

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS



Open Access, Refereed Journal Multi-Disciplinary
Peer Reviewed

www.ijlra.com

DISCLAIMER

No part of this publication may be reproduced, stored, transmitted, or distributed in any form or by any means, whether electronic, mechanical, photocopying, recording, or otherwise, without prior written permission of the Managing Editor of the *International Journal for Legal Research & Analysis (IJLRA)*.

The views, opinions, interpretations, and conclusions expressed in the articles published in this journal are solely those of the respective authors. They do not necessarily reflect the views of the Editorial Board, Editors, Reviewers, Advisors, or the Publisher of IJLRA.

Although every reasonable effort has been made to ensure the accuracy, authenticity, and proper citation of the content published in this journal, neither the Editorial Board nor IJLRA shall be held liable or responsible, in any manner whatsoever, for any loss, damage, or consequence arising from the use, reliance upon, or interpretation of the information contained in this publication.

The content published herein is intended solely for academic and informational purposes and shall not be construed as legal advice or professional opinion.

**Copyright © International Journal for Legal Research & Analysis.
All rights reserved.**

ABOUT US

The *International Journal for Legal Research & Analysis (IJLRA)* (ISSN: 2582-6433) is a peer-reviewed, academic, online journal published on a monthly basis. The journal aims to provide a comprehensive and interactive platform for the publication of original and high-quality legal research.

IJLRA publishes Short Articles, Long Articles, Research Papers, Case Comments, Book Reviews, Essays, and interdisciplinary studies in the field of law and allied disciplines. The journal seeks to promote critical analysis and informed discourse on contemporary legal, social, and policy issues.

The primary objective of IJLRA is to enhance academic engagement and scholarly dialogue among law students, researchers, academicians, legal professionals, and members of the Bar and Bench. The journal endeavours to establish itself as a credible and widely cited academic publication through the publication of original, well-researched, and analytically sound contributions.

IJLRA welcomes submissions from all branches of law, provided the work is original, unpublished, and submitted in accordance with the prescribed submission guidelines. All manuscripts are subject to a rigorous peer-review process to ensure academic quality, originality, and relevance.

Through its publications, the *International Journal for Legal Research & Analysis* aspires to contribute meaningfully to legal scholarship and the development of law as an instrument of justice and social progress.

PUBLICATION ETHICS, COPYRIGHT & AUTHOR RESPONSIBILITY STATEMENT

The *International Journal for Legal Research and Analysis (IJLRA)* is committed to upholding the highest standards of publication ethics and academic integrity. All manuscripts submitted to the journal must be original, unpublished, and free from plagiarism, data fabrication, falsification, or any form of unethical research or publication practice. Authors are solely responsible for the accuracy, originality, legality, and ethical compliance of their work and must ensure that all sources are properly cited and that necessary permissions for any third-party copyrighted material have been duly obtained prior to submission. Copyright in all published articles vests with IJLRA, unless otherwise expressly stated, and authors grant the journal the irrevocable right to publish, reproduce, distribute, and archive their work in print and electronic formats. The views and opinions expressed in the articles are those of the authors alone and do not reflect the views of the Editors, Editorial Board, Reviewers, or Publisher. IJLRA shall not be liable for any loss, damage, claim, or legal consequence arising from the use, reliance upon, or interpretation of the content published. By submitting a manuscript, the author(s) agree to fully indemnify and hold harmless the journal, its Editor-in-Chief, Editors, Editorial Board, Reviewers, Advisors, Publisher, and Management against any claims, liabilities, or legal proceedings arising out of plagiarism, copyright infringement, defamation, breach of confidentiality, or violation of third-party rights. The journal reserves the absolute right to reject, withdraw, retract, or remove any manuscript or published article in case of ethical or legal violations, without incurring any liability.

EVOLUTION OF JUDICIAL REVIEW IN USA

AUTHORED BY - ADV. VEDANT SURENDRA KABRA

Abstract

*Judicial review has long been a cornerstone of democratic governance, ensuring that laws and actions by government bodies align with the Constitution. In the United States, the doctrine of judicial review emerged as a powerful check on legislative and executive powers, profoundly shaping the judicial landscape of constitutional law. The landmark 1803 case of **Marbury v. Madison** laid the foundation for judicial review, empowering the Supreme Court to invalidate laws contrary to the Constitution. This principle, while initially controversial, now serves as an integral part of constitutional jurisprudence in the U.S. The evolution of judicial review in America has not only shaped legal norms but also reinforced the judiciary's role in maintaining the balance of power of government. However, at present, judicial review remains a vital tool in American constitutional law. It enables courts to strike down unconstitutional laws and executive actions, thus safeguarding fundamental rights and principles enshrined in the Constitution. The modern judicial system continues to expand the scope of review, engaging in complex legal reasoning to address societal concerns such as civil rights, federalism, and separation of powers. However, the growing power of judicial review in the U.S. raises questions about its potential to undermine democratic values. The rise of judicial activism, where courts are perceived to create law rather than interpret it, has sparked significant debate on the limits of judicial power. Additionally, concerns about the politicization of the judiciary, especially in the context of ideological shifts, challenge the impartiality and independence of the courts. The research problem is to see if judicial review in the U.S. is affecting democracy or if it still follows constitutional principles. Judicial review is important in both the U.S. and India, but its growing power raises concerns about judges going too far, especially with political divisions. In the U.S., courts are getting more involved in policymaking, leading to debates about the separation of powers. In India, judicial activism has made people question whether courts are overstepping their role. Establishing clearer guidelines to define the scope of judicial review can ensure it stays within constitutional limits. Both the U.S. and Indian courts could adopt stricter standards to prevent judicial overreach, preserving the separation of powers and maintaining judicial independence without interfering with legislative or executive functions. The aim of this study is to examine the evolution of judicial review in the*

U.S. and India. It will focus on its impact on democracy and constitutional principles. The objectives are to assess if judicial overreach is undermining the balance of power. Additionally, it aims to identify areas where reforms are needed and explore ways to clarify the scope of judicial review while maintaining the separation of powers.

Keywords: Judicial Review, U.S. Constitution, Indian Constitution, Judicial Overreach, Separation of Powers.

1. Introduction:

Judicial review has been a cornerstone of American constitutional governance since the early 19th century, playing a pivotal role in shaping the relationship between the judiciary, the legislature, and the executive. As a mechanism through which courts examine the constitutionality of legislative and executive actions, judicial review serves as a critical check on governmental power, ensuring that all branches of government adhere to the principles enshrined in the Constitution. This doctrine empowers courts to strike down laws and executive decisions that violate constitutional norms, thereby safeguarding fundamental rights and promoting the rule of law.

The establishment of judicial review in the United States is most famously attributed to the landmark case of *Marbury v. Madison* (1803). Decided under the leadership of Chief Justice John Marshall, this case marked a defining moment in American constitutional history. It affirmed the authority of the Supreme Court to declare legislative and executive actions unconstitutional, thereby cementing the judiciary's role as a co-equal branch of government capable of upholding the supremacy of the Constitution. The decision not only strengthened the judiciary's independence but also set a precedent for the exercise of judicial review that continues to influence constitutional jurisprudence to this day.

While initially controversial, the doctrine of judicial review gradually gained acceptance as an essential aspect of American jurisprudence. Over the centuries, it has evolved to address increasingly complex legal, social, and political challenges. From issues of federalism and civil rights to questions of administrative authority and separation of powers, judicial review has proven to be a flexible yet powerful tool in resolving constitutional conflicts. However, this expanding authority has also generated debates about the limits of judicial power, especially concerning the potential for judicial activism and the politicization

of the judiciary.

In contemporary America, judicial review remains a dynamic and contested aspect of constitutional governance. The growing involvement of courts in matters of policy-making and the interpretation of broad constitutional principles has sparked significant discussion about the judiciary's proper role within a democratic society. Balancing judicial authority with democratic accountability continues to be a central theme in legal discourse, as courts increasingly engage in complex legal reasoning to address societal concerns. This evolving landscape raises important questions about the nature of judicial review, its impact on democratic governance, and its compatibility with the original intent of the Constitution.

Understanding the historical development, theoretical foundations, and practical applications of judicial review in the United States is essential for assessing its contemporary relevance and future trajectory. This paper seeks to examine the evolution of judicial review from its inception to the present, exploring its implications for constitutional governance, judicial independence, and democratic legitimacy. By doing so, it aims to provide a comprehensive analysis of how judicial review has shaped the American legal system and the broader quest for justice and constitutional fidelity.

2. Historical Background:

The concept of judicial review in the United States emerged from the debates surrounding the Constitution and was ultimately established through the landmark case of *Marbury v. Madison* in 1803.¹ The framers of the Constitution did not explicitly outline the principle of judicial review; however, it was implied through various discussions and writings during the Constitutional Convention. Notably, some framers expressed their belief in the judiciary's role as a check on legislative and executive powers, aligning with the principles of separation of powers and federalism.

The case of *Marbury v. Madison* marked a pivotal moment in American legal history as it was the first instance where the Supreme Court exercised its authority to nullify an act of Congress deemed unconstitutional. Chief Justice John Marshall's decision articulated the necessity of judicial review as a means to uphold the Constitution and protect individual rights

¹ *Marbury v. Madison*, 5 U.S. (1 Cranch) 137 (1803)

from potential legislative overreach

Prior to *Marbury*, earlier cases such as *Satterlee v. Matthewson* (1829) and *Ogden v. Saunders* (1827) had begun to hint at the judiciary's role in interpreting the law, but it was the clear affirmation of judicial review in *Marbury* that solidified this authority.² This decision not only established the Supreme Court's role as the ultimate interpreter of the Constitution but also set a precedent for the judiciary to engage in checks and balances against the other branches of government. Over the years, the practice of judicial review has sparked considerable debate. Proponents argue that it is essential for safeguarding constitutional rights and ensuring that no branch of government exceeds its powers. Conversely, critics contend that it can lead to judicial overreach, undermining democratic principles and the will of the electorate.

Despite these debates, judicial review remains a cornerstone of the American legal system, continually shaping the relationship between the Constitution and the actions of the government.

3. Establishment of Judicial Review:

The establishment of judicial review in the United States was solidified by the landmark case **Marbury v. Madison (1803)**, presided over by Chief Justice **John Marshall**. The case emerged when William Marbury, an appointee of outgoing President **John Adams**, sued Secretary of State **James Madison** for failing to deliver his judicial commission. Chief Justice Marshall ruled that while Marbury had a right to his commission, the Supreme Court could not issue a writ of mandamus because the **Judiciary Act of 1789**, which granted such authority, was unconstitutional.

By declaring a federal law unconstitutional, Marshall established the principle that it is the judiciary's duty to interpret the law and ensure its conformity with the Constitution. This decision firmly established the power of **judicial review**, allowing the Supreme Court to strike down laws that violate the Constitution, even though this authority was not explicitly mentioned in the text. **Marbury v. Madison** thus became the foundation of the judiciary's role as a check on legislative and executive actions, shaping the development of American

² Bruce A. Ragsdale, *Debates on the Federal Judiciary: A Documentary History, Volume I: 1787–1875*

constitutional law.

A. The Federalist Papers and Alexander Hamilton's Views on Judicial Review:

In *Federalist No. 78*, Alexander Hamilton laid the philosophical foundation for judicial review in the United States. Writing under the pseudonym "Publius," Hamilton argued that the judiciary was the "least dangerous" branch of government because it had neither force nor will, but merely judgment. He emphasized the necessity of an independent judiciary to interpret and uphold the Constitution as the supreme law of the land. This essay provides critical insights into the justification and scope of judicial review, which would later be formalized in *Marbury v. Madison* (1803).

Hamilton asserted that the Constitution represents the highest expression of the people's will and, therefore, must take precedence over ordinary legislative acts. He wrote, "No legislative act, therefore, contrary to the Constitution, can be valid." The judiciary's role, he argued, was to ensure that legislative acts remained subordinate to the Constitution. Hamilton championed the necessity of life tenure for judges to ensure their independence from political influence..

Hamilton portrayed the judiciary as the "intermediate body" between the people and the legislature, tasked with ensuring that the legislature adheres to the constitutional framework. This protective role, according to Hamilton, was indispensable for safeguarding individual rights and liberties.

B. The Judiciary Act of 1789:

The **Judiciary Act of 1789** was a landmark statute passed by the first United States Congress that established the structure and jurisdiction of the federal judiciary as outlined in **Article III of the Constitution**.³ It created a three-tiered court system comprising the **Supreme Court**, **Circuit Courts**, and **District Courts**. The Supreme Court was established with one Chief Justice and five Associate Justices, while the Act also provided for the creation of thirteen district courts and three circuit courts, with the circuit courts serving as the primary trial courts for most federal cases. The Act aimed to ensure that the federal judiciary had adequate authority to enforce federal laws and resolve disputes arising under the Constitution.

Significantly, the **Judiciary Act of 1789** also granted the Supreme Court the

³ Judiciary Act of 1789, ch. 20, 1 Stat. 73.

authority to issue writs of mandamus as part of its original jurisdiction, allowing it to command government officials to perform specific duties.⁴ This provision became central to the case of **Marbury v. Madison (1803)**, where Chief Justice **John Marshall** declared this part of the Act unconstitutional because it expanded the Supreme Court's original jurisdiction beyond what was permitted by the Constitution.⁵ The decision established the power of judicial review, demonstrating that while the **Judiciary Act of 1789** played a crucial role in shaping the American legal system, its provisions could be struck down if found incompatible with the Constitution's principles.

C. **Marbury v. Madison (1803):**

I. **Facts of the Case:**

The case of *Marbury v. Madison* (1803) arose from the political conflict between the outgoing Federalist administration of President John Adams and the incoming Democratic-Republican administration of President Thomas Jefferson. During his final days in office, Adams appointed several Federalist judges under the Judiciary Act of 1801 to maintain his party's influence within the federal judiciary. However, some commissions, including that of William Marbury, were not delivered before Adams left office. When Thomas Jefferson became President, his Secretary of State, James Madison, refused to deliver Marbury's commission. As a result, Marbury filed a petition directly to the Supreme Court, seeking a writ of mandamus compelling Madison to deliver the commission, relying on Section 13 of the Judiciary Act of 1789, which empowered the Supreme Court to issue such writs under its original jurisdiction⁶.

II. **Chief Justice John Marshall's Reasoning:**

In deciding the case, Chief Justice John Marshall faced a complex legal and political dilemma. Marshall acknowledged that William Marbury had a legal right to his commission and that the law provided him a remedy. However, the crucial question was whether the Supreme Court had the authority to issue the writ of mandamus under its original jurisdiction as provided by the Judiciary Act of 1789. Marshall concluded that while the Act authorized the issuance of

⁴ Id. § 13

⁵ *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 176–77 (1803)

⁶ Id. at 176–77.

writs of mandamus, it violated the Constitution by expanding the Court's original jurisdiction beyond what was explicitly stated in Article III of the Constitution. By asserting that "it is emphatically the province and duty of the judicial department to say what the law is," Marshall emphasized the judiciary's duty to interpret the law and ensure its conformity with the Constitution. His reasoning was aimed at preserving the Court's legitimacy while simultaneously asserting the power to review congressional acts for constitutionality.⁷

III. Declaration of Judicial Review as an Implied Power

The most significant outcome of *Marbury v. Madison* was Chief Justice Marshall's declaration that judicial review was an implied power of the judiciary. Although the Constitution did not explicitly grant the judiciary this power, Marshall reasoned that the Constitution's supremacy clause (Article VI) established it as the supreme law of the land, thereby requiring the judiciary to invalidate laws that conflicted with it.⁸ By declaring Section 13 of the Judiciary Act of 1789 unconstitutional, Marshall not only established the Court's authority to nullify federal laws that violated the Constitution but also strengthened the system of checks and balances within the federal government. The case set a precedent for future courts to exercise judicial review, establishing the judiciary as a co-equal branch of government with the authority to interpret and safeguard the Constitution. The decision also reflected Alexander Hamilton's arguments in *Federalist No. 78*, where he emphasized the judiciary's duty to protect the Constitution from legislative encroachments.

- **Constitutional Provisions:**

The Indian Constitution explicitly provides for judicial review through various articles. Articles 13, 32, 131–136, 143, 226, and 246 form the backbone of judicial review in India. Article 13 declares that any law inconsistent with fundamental rights shall be void. Articles 32 and 226 empower the Supreme Court and High Courts, respectively, to issue writs for the enforcement of fundamental rights. This clear constitutional mandate sets India apart from the United States, where judicial review evolved through judicial interpretation rather than explicit constitutional endorsement.

⁷ Id. at 177

⁸ U.S. Const. art. VI, cl. 2.

4. Development and Expansion of Judicial Review:

The concept of **judicial review**, established by **Marbury v. Madison (1803)**, gradually expanded as the **Supreme Court** asserted its authority to review federal and state laws, executive actions, and administrative decisions. Over time, judicial review became a powerful tool for safeguarding constitutional principles, addressing issues of federalism, civil rights, and individual liberties, and ensuring the Constitution's adaptability to evolving societal needs.

A. The Lochner Era (1897–1937):

The Lochner Era refers to a period where the Supreme Court actively used judicial review to strike down economic regulations, favoring freedom of contract over government intervention. During this era, the Court often prioritized individual economic rights over state authority to regulate labor conditions, shaping the interpretation of the Fourteenth Amendment's Due Process Clause.⁹

During the Lochner Era, the Supreme Court adopted a judicially activist approach by regularly striking down laws aimed at regulating wages, working hours, and labor conditions. The Court's emphasis on economic liberties often conflicted with state efforts to address social and economic issues, asserting that such regulations were unreasonable infringements on individual freedom of contract.

In *Lochner v. New York (1905)*, the Supreme Court invalidated a New York law limiting bakery workers' hours to sixty hours per week or ten hours per day, holding that it violated the right to freedom of contract protected by the Fourteenth Amendment's Due Process Clause. The Court reasoned that the law was an unnecessary and arbitrary interference with personal liberty, setting a precedent for heightened judicial scrutiny of economic regulations throughout the Lochner Era.

B. The New Deal Era:

The New Deal Era marked a significant shift in the Supreme Court's approach to economic regulations. Faced with the economic crisis of the Great Depression, the federal government implemented various regulatory measures under President Franklin D. Roosevelt's New Deal. The Court, which initially continued its Lochner-era approach of invalidating economic regulations, eventually adopted a more deferential stance toward legislative authority.

⁹ David E. Bernstein, *Rehabilitating Lochner: Defending Individual Rights Against Progressive Reform*

The landmark case *West Coast Hotel Co. v. Parrish* (1937) signaled a dramatic shift away from *Lochner*-era jurisprudence. The Supreme Court upheld a Washington state minimum wage law for women, ruling that the Fourteenth Amendment's Due Process Clause did not guarantee an absolute freedom of contract.¹⁰ This decision marked the beginning of a new era of judicial restraint, where the Court recognized the government's authority to regulate economic matters to protect public welfare.

President Franklin D. Roosevelt's Court-Packing Plan of 1937 aimed to add more justices to the Supreme Court to secure favorable rulings for New Deal legislation. Although the plan was ultimately unsuccessful, it pressured the Court to reconsider its opposition to economic regulation.¹¹ The so-called "switch in time that saved nine" demonstrated the Court's willingness to adapt to political realities, leading to a more permissive standard of judicial review for economic and social welfare legislation.

C. Civil Rights and Judicial Review:

The Civil Rights Era marked a critical expansion of judicial review as the Supreme Court increasingly addressed issues related to racial equality, civil liberties, and individual rights. The Court's intervention during this period demonstrated its willingness to challenge long-standing societal norms and to actively protect constitutional rights against discriminatory state practices.¹²

In *Brown v. Board of Education* (1954), the Supreme Court unanimously held that racial segregation in public schools violated the Equal Protection Clause of the Fourteenth Amendment.¹³ The decision overturned the "separate but equal" doctrine established in *Plessy v. Ferguson* (1896), asserting that segregation was inherently unequal and harmful to African American children. This landmark ruling not only advanced civil rights but also solidified the Court's role in promoting social justice through judicial review.

Following *Brown*, the Supreme Court continued to expand civil liberties and rights, addressing issues such as voting rights, freedom of speech, and criminal justice protections. The Warren Court (1953–1969), in particular, played a transformative role

¹⁰ *West Coast Hotel Co. v. Parrish*, 300 U.S. 379, 400 (1937)

¹¹ William E. Leuchtenburg, *The Supreme Court Reborn: The Constitutional Revolution in the Age of Roosevelt* 131–32 (1995).

¹² Michael J. Klarman, *From Jim Crow to Civil Rights: The Supreme Court and the Struggle for Racial Equality* 5–7 (2004)

¹³ *Brown v. Board of Education*, 347 U.S. 483, 495 (1954)

in shaping constitutional interpretation, reinforcing the Court's authority to ensure equality and protect individual rights from governmental overreach¹⁴. Cases like *Miranda v. Arizona* (1966) and *Loving v. Virginia* (1967) further established the Court's commitment to expanding personal freedoms through judicial review.¹⁵

D. India's Perspective:

India's journey of judicial review has been shaped by several landmark cases. The earliest cases focused on the balance between fundamental rights and the state's power to enact social and economic reforms. In *A.K. Gopalan v. State of Madras* (1950), the Supreme Court adopted a narrow interpretation of fundamental rights, giving precedence to legislative authority. However, this approach gradually shifted towards a more expansive interpretation of rights.

The landmark case of *Kesavananda Bharati v. State of Kerala* (1973) marked a turning point in Indian judicial review. The Supreme Court established the Basic Structure Doctrine, holding that Parliament's power to amend the Constitution under Article 368 did not extend to altering its basic structure. This doctrine empowered the judiciary to strike down constitutional amendments that violated the essential features of the Constitution, thereby solidifying the role of judicial review as a safeguard against legislative overreach.

Expansion of Judicial Review

Post-*Kesavananda Bharati*, the judiciary continued to expand the scope of judicial review to protect fundamental rights and constitutional principles. In *Maneka Gandhi v. Union of India* (1978), the Supreme Court adopted a broad interpretation of the right to life and personal liberty under Article 21, emphasizing that laws restricting these rights must meet the test of reasonableness, fairness, and non-arbitrariness.

Moreover, in cases like *Indira Nehru Gandhi v. Raj Narain* (1975) and *Minerva Mills v. Union of India* (1980), the Court reinforced its power of judicial review by declaring that judicial review itself forms part of the basic structure of the Constitution. These cases highlighted the judiciary's commitment to preserving the constitutional balance of power and ensuring that no branch of government exceeded its authority.

¹⁴ Lucas A. Powe, Jr., *The Warren Court and American Politics* 27–29 (2000).

¹⁵ *Miranda v. Arizona*, 384 U.S. 436 (1966); *Loving v. Virginia*, 388 U.S. 1 (1967).

5. Modern Developments and Trends:

The modern era of judicial review in the United States is characterized by its adaptation to evolving societal values, political dynamics, and complex legal challenges. The Supreme Court continues to play a pivotal role in addressing contentious issues, including privacy, abortion, same-sex marriage, administrative authority, and ideological debates over constitutional interpretation.

a) **Judicial Review in Contemporary America**

The Supreme Court has significantly expanded its role in addressing fundamental rights concerning privacy, abortion, and same-sex marriage. Notable cases include *Roe v. Wade* (1973)¹⁶, which established a constitutional right to abortion under the Fourteenth Amendment's Due Process Clause, and *Obergefell v. Hodges* (2015)¹⁷, which recognized same-sex marriage as a constitutional right under the Equal Protection Clause. However, recent decisions like *Dobbs v. Jackson Women's Health Organization* (2022), which overturned *Roe v. Wade*, indicate a shifting approach toward state authority over such matters.¹⁸

b) **Conservative vs. Liberal Interpretations**

The divide between originalism and living constitutionalism remains a central theme in contemporary judicial review. Originalists advocate for an interpretation of the Constitution consistent with its original meaning, as exemplified by Justice Antonin Scalia's jurisprudence.¹⁹ In contrast, living constitutionalists argue that the Constitution's meaning can evolve over time to address societal changes, a perspective associated with Justice Stephen Breyer and others. This philosophical divide influences how courts address issues like gun control, religious freedom, and civil rights.²⁰

c) **Impact of Political Polarization on Judicial Review**

Political polarization has increasingly affected perceptions of the Supreme Court's legitimacy and its role in adjudicating highly divisive issues. The appointment process for justices, particularly following high-profile cases and contentious confirmation

¹⁶ *Roe v. Wade*, 410 U.S. 113, 164 (1973)

¹⁷ *Obergefell v. Hodges*, 576 U.S. 644, 675 (2015)

¹⁸ *Dobbs v. Jackson Women's Health Org.*, 142 S. Ct. 2228, 2242 (2022)

¹⁹ Antonin Scalia, *A Matter of Interpretation: Federal Courts and the Law* 23–25 (1997)

²⁰ Stephen Breyer, *Active Liberty: Interpreting Our Democratic Constitution* 5–7 (2005)

hearings, has amplified concerns about judicial neutrality.²¹ Scholars argue that the growing ideological divide threatens the Court's credibility as an impartial arbiter of constitutional interpretation.

Judicial review in India has also played a crucial role in promoting social justice and enhancing the rights of marginalized communities. Through Public Interest Litigation (PIL), the judiciary has expanded access to justice and addressed issues ranging from environmental protection to human rights. The evolution of judicial review in this context reflects the Court's proactive approach towards fulfilling the constitutional mandate of ensuring justice for all.

6. Critical Analysis:

Judicial review has played a fundamental role in shaping American constitutional law by reinforcing the separation of powers and ensuring the protection of individual rights. However, its application has been subject to various criticisms and debates regarding its scope and legitimacy.

a) Advantages of Judicial Review:

I. Protection of constitutional Rights:

One of the most significant advantages of judicial review is its ability to protect constitutional rights against legislative and executive overreach. By ensuring that all laws and government actions adhere to constitutional principles, the Supreme Court acts as a guardian of fundamental rights. For instance, cases like *Brown v. Board of Education* (1954)²² established essential civil rights protections by dismantling state-enforced racial segregation. Similarly, the Court's rulings on freedom of speech, due process, and privacy rights reflect its commitment to upholding constitutional safeguards. Judicial review thus serves as a powerful tool for ensuring that individual liberties are respected and protected from arbitrary governmental interference.

II. Maintaining Checks and Balances:

Judicial review is also essential for maintaining the system of checks and balances embedded within the American constitutional framework. By

²¹ Neal Devins & Lawrence Baum, *The Company They Keep: How Partisan Divisions Came to the Supreme Court* 34–36 (2019)

²² *Brown v. Board of Education*, 347 U.S. 483, 495 (1954)

reviewing the constitutionality of legislative and executive actions, the judiciary acts as a check on potential abuses of power by the other branches of government. As Alexander Hamilton emphasized in Federalist No. 78, the judiciary must be empowered to act as an "intermediate body" between the people and the legislature to keep the latter within the limits assigned to its authority. This function of judicial review contributes to the overall stability and integrity of the constitutional system.

Judicial review in India has faced criticism for instances of judicial activism, where the judiciary is perceived to have encroached upon the domain of the legislature and executive. Concerns have also been raised about the lack of accountability and transparency in judicial decision-making. Moreover, the increasing politicization of judicial appointments has posed challenges to the independence of the judiciary.

7. Conclusion:

The evolution of judicial review in the United States demonstrates the judiciary's role as both a protector of constitutional principles and a potential agent of judicial activism. From the landmark case of *Marbury v. Madison* (1803), which established judicial review as an implied power of the Supreme Court, the judiciary has continued to define its scope and limitations over time. The establishment of judicial review was rooted in the idea of maintaining a system of checks and balances, ensuring that the legislative and executive branches did not exceed their constitutional authority. This power, although not explicitly mentioned in the U.S. Constitution, has become a fundamental aspect of American constitutionalism, ensuring that laws conflicting with constitutional provisions are declared null and void. However, the exercise of judicial review has not been without controversy, particularly when it has been perceived as judicial overreach.

The *Lochner* Era (1897–1937) serves as a prime example of judicial activism, where the Supreme Court frequently struck down economic regulations aimed at promoting social welfare under the guise of protecting individual liberties. This period demonstrated the potential dangers of judicial overreach, as the Court often substituted its economic philosophy for that of the legislature. However, the New Deal Era marked a significant shift toward judicial restraint, with the Supreme Court upholding broader governmental powers to address economic crises and promote social welfare. The *West Coast Hotel Co. v. Parrish* (1937) decision

epitomized this shift, where the Court acknowledged the legitimacy of state intervention in economic matters, thereby restoring a more balanced approach to judicial review.

Moreover, judicial review played a critical role during the Civil Rights Movement, particularly in cases like *Brown v. Board of Education* (1954), where the Court actively sought to dismantle institutionalized racial segregation and uphold the principles of equality and justice. The expanding interpretation of constitutional rights has continued into contemporary America, with cases involving privacy rights, abortion, same-sex marriage, and administrative agencies reflecting the Court's evolving understanding of the Constitution. Nonetheless, debates between Originalism and Living Constitutionalism highlight the ongoing struggle to balance judicial interpretation with evolving societal values, raising questions about the appropriate scope of judicial power in a democratic society.

Critics of judicial review argue that it undermines democracy by allowing unelected judges to overrule the decisions of elected representatives. Concerns about judicial activism and the undemocratic nature of judicial review remain central to contemporary discourse, especially in a politically polarized environment. Nevertheless, proponents maintain that judicial review is essential for safeguarding constitutional rights and ensuring that governmental actions remain within constitutional limits. The ongoing challenge lies in finding an equilibrium between the judicial duty to uphold the Constitution and the democratic principle of respecting the will of the people. As American society continues to grapple with complex legal and constitutional issues, the role of judicial review will undoubtedly remain a topic of significant debate.

A comparative analysis between the Indian and U.S. models reveals that while India has explicitly incorporated judicial review within its constitutional framework, the U.S. model developed through judicial interpretation. Despite these differences, both systems serve the purpose of maintaining constitutional supremacy and safeguarding individual rights. However, the Indian model, through PILs and the Basic Structure Doctrine, has been more inclined towards social justice and safeguarding democracy from legislative overreach.