigation. One notable example is the case of *Vishakha v. State of Rajasthan*⁵⁴, The Supreme Court established standards for the prevention of sexual harassment in work environments. This ruling constituted a triumph for the rights of women and contributed to the establishment of a structure for dealing with harassment in the workplace that is based on gender.⁵⁵

A further instance is the lawsuit of *Navtej Singh Johar v. Union of India*, when the Supreme Court invalidated Section 377 in the Indian Penal Code,

which deemed gay activities as unlawful. This ruling constituted a significant triumph for the rights of the LGBT community and showcased the judiciary's ability to safeguard individual rights and advance social equity.⁵⁶

The American system of judicial review has a broad scope and a strong tradition of protecting individual rights, the British system has a bit strict level of judicial independence and a strong tradition of the common law, and the Indian system has been effective in promoting social justice and protecting basic rights.⁵⁷

Criticism of The Judicial Review

Undemocratic

The detractors of Judicial Review describe it as an undemocratic system. It grants the court the authority to judge the fate of legislation passed by legislature, which represents the sovereign will of the people.⁵⁸

Absence of Clarity

The Indian Constitution lacks a precise delineation of the procedure of Judicial Review. It is taken from multiple clauses in the Constitution.

From Administrative Difficulties

When Supreme Court strikes down a statute as unconstitutional, the ruling becomes effective on the date that the judgement is issued.⁵⁹ Now, a legislation is subject to Judicial Review only when its legality is at issue in any case heard by the Supreme Court. The Supreme Court may do hear such a lawsuit five, ten, or more years after the law's implementation. Therefore, when the Court dismisses it as unconstitutional, it causes administrative difficulties. A Judicial Review determination can generate more issues than it

resolves.⁶⁰

Reactionary

Some critics perceive the judicial review system as a reactive mechanism. He has the authority to reverse progressive legislation passed by the legislature. Deferral Systems: Judicial review is an inefficient and time-consuming process. On occasion, individuals in general and law enforcement officials in particular opted to take their time or point the finger at police enforcement.⁶¹

Conclusion

This research paper conducts a comparative analysis and assessment of the judicial review processes in India, the UK, as well as the United States. The evaluation is based on three key criteria: the scope of judicial review, the level of judicial autonomy, and the efficacy of the system in safeguarding individual rights and ensuring government transparency. After evaluating the strengths and weaknesses of different systems, the paper concludes that the U.S. system of judicial review is superior in safeguarding individual rights as well as ensuring government accountability. This is primarily attributed to the extensive range of judicial review, the significant level of autonomy of the judiciary, and the system's effectiveness in enforcing court rulings.

Assessing the superiority of the system of judicial review is a challenging task. Every system possesses unique advantages and disadvantages, and is specifically tailored to fulfil the needs of its respective nation. The United States possesses the most extensive jurisdiction for judicial review and a robust tradition of safeguarding individual rights.

In contrast, the United Kingdom boasts a formidable common law heritage and a significant degree of judicial autonomy. India, on the other hand, has demonstrated effectiveness in safeguarding fundamental rights and advancing social justice. The effectiveness of a system of judicial review ultimately relies on several factors, such as the legal framework, the degree of judicial autonomy, the societal and legal culture of the country, and its political culture. This conclusion can be deduced by analysing the judicial review mechanisms of India, the UK, & the United States. By comparing various systems, it becomes evident that each possesses distinct attributes, advantages, and limitations, rendering it unfeasible to ascertain superiority. Furthermore, the autonomy of the judiciary is the main element of judicial review, because it represents a grave injustice for a court lacking autonomy to render judgements on illegal laws and actions. The judiciary exercises immediate jurisdiction over delegated laws through judicial review. If a law adopted by the government is shown to be in contradiction to the Constitution or surpasses the authority provided through the parent Act, then will be ruled invalid. We advocate for the universal adoption of judicial review across all nations, including the UK. Furthermore, granting the courts in the UK the power to scrutinise legislative activities promotes a sense of democratic consciousness among the general populace. Every part should be accountable for a distinct organ, although it must not exceed its own constraints. It introduces the principle known as, Rule of law. During the Minerva Mills instance, Justice P.N. Bhagwati's dissenting opinion

underscores the court's duty to safeguard Constitutional principles and uphold Constitutional restrictions. The Rule of law is fundamentally based on the principle that the government's exercise of powers, be it legislative, executive, or otherwise, must conform to the Constitution and the law. In the case, *Indian Council for Eco Legal Action v. Union of India*, that was decided that only a writ petition filed under Article 32 of the Constitution, which contests or requests a reconsideration of the Supreme Court's decision on its merits, would be considered unacceptable.

Suggestions:

Judicial review is going through significant changes. Although judicial review was not previously established in England, its rise has enabled the courts to acquire greater authority. Parliamentary sovereignty in England still remains, but it has been surpassed by judicial oversight. The extent of the judiciary in India has become quite extensive. Even administrative actions are subject to court review.

So, any conduct that violates the Constitution might be deemed unlawful and null. Judicial review permits courts to investigate and regulate all legislative and administrative arbitrariness. In India, the notion of "division of powers" helps to maintain a system of checks and balances. Each agency performs a unique function, but the courts must strike a balance by considering whether each entity is dogmatic or unconstitutional. Until a case is referred to them, courts cannot independently challenge the administration or give decisions.

The courts must analyse the constitutionality of cooperative federalism in conflicts involving

federal legislation, such as power distribution and interstate trade. This will enhance the cohesion of federal democracies. Judicial review is intended to interpret and execute existing laws. Further, the autonomous nature of the judiciary is a crucial factor when the court is empowered to evaluate any statute, as a judiciary that lacks dependence is incapable of delivering impartial judgements.

Furthermore, the judiciary ensures that delegated legislation does not exceed legal limits and that no essential functions are delegated. In the current climate, judicial scrutiny should be an integral component of any nation. This will promote democracy while guaranteeing that no institution works arbitrarily. The ultimate purpose of a constitution is to protect the interests of each individual and, by extension, the group. Consequently, expanding the scope of judicial review would more effectively achieve this purpose.

Owing to its political nature, judicial review is sometimes accused of separating it from the legal system and allowing ulterior political goals to emerge. This is a further justification for judicial review in all nations. The courts protect public interests and defend the rule of law.

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