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# **COMPARATIVE STUDY OF APPLICATION OF JUDICIAL REVIEW UNDER THE INDIAN CONSTITUTION AND THE U.S CONSTITUTION**

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## **ABSTRACT**

Judicial review, a cornerstone of constitutional governance, serves as a critical mechanism for maintaining the balance of power and protecting fundamental rights in both legal systems. Tracing the origins and development of judicial review in the United States, where it was first established in *Marbury v. Madison* (1803), and in India, where it gained prominence through landmark cases like *Kesavananda Bharati v. State of Kerala* (1973). In the U.S., judicial review primarily emphasizes a restrained approach, rooted in the original intent of the Constitution, whereas in India, the judiciary has adopted a more activist role, particularly through the expansion of Public Interest Litigation (PIL) and the doctrine of the "basic structure." The comparative analysis highlights the dynamic nature of judicial review in both democracies and emphasizes the judiciary's pivotal role in shaping the constitutional order, reflecting broader socio-political contexts in each country.

**Keywords:** Judicial Review, Indian Constitution, U.S. Constitution, Constitutional Law, Judicial Supremacy, Separation of Powers.

## **1. INTRODUCTION**

Judicial review is a doctrine that empowers courts to examine the constitutionality of legislative acts and executive actions, ensuring that they do not violate constitutional provisions. This principle, central to constitutional democracies, serves as a check on the arbitrary exercise of power by the state. Judicial review has evolved as a critical mechanism for maintaining the rule of law, ensuring the supremacy of the Constitution, and protecting individual rights from majoritarian excesses. Its origin is deeply rooted in the separation of powers, a doctrine that requires a careful balancing of authority among the legislative, executive, and judicial branches of government. In both India and the United States, judicial review plays a vital role in safeguarding constitutional principles by enabling courts to invalidate laws and government

actions that are incompatible with the Constitution. Through this mechanism, courts uphold the fundamental rights, preserve the federal balance, and prevent the abuse of executive and legislative authority. Judicial Review is fundamentally based on the rule of law. The court has the authority to assess legislative and executive activities, as well as the actions of the judiciary. This includes scrutinizing the legality of laws and actions. It is an example of Rule of Law. Judicial review process serves as a check and balance mechanism to ensure the division of powers. Judicial review is based on the principle of separation of powers.

The court has the power to declare any statute or order unlawful and unenforceable if it contradicts the fundamental laws of the nation. Judicial review is based on the "Theory of Limited Government" and the "Supremacy of Constitution with the requirement that ordinary law confirm to constitutional law." Judicial Review is a procedure that includes the concept of judicial activism. The Indian constitution establishes an independent judiciary responsible for determining the legitimacy of laws and governmental actions. The Supreme Court of India established theories such as "Doctrine of Severability," "Doctrine of Eclipse," and "Doctrine of Prospective Overruling" based on Judicial Review. In India Judicial Review based on three important dimensions, these are” Judicial Review of Constitutional Amendments”, Judicial Review of Legislative Actions, “Judicial Review of Administrative Actions”.

Judicial review aims to assess whether legislative acts are unlawful. It adapts the constitution to the new conditions and requirements of the period. Judicial review in India is to enforce constitutional law, safeguard individuals' fundamental rights, and maintain federal equilibrium between the Centre and States. Judicial review focuses on the division of legislative and administrative functions between the Centre and the State under the constitution. The judiciary is responsible for limiting the powers of various governmental agencies as outlined in the constitution. Judicial review stems from the Rule of Law, which requires public authorities to follow the law. Judicial review holds public officials responsible for their actions, particularly when decisions are not within political control. Judicial Review is an effective tool for addressing arbitrary, unfair, and unconstitutional legislation.

The importance of judicial review lies not only in its ability to correct unconstitutional actions but also in its broader role of ensuring that the government remains within its constitutionally prescribed limits. In the words of Chief Justice Marshall, "it is emphatically the province and

duty of the judicial department to say what the law is”<sup>1</sup>. This principle, established in the United States, has influenced the development of judicial review across the world, including in India, where the judiciary has been granted extensive powers to review legislation and executive action.

## 2. HISTORICAL BACKGROUND

### 2.1 India

In India, judicial review was introduced as a fundamental principle of the Constitution, influenced by colonial legal traditions and the need to protect fundamental rights. The concept took root in the post-independence era with the establishment of the Constitution of India in 1950. Articles 13, 32, and 226 explicitly enshrine the power of judicial review, empowering both the Supreme Court and High Courts to strike down laws that violate fundamental rights. Over the years, the Indian judiciary has expanded the scope of judicial review through landmark judgments, notably the *Kesavananda Bharati v. State of Kerala* case<sup>2</sup>, which established the "basic structure doctrine." This doctrine ensures that certain essential features of the Constitution, including judicial review, cannot be amended or abrogated, even by Parliament. The evolution of judicial review in India is marked by its active role in shaping the political, social, and economic landscape of the country, particularly through the development of Public Interest Litigation (PIL), which allows for greater judicial intervention in matters of public interest.

### 2.2 United States

Judicial review in the United States traces its origins to the landmark case of *Marbury v. Madison* (1803)<sup>3</sup>, which established the principle that the judiciary has the authority to review and invalidate acts of Congress that conflict with the Constitution. Though the U.S. Constitution does not explicitly mention judicial review, Chief Justice Marshall's decision in *Marbury* firmly entrenched it as a central feature of American constitutional law. The doctrine has since played a pivotal role in shaping U.S. legal and political history, serving as a check on legislative and executive actions and protecting the constitutional order from violations of individual rights. Notably, judicial review in the U.S. has been instrumental in advancing civil

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<sup>1</sup> *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 177 (1803).

<sup>2</sup> *Kesavananda Bharati v. State of Kerala*, AIR 1973 SC 1461.

<sup>3</sup> *Marbury*, 5 U.S. at 137.



rights and liberties, as seen in cases like *Brown v. Board of Education*<sup>4</sup> and *Roe v. Wade*<sup>5</sup>. While judicial review in the U.S. remains an implied power, its authority and significance in preserving the Constitution are universally acknowledged.

### 3. JUDICIAL REVIEW UNDER THE U.S. CONSTITUTION

#### 3.1 Constitutional Foundation

##### 3.1.1 Absence of Express Provision for Judicial Review

The U.S. Constitution does not expressly provide for the power of judicial review—the authority of courts to invalidate legislative and executive actions deemed unconstitutional. This absence has often sparked debate about whether the framers of the Constitution intended to grant such authority to the judiciary. However, judicial review became an established principle early in the history of the United States, demonstrating that constitutional text alone cannot always fully capture the scope of governmental power.

The silence of the Constitution on judicial review stands in contrast to the judiciary's crucial role in upholding the rule of law. While Article III outlines the powers of the federal judiciary, it does not explicitly mention judicial review. Nonetheless, Alexander Hamilton, in *The Federalist No. 78*, strongly implied the necessity of judicial review as an essential function of the judiciary, noting that courts were to act as intermediaries between the people and the legislature in determining the constitutionality of laws.<sup>6</sup> Thus, while the Constitution does not expressly mandate judicial review, its development became almost inevitable as the judiciary took on its role as a guardian of constitutional principles.

##### 3.1.2 Development of Judicial Review through Judicial Precedent

Judicial review in the United States emerged primarily through judicial precedent rather than explicit constitutional text. The practice was formally established in 1803 by the Supreme Court in *Marbury v. Madison*<sup>7</sup>, and over time, it became a defining characteristic of American constitutional law. The doctrine allowed courts to evaluate the constitutionality of legislative and executive actions, thereby ensuring that all branches of government operate within constitutional boundaries. *Marbury* and subsequent rulings entrenched judicial review as an

<sup>4</sup> *Brown v. Bd. of Educ.*, 347 U.S. 483 (1954).

<sup>5</sup> *Roe v. Wade*, 410 U.S. 113 (1973).

<sup>6</sup> *The Federalist No. 78* (Alexander Hamilton).

<sup>7</sup> *Supra* note 1.

essential tool for the judiciary to check and balance the powers of the other branches of government.

### **3.2 Marbury v. Madison**

#### **3.2.1 Explanation of the Case and Its Significance**

*Marbury v. Madison*<sup>8</sup> is one of the most significant Supreme Court decisions in U.S. history. The case arose from the last-minute judicial appointments made by President John Adams before he left office in 1801. William Marbury, one of these appointees, did not receive his commission, and when President Thomas Jefferson took office, his Secretary of State, James Madison, refused to deliver it. Marbury petitioned the Supreme Court for a writ of mandamus, asking the Court to compel Madison to deliver the commission.

In his decision, Chief Justice John Marshall held that while Marbury had a right to his commission, the Judiciary Act of 1789, which allowed Marbury to bring his claim directly to the Supreme Court, was unconstitutional. This ruling was monumental because it marked the first time the Supreme Court declared a law passed by Congress unconstitutional, thus establishing the principle of judicial review.

#### **3.2.2 How It Set the Foundation for Judicial Review in the U.S.**

*Marbury v. Madison* firmly established judicial review as a cornerstone of American constitutional law. In delivering his decision, Marshall famously asserted, "It is emphatically the province and duty of the judicial department to say what the law is." This decision not only invalidated a portion of the Judiciary Act of 1789 but also cemented the role of the judiciary as an equal branch of government with the authority to interpret the Constitution and strike down laws that conflict with it.

## **4. APPLICATION OF JUDICIAL REVIEW IN KEY AREAS**

### **4.1 Federalism: Resolving Disputes between Federal and State Laws**

One of the primary applications of judicial review in the United States has been in resolving conflicts between federal and state laws. The Supremacy Clause (Article VI) of the U.S. Constitution declares that federal law takes precedence over state laws when the two are in conflict. Judicial review ensures that states do not enact laws that infringe on federal authority

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<sup>8</sup> *Ibid*

or violate the Constitution. A landmark case in this regard is *McCulloch v. Maryland*<sup>9</sup>, where the Supreme Court invalidated a state law that attempted to tax a federal bank, emphasizing the supremacy of federal law and the need for national uniformity in certain areas of governance.

#### **4.2 Separation of Powers: Judicial Review as a Check on Executive and Legislative Actions**

Judicial review serves as a critical check on the powers of the executive and legislative branches, ensuring that no branch exceeds its constitutional limits. For example, in *Youngstown Sheet & Tube Co. v. Sawyer*<sup>10</sup>, the Supreme Court invalidated President Truman's attempt to seize steel mills during the Korean War without congressional authorization, ruling that his actions exceeded his executive powers. This case illustrates the judiciary's role in maintaining the separation of powers by preventing executive overreach and reinforcing the principle that even the president must operate within the bounds of the Constitution.

#### **4.3 Rights and Liberties: Judicial Review in the Context of Protecting Civil Liberties**

Judicial review has also played a fundamental role in protecting civil rights and liberties, particularly in the context of the Bill of Rights and the Fourteenth Amendment. Through judicial review, the Supreme Court has invalidated laws that infringe upon individual rights, thus strengthening the protection of civil liberties in the U.S. Notable examples include *Brown v. Board of Education*<sup>11</sup>, where the Court struck down racial segregation in public schools as a violation of the Equal Protection Clause, and *Roe v. Wade*<sup>12</sup>, where the Court recognized a woman's constitutional right to an abortion based on the right to privacy.

#### **4.4 Judicial Activism vs. Judicial Restraint**

##### **4.4.1 How U.S. Courts Have Balanced Activism and Restraint over Time**

The U.S. judiciary has seen a continuous debate between judicial activism and judicial restraint. Judicial activism refers to the courts' willingness to overturn legislative and executive actions, particularly when such actions are seen as violating constitutional principles. The Warren Court (1953-1969), known for its activism, expanded civil rights and liberties through landmark decisions like *Brown v. Board of Education* and *Miranda v. Arizona*<sup>13</sup>. Judicial restraint, on the

<sup>9</sup> *McCulloch v. Maryland*, 17 U.S. (4 Wheat.) 316 (1819).

<sup>10</sup> *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579 (1952).

<sup>11</sup> *Supra* note 4.

<sup>12</sup> *Supra* note 5.

<sup>13</sup> *Miranda v. Arizona*, 384 U.S. 436 (1966).

other hand, suggests that courts should defer to the decisions of the legislative and executive branches, especially on policy matters. The Rehnquist and Roberts Courts have adopted a more restrained approach, particularly in cases involving federalism and states' rights. For instance, in *United States v. Lopez*<sup>14</sup>, the Court ruled that Congress had overstepped its authority under the Commerce Clause by enacting a law regulating gun possession near schools.

#### 4.4.2 Notable Judicial Review Debates in U.S. Constitutional History

Judicial review has been at the center of some of the most significant constitutional debates in U.S. history, including the struggle over civil rights, the balance of powers between federal and state governments, and the scope of executive authority. One of the most contentious periods of judicial activism was the Court's role in the desegregation of schools and the expansion of civil rights in the 1950s and 1960s. The debate over judicial restraint has similarly shaped discussions about the judiciary's role in society, with some arguing that courts should avoid interfering in political and policy decisions best left to the legislative branch. Cases like *Lopez* highlight the ongoing struggle to define the boundaries of judicial power, particularly in matters involving federalism and individual liberties.

## 5. JUDICIAL REVIEW UNDER THE INDIAN CONSTITUTION

### 5.1 Constitutional Provisions

#### 5.1.1 Article 13: Judicial Review in the Context of Laws Inconsistent with Fundamental Rights

Article 13 of the Indian Constitution lays the foundational framework for judicial review in India. It declares that any law inconsistent with or in derogation of the fundamental rights guaranteed by the Constitution is void to the extent of such inconsistency. Article 13(2) specifically prohibits the state from making any law that takes away or abridges the rights conferred by Part III of the Constitution, which enumerates the fundamental rights of citizens. This article grants the judiciary the power to examine the constitutionality of legislative actions and strike down laws that violate fundamental rights.

Through Article 13, the Indian judiciary has emerged as a custodian of fundamental rights, safeguarding citizens from potential legislative excesses. For instance, the judiciary has

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<sup>14</sup> *United States v. Lopez*, 514 U.S. 549 (1995).

invoked this article to invalidate laws that infringe on fundamental rights such as the right to equality, freedom of speech, and protection against arbitrary state actions.<sup>15</sup>

### 5.1.2 Articles 32 and 226: Judicial Review Powers of the Supreme Court and High Courts

Article 32 of the Indian Constitution provides individuals the right to approach the Supreme Court directly for the enforcement of their fundamental rights. Dr. B.R. Ambedkar famously called Article 32 "the heart and soul of the Constitution" because it empowers the Supreme Court to issue writs such as habeas corpus, mandamus, prohibition, quo warranto, and certiorari to protect fundamental rights.<sup>16</sup>

Similarly, Article 226 gives the High Courts the power to issue writs for the enforcement of fundamental rights and for "any other purpose," thereby expanding their jurisdiction beyond fundamental rights to include broader questions of legality. This provision has played a critical role in judicial review at the state level, ensuring that High Courts can scrutinize executive and legislative actions that may not directly infringe fundamental rights but are nonetheless unlawful.<sup>17</sup>

## 6. HISTORICAL EVOLUTION OF JUDICIAL REVIEW IN INDIA

### 6.1 Pre-Independence Roots and Influence of British Legal Traditions

Judicial review in India has its roots in the colonial legal system, influenced by British common law principles. The British legal tradition brought with it the concept of limited government and the rule of law, which required the judiciary to act as an arbiter of legal disputes and protector of individual rights against state excesses. The Government of India Acts of 1935, which served as the template for the drafting of the Indian Constitution, laid down provisions for federalism and judicial oversight of legislative actions, further reinforcing the need for judicial review.

### 6.2 Post-Independence Landmark Judgments: *Kesavananda Bharati v. State of Kerala* (1973)

The most significant development in the evolution of judicial review in post-independence India came with the landmark case of *Kesavananda Bharati v. State of Kerala*<sup>18</sup>, where the

<sup>15</sup> INDIA CONST. art. 13.

<sup>16</sup> INDIA CONST. art. 32; *Ramesh Thappar v. State of Madras*, AIR 1950 SC 124.

<sup>17</sup> INDIA CONST. art. 226; *Daryao v. State of U.P.*, AIR 1961 SC 1457.

<sup>18</sup> *Supra* note 2.



Supreme Court established the "basic structure doctrine." In this case, the Court was asked to adjudicate on the validity of constitutional amendments that sought to curtail property rights and introduce land reforms. The Supreme Court held that while Parliament has the power to amend the Constitution under Article 368, it cannot alter the basic structure or essential features of the Constitution.

The Kesavananda Bharati judgment expanded the scope of judicial review by giving the judiciary the power to invalidate constitutional amendments that violate the basic structure, thus making judicial review a fundamental principle in the Indian constitutional framework. The basic structure doctrine has since been invoked in several cases, including *Minerva Mills Ltd. v. Union of India*<sup>19</sup> and *I.R. Coelho v. State of Tamil Nadu*<sup>20</sup>, where the Supreme Court reinforced its authority to protect the core features of the Constitution.

## 7. APPLICATION OF JUDICIAL REVIEW IN KEY AREAS

### 7.1 Fundamental Rights: Judicial Review as a Protector of Fundamental Rights

Judicial review in India has been instrumental in protecting the fundamental rights guaranteed under Part III of the Constitution. The judiciary has often stepped in to strike down legislative or executive actions that violate these rights. For instance, in *Maneka Gandhi v. Union of India*<sup>21</sup>, the Supreme Court expanded the interpretation of the right to life and personal liberty under Article 21, holding that it included the right to travel abroad and that any procedure established by law must be "fair, just, and reasonable." This decision marked a significant shift towards a more expansive reading of fundamental rights and underscored the importance of judicial review in protecting individual freedoms.

### 7.2 Separation of Powers and Federalism: The Role of Judicial Review in Maintaining Balance between Central and State Governments

Judicial review has also played a crucial role in maintaining the balance of power between the central and state governments in India's federal structure. In cases involving conflicts between central and state laws, the judiciary has been called upon to interpret the provisions of the Constitution to ensure that neither level of government exceeds its jurisdiction. For example, in *S.R. Bommai v. Union of India*<sup>22</sup>, the Supreme Court addressed the issue of federalism and

<sup>19</sup> *Minerva Mills Ltd. v. Union of India*, (1980) 3 SCC 625.

<sup>20</sup> *I.R. Coelho v. State of Tamil Nadu*, (2007) 2 SCC 1.

<sup>21</sup> *Maneka Gandhi v. Union of India*, (1978) 1 SCC 248.

<sup>22</sup> *S.R. Bommai v. Union of India*, (1994) 3 SCC 1.

the misuse of Article 356, which allows for the imposition of President's Rule in states. The Court laid down strict guidelines to prevent the arbitrary dismissal of state governments, emphasizing the need for judicial review to protect the autonomy of states within the federal framework.

### **7.3 Social Justice and Economic Reforms: Judicial Review in the Context of Socio-Economic Changes**

In addition to protecting fundamental rights and ensuring federal balance, judicial review has been a key tool in addressing socio-economic issues in India. The judiciary has been at the forefront of adjudicating cases involving land reforms, labor laws, and economic regulations. For instance, in land reform cases such as *Golaknath v. State of Punjab*<sup>23</sup>, the Supreme Court initially ruled that Parliament could not amend fundamental rights, particularly the right to property. However, this position was later modified in *Kesavananda Bharati*, allowing Parliament to introduce land reforms, provided they did not violate the basic structure of the Constitution. Judicial review, therefore, has played a pivotal role in reconciling the need for social and economic reforms with the protection of constitutional principles.

## **8. JUDICIAL ACTIVISM AND PUBLIC INTEREST LITIGATION (PIL)**

### **8.1 Development of PIL and Its Impact on Judicial Review**

The development of Public Interest Litigation (PIL) in India during the 1980s revolutionized the concept of judicial review. PIL allows individuals or groups to approach the courts for the enforcement of rights not just for themselves but for the broader public interest, particularly on behalf of marginalized sections of society. Through PILs, the judiciary has expanded its scope to address issues of social justice, environmental protection, and government accountability. Cases like *M.C. Mehta v. Union of India*<sup>24</sup>, which dealt with environmental degradation, and *Vishaka v. State of Rajasthan*<sup>25</sup>, concerning sexual harassment at the workplace, demonstrate the transformative impact of PIL on judicial review in India.

### **8.2 The Rise of Judicial Activism and Its Challenges**

The rise of PILs has also given birth to an era of judicial activism, where courts have increasingly intervened in policy matters traditionally within the domain of the executive or

<sup>23</sup> *Golaknath v. State of Punjab*, AIR 1967 SC 1643.

<sup>24</sup> *M.C. Mehta v. Union of India*, (1987) 1 SCC 395.

<sup>25</sup> *Vishaka v. State of Rajasthan*, (1997) 6 SCC 241.

legislature. While judicial activism has often been praised for advancing social justice and protecting fundamental rights, it has also attracted criticism for overstepping the boundaries of judicial authority. Critics argue that excessive judicial activism undermines the separation of powers and encroaches upon the responsibilities of the other branches of government. Nevertheless, the judiciary's proactive stance has been justified in cases where executive or legislative inaction has left fundamental rights unprotected. The challenge lies in maintaining a balance between judicial activism and judicial restraint to preserve the integrity of the constitutional framework.

## 9. STRUCTURAL DIFFERENCES IN CONSTITUTIONAL PROVISIONS

### 9.1 Express Provisions in India vs. Implied Powers in the U.S.

- **India:** The Indian Constitution explicitly provides for judicial review, particularly through Article 13, which ensures the invalidation of laws inconsistent with fundamental rights.<sup>26</sup> Articles 32 and 226 further grant the Supreme Court and High Courts the authority to enforce constitutional rights and judicial review of legislative and executive actions.<sup>27</sup>
- **U.S.:** The U.S. Constitution does not explicitly mention judicial review. However, the authority was implied through judicial interpretation in *Marbury v. Madison* (1803), where Chief Justice John Marshall established judicial review by interpreting Article III in conjunction with the Supremacy Clause of Article VI.<sup>28</sup> This case formed the foundation for the judiciary's power to declare laws unconstitutional.

### 9.2 Role of Judiciary in Balancing Powers

- **India:** In India, the judiciary acts as a crucial check on both legislative and executive power. The Supreme Court has asserted its power to strike down constitutional amendments that violate the "basic structure doctrine," as seen in *Kesavananda Bharati v. State of Kerala*.<sup>29</sup> Judicial review is also vital for maintaining the balance between the central and state governments within India's quasi-federal structure.

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<sup>26</sup> INDIA CONST. art. 13.

<sup>27</sup> INDIA CONST. arts. 32, 226.

<sup>28</sup> *Supra* note 1.

<sup>29</sup> *Supra* note 2.

- **U.S.:** The U.S. judiciary plays a similarly pivotal role in balancing powers through judicial review, serving as a check on executive overreach and unconstitutional legislation. In cases like *Youngstown Sheet & Tube Co. v. Sawyer*<sup>30</sup>, the U.S. Supreme Court has curtailed executive actions exceeding constitutional authority. Moreover, federalism disputes are settled through judicial review, as seen in *McCulloch v. Maryland*<sup>31</sup>, which reinforced federal supremacy.

### 9.3 Judicial Activism

- **India:** The Indian judiciary has taken an active role in shaping policy, particularly through Public Interest Litigations (PILs). The court's decisions in cases like *Vishaka v. State of Rajasthan*<sup>32</sup> and *M.C. Mehta v. Union of India*<sup>33</sup> have influenced legislative and executive policy on issues like sexual harassment and environmental regulation.
- **U.S.:** Judicial activism in the U.S. was particularly prominent during the Warren Court era, with cases like *Brown v. Board of Education*<sup>34</sup>, which ended racial segregation in schools. However, in recent decades, U.S. courts have shifted toward judicial restraint, emphasizing deference to the other branches of government and the democratic process.

### 9.4 Key Differences in Judicial Philosophy and Approach

- **U.S.:** U.S. judicial philosophy, especially in recent decades, has been shaped by textualism and originalism. Justices like Antonin Scalia championed these approaches, arguing that the Constitution should be interpreted according to its original meaning or plain text.<sup>35</sup>
- **India:** In contrast, the Indian judiciary often employs a purposive and evolving approach to interpretation. The Constitution is viewed as a living document, allowing judges to interpret provisions in light of changing social and political contexts. This is evident in decisions such as *Maneka Gandhi v. Union of India*<sup>36</sup>, where the Supreme Court expanded the scope of Article 21 (right to life).

<sup>30</sup> *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579 (1952).

<sup>31</sup> *Supra* note 9.

<sup>32</sup> *Supra* note 25.

<sup>33</sup> *Supra* note 24.

<sup>34</sup> *Supra* note 4.

<sup>35</sup> Antonin Scalia, *A Matter of Interpretation: Federal Courts and the Law* (Princeton Univ. Press 1997).

<sup>36</sup> *Supra* note 21.

## 10. SIMILARITIES

**10.1 Judiciary as Guardian of the Constitution:** In both India and the U.S., judicial review serves as the cornerstone for maintaining the supremacy of the Constitution. It allows courts to invalidate laws and executive actions that violate constitutional provisions. This function is critical in safeguarding fundamental rights, preventing arbitrary use of power, and ensuring that legislative and executive actions adhere to constitutional limits. For instance, in *Marbury v. Madison* in the U.S., the judiciary established its authority to review executive and legislative actions, which is similarly reflected in India's judiciary through its application of Articles 13, 32, and 226 of the Indian Constitution.

**10.2 Balancing Powers:** Both the Indian and U.S. judiciaries act as a check on the legislative and executive branches, ensuring that no branch exceeds its constitutional mandate. In the U.S., cases such as *Youngstown Sheet & Tube Co. v. Sawyer*<sup>37</sup> and *United States v. Nixon*<sup>38</sup> illustrate the judiciary's role in restraining executive overreach. In India, landmark judgments such as *Indira Nehru Gandhi v. Raj Narain* and *Kesavananda Bharati v. State of Kerala* highlight the judiciary's active role in striking down constitutional amendments or legislative actions that violate the Constitution's "basic structure."

## 11. THE FUTURE OF JUDICIAL REVIEW

As global political landscapes continue to evolve, judicial review will remain a fundamental component of constitutional governance, particularly in maintaining the delicate balance of powers and safeguarding individual rights. However, the role of judicial review may face new challenges in both India and the U.S., as both nations grapple with emerging political, social, and technological shifts.

### 11.1 INDIA:

#### 11.1.1 Public Interest Litigation (PIL) and Judicial Activism:

The trend of judicial activism through PILs is likely to continue in India, as courts remain responsive to societal issues that may not be adequately addressed by the legislature or executive. However, with this increased activism comes the potential for tensions between the judiciary and other branches of government. Critics argue that excessive judicial intervention

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<sup>37</sup>Supra note 30.

<sup>38</sup> *United States v. Nixon*, 418 U.S. 683 (1974).



in policy matters undermines the separation of powers. Therefore, while PILs may remain a powerful tool for social justice, the judiciary may also need to adopt a more restrained approach in cases where democratic institutions are functioning adequately.

### **11.1.2 Socio-economic Reforms and Constitutional Interpretation:**

As India continues to undergo significant economic and social transformation; the courts will be faced with complex cases involving land reforms, labor laws, and environmental protection. Judicial review will be critical in adjudicating disputes that arise from these reforms, especially where they intersect with fundamental rights. Additionally, the evolving nature of Indian constitutional interpretation will likely lead to further expansion of rights, with courts potentially recognizing new categories of socio-economic rights in line with global human rights standards.

### **11.1.3 Federalism and Decentralization:**

India's quasi-federal structure will also present challenges for judicial review, particularly in resolving disputes between the central government and state governments. With increasing calls for greater decentralization and regional autonomy, judicial review will play a key role in maintaining the balance between the Union and state governments, especially in areas such as resource allocation, taxation, and legislative competence.

## **11.2 U.S :**

**11.2.1 Judicial Restraint and Deference to Political Branches:** In the U.S., the trend toward judicial restraint is expected to continue, particularly with conservative justices advocating for a limited role of the judiciary in policy-making. The rise of originalism and textualism will likely shape future decisions, particularly in areas such as abortion rights, affirmative action, and campaign finance reform. While judicial review will remain a critical mechanism for upholding constitutional rights, courts may increasingly defer to the political branches on contentious social issues.

**11.2.2 Technology and Privacy Rights:** One of the most significant challenges for judicial review in the U.S. will be addressing the intersection of technology and privacy rights. As new technologies emerge, courts will be tasked with interpreting constitutional protections in light of modern realities. Cases involving surveillance, data privacy, and artificial intelligence will

raise complex questions about the Fourth Amendment and individual liberties. Judicial review will play a central role in shaping how the Constitution is applied to these evolving challenges.

**11.2.3 Polarization and Judicial Legitimacy:** In an era of increasing political polarization, the legitimacy of the judiciary itself may come under scrutiny. Recent decisions involving voting rights, gerrymandering, and campaign finance reform have led to concerns that the judiciary is becoming politicized. To maintain public confidence, courts may need to exercise caution in their use of judicial review, ensuring that their decisions are grounded in clear constitutional principles rather than political preferences.

## 12. ISSUES IN JUDICIAL REVIEW

Several key issues emerge due to the distinct constitutional, legal, and socio-political frameworks in each country. Here's an outline of some critical issues related to judicial review in both jurisdictions:

### *12.1 Constitutional Foundations and Judicial Supremacy*

The U.S. relies more on an implied doctrine of judicial review, while India's is constitutionally explicit, affecting the scope, nature, and authority of courts in both systems. Comparing these approaches raises questions about the balance of power between the judiciary and other branches of government.

### *12.2 Judicial Review of Constitutional Amendments*

This presents a unique challenge, as the Indian judiciary can limit Parliament's ability to amend the Constitution, while in the U.S., the courts do not have the authority to invalidate amendments. This difference creates a fundamental divergence in how constitutional changes are controlled in each system.

### **12.3 Judicial Activism vs. Judicial Restraint**

The difference in judicial philosophies between activism and restraint poses challenges when comparing the role of courts in governance. U.S. courts tend to emphasize constitutional originalism or textualism in recent times, while Indian courts have embraced a more expansive, purposive interpretation.

#### **12.4 Public Interest Litigation (PIL) in India**

The Indian model of PIL represents a significant departure from the U.S. model, highlighting the tension between open judicial intervention in social and policy matters and a more limited judicial role constrained by strict standing doctrines.

#### **12.5 Federalism and Judicial Review**

The differing balances of power between the central and state governments in the two systems make comparisons of judicial review challenging, particularly in cases where federalism is at stake.

#### **12.6 Impact of Social and Economic Conditions**

The Indian judiciary's engagement with socio-economic rights contrasts with the U.S. courts' focus on civil and political rights, making cross-jurisdictional analysis more complex, particularly in terms of judicial intervention in governance.

#### **12.7 Amendment Procedures and Judicial Review**

**Issue:** The differing rigidity and flexibility of the amendment processes impact how judicial review operates in each system, particularly in terms of how the judiciary checks the power of the legislature to modify the Constitution.

#### **12.8 Separation of Powers**

The evolving role of the judiciary in India's separation of powers framework creates challenges for comparison, especially when juxtaposed with the more formal and rigid boundaries in the U.S. system.

#### **12.9 Basic Structure Doctrine (India) vs. Judicial Finality(U.S.)**

The basic structure doctrine in India represents a unique form of judicial oversight that has no direct parallel in the U.S., raising questions about the extent and limits of judicial review in protecting constitutional integrity.

### **13. CHALLENGES IN JUDICIAL REVIEW**

In both the U.S. and India, judicial review plays a critical role in ensuring that laws and executive actions comply with constitutional mandates. However, the exercise of this power faces several challenges unique to each country due to differences in constitutional

frameworks, legal traditions, and socio-political contexts. Here are the key challenges of judicial review in the U.S. and India:

### ***13.1 Legitimacy of Judicial Review***

The fundamental challenge of judicial review in both countries lies in reconciling the courts' power to invalidate laws with democratic principles, as unelected judges are perceived to wield significant influence over elected bodies.

### ***13.2 Judicial Activism vs. Judicial Overreach***

The balancing act between judicial activism and restraint remains a challenge, as courts in both countries are sometimes viewed as encroaching on the domains of the executive and legislative - branches.

### ***13.3 Impact of Political and Social Context***

The interplay between judicial review and the political environment is a challenge in both systems, as courts are often seen as either advancing or resisting particular ideological or social movements.

### ***13.4 Judicial Review of Constitutional Amendments***

In the U.S., the inability to review amendments can hinder judicial correction of controversial constitutional changes, while in India; the judiciary's power to strike down amendments can cause a conflict with Parliament's law-making authority.

### ***13.5 Delay and Backlog of Cases***

Both systems face challenges related to judicial efficiency. In the U.S., the selective nature of the Supreme Court's docket limits access to judicial review, while in India, the backlog of cases hampers the judiciary's ability to resolve constitutional disputes promptly.

### ***13.6 Scope of Judicial Review***

The differing scopes of judicial review limited in the U.S. due to doctrines like political questions and broader in India due to PIL pose challenges for determining the appropriate boundaries of judicial power in constitutional governance.

### ***13.7 Judicial Independence and Accountability***

Ensuring judicial independence, while maintaining accountability is a persistent challenge in both the systems. The politicization of appointments in the U.S. and the lack of transparency in the Indian appointment system both raise concerns about the impartiality and credibility of the judiciary.

### ***13.8 Inconsistencies and Precedents***

Both systems face challenges related to judicial consistency. The overturning of precedent can lead to instability in constitutional interpretation, undermining public confidence in the judiciary's role as a steady guardian of constitutional rights.

### ***13.9 Balancing Fundamental Rights and State Interests***

Balancing the protection of individual rights against state interests is a persistent challenge in both the U.S. and India, especially when these issues touch on politically or socially contentious areas.

These challenges reflect the complexities of judicial review in both countries. The differences in constitutional frameworks, political environments, and judicial philosophies create unique issues in the application of judicial review, but both systems share common difficulties related to legitimacy, activism, accountability, and balancing rights with state interests.

## **14.CONCLUSION**

Judicial review has played a pivotal role in shaping constitutional democracies, particularly in India and the U.S. Both nations have developed distinctive frameworks for judicial review, influenced by their unique political histories, constitutional structures, and social contexts. Despite some fundamental similarities in the broad objectives of judicial review such as ensuring checks and balances, upholding the rule of law, and protecting fundamental rights there are also significant differences in its application between India and the U.S.

In many nations, the judiciary safeguards the constitution through judicial review. In India, courts review the legality of laws and administrative acts to ensure they are neither conflicting nor unlawful. Judicial scrutiny of administrative actions has expanded in recent years. The spirit of judicial review requires all organs to operate within their limitations. Judicial review prevents the legislature from delegating vital duties and inhibits them from passing unlawful laws. In India and the United States, the legislature's capacity to pass laws is limited by both



implicit and explicit constitutional constraints. These limitations include not exceeding its authority and not violating Natural Justice Principles. Legislation cannot infringe the fundamental rights that form the basis of the Constitution.

In all nations, courts serve as a guardian, resolving disputes through judicial review. Judicial review is necessary to determine the constitutionality of federal laws, addressing issues such as power distribution and interstate trade. Cooperative federalism promotes greater harmony in the federal democratic state. Judicial reviews are effective tools for courts to interpret and execute legitimate laws. Judicial independence is crucial for judicial review, as it would be unfair to make decisions based on faulty laws and acts if the court was not independent. Judicial review allows the judiciary to effectively control delegated legislation. If a law made by the executive violates the constitution or the parent Act, it is declared null and void by the courts.

The court's minority decision in the *Minerva Mills* wrote, "It is for the judiciary to uphold the Constitutional values and to enforce the Constitutional limitations, that is the essence the Rule of law, which inter alia requires that the exercise of powers by the Government whether it be the legislative or the executive or any other authority be conditioned by the Constitution and the law". It helps the court to maintain State unity. The court safeguards both individual and social rights while finding legislation invalid. To defend individual rights, judicial review has to be expanded. Strengthening judicial review will enhance individual liberty and freedom. The notions of judicial review are also criticised. The Courts' severe behavior is occasionally challenged in political circles. The Supreme Court is responsible for interpreting the law and cannot be challenged by the people.

In conclusion, judicial review will remain an essential feature of constitutional democracy in both India and the U.S. However, its future role will be shaped by the evolving social, political, and technological challenges that each country faces. In India, judicial activism and the expansive interpretation of fundamental rights will continue to define the judiciary's role, particularly in addressing socio-economic inequalities. In the U.S., the focus will likely be on judicial restraint and the interpretation of constitutional provisions in light of modern technological advancements. In both nations, the balance between judicial intervention and deference to the political branches will remain a key issue in the application of judicial review.