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"COMPARATIVE ANALYSIS OF JUDICIAL REVIEW IN INDIA, THE UNITED STATES, AND THE UNITED KINGDOM"

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ABSTRACT

This paper presents a comparative analysis of judicial review in India, the USA, and the UK. Judicial review is a fundamental component of the legal systems in these countries, allowing courts to review the actions of the executive and legislative branches to ensure they are consistent with the constitution. Despite sharing this common purpose, the three countries have distinct approaches to judicial review, shaped by their legal traditions, constitutional frameworks, and historical developments.

In India, judicial review is based on the principle of constitutional supremacy, with the Supreme Court empowered to strike down laws that violate the constitution. The Indian judiciary has played a proactive role in expanding the scope of judicial review to protect fundamental rights and ensure governmental accountability.

In the USA, judicial review is grounded in the doctrine of judicial supremacy, established by the landmark case of *Marbury v. Madison*. The US Supreme Court has the authority to interpret the constitution and overturn laws that are deemed unconstitutional. The American system is characterized by a strong tradition of judicial activism, with the courts playing a significant role in shaping public policy.

In contrast, the UK has a system of parliamentary supremacy, where the legislature is sovereign and can enact laws that cannot be overturned by the courts. However, the UK has a long history of common law principles that allow for judicial review of administrative actions to ensure they are lawful, rational, and procedurally fair.

This paper will compare and contrast the approaches to judicial review in these three countries, examining the scope of review, the role of the judiciary, the standards of review applied, and the impact of judicial review on the respective legal systems. By highlighting the similarities and differences, this comparative analysis aims to deepen our understanding of the role of the judiciary in ensuring the rule of law and protecting constitutional rights in diverse legal systems.

INTRODUCTION:

The concept of judicial review is a cornerstone of modern legal systems, ensuring that the actions of the government are in accordance with the constitution. In the Indian context, the emphasis on the "Supremacy of Law" is paramount, highlighting the unique implementation of the doctrine of judicial review in the Indian Constitution. Despite its significance, the importance of judicial review in India is sometimes overlooked, particularly by the government.

Judicial review serves as a crucial mechanism for ensuring that all citizens are treated fairly by those in power. It is the process by which a court determines the constitutionality of a statute based on precedent. If a statute is found to be unconstitutional, the court issues a declaration of nullity, rendering the statute invalid. India's commitment to the rule of law is evident in its approach to judicial review. Historical cases, such as "Emperor v Burah" and "Secretary of State v. Moment," established the foundation for judicial review in India, empowering courts to review and potentially strike down laws that exceed the government's authority.

Comparatively, the United States and the United Kingdom also have systems of judicial review, each with its own unique characteristics and historical development. Understanding the similarities and differences in the approach to judicial review in these countries can provide valuable insights into the role of the judiciary in upholding the rule of law and protecting citizens' rights.

Objective

To understand the concept of judicial review.

To analyse the current situation of Judicial Review in India, the USA & UK.

To critically examine the system of judicial review in the USA and in India

To examine the key difference between judicial review in the US, UK and India.

Hypothesis:

Prior user prevails on registered subsequent user of trademark if he is capable of providing his prior continuous use of impugned trademark

Origin Of Judicial Review

The judicial review basically originated in the USA. It was propounded for the first time in the historic landmark case of Marbury vs. Madison 1803 by the leadership of John Marshall the chief justice of the American Supreme Court. In which the power of the Supremecourt was established by limiting the power of the congressional by declaring the legislation unconstitutional. In India, on the other hand, the constitution itself confers the power of judicialreview on the judiciary both the supreme court and high court¹.

The concept of judicial review was established early on, notably in the case of Dr. Bonham, where the Royal College of Physicians in London barred Dr. Bonham from practicing because he lacked a license. This case is significant for highlighting the violationof the principles of natural justice due to pecuniary bias, as the fine imposed on Dr. Bonhamfor practicing without a license would benefit both the king and the college itself.

A landmark case that further solidified the concept of judicial review was Marbury v.Madison in 1803. This case arose when President Adams, of the Federalist Party, appointedmembers of his party as judges on his last day in office, just before Jefferson, an Anti- Federalist, assumed the presidency. Jefferson, opposing these appointments, preventedJames Madison, the Secretary of State, from delivering the judges' commissions. Marbury, one of the appointed judges, petitioned the Supreme Court for a writ of mandamus to force Madison to deliver the commissions. The Court, led by Chief Justice John Marshall, not onlyrejected Marbury's request but also declared the act of Congress that granted the Court the power to issue such writs unconstitutional. This decision established the principle of judicialreview, empowering the Supreme Court to review and invalidate laws or actions that are incompatible with the Constitution².

¹ <https://legalstudymaterial.com/judicial-review-a-comparative-analysis-in-usa-uk-and-india/> last seen on 3/4/2024

² https://blog.iplayers.in/all-about-judicial-review/#History_of_Judicial_Review last seen on 3.4.2024

Judicial Review In India³

The Government of India Act of 1935 did not explicitly include a clause for judicial review, but due to constitutional complexities, a broader definition was required. The Constitution of India, adopted in 1950, contains several articles that define and establish judicial review, including Articles 13, 32, 131–136, 143, 226, 227, 245, 246, and 372. Article 13 guarantees the judicial examination of both new and old laws, inheriting key judicial review concepts such as severability and eclipse.

The Doctrine of Eclipse refers to laws passed before the Constitution came into effect. Article 13 declares that any pre-Constitution legislation conflicting with Part III of the Constitution is void. Initially, these laws were constitutional and binding, but Article 13 nullified them. If the constitutional ban is removed, the statute is reinstated.

For example, in the case of *Bhikaji Narain Dharkras v. State of M.P.*, a state law allowed governments to ban commercial motor transport providers. However, a part of this law was declared null and void as of the Constitution's effective date because it violated Article 19(1)(g) and could not be justified under Article 19(6). The First Amendment Act of 1951 amended Article 19(6) to authorize government monopolies, making the previously unconstitutional act valid and enforceable.

The Doctrine of Severability, based on the phrase "to the extent of inconsistency" in Article 13, allows courts to strike down unconstitutional sections of a statute while keeping the rest intact, if possible. If invalid and valid portions of a law are so intertwined that separating them is impossible, the entire provision is deemed void. In *A.K. Gopalan v. State of Madras*⁴, only Section 14 of the Prevention of Detention Act was ruled unconstitutional, not the entire Act, because removing Section 14 did not affect the Act's purpose.

The doctrine of Prospective Over-ruling allows a court to reinterpret a previous judgment to meet present needs without binding the original parties or others bound by the precedent. This theory creates a new rule of law for future situations while the old precedent still applies to past

³ <https://ijlra.in/volume-3/issue-2/judicial-review-a-comparative-analysis-of-india-the-united-states-and-the-united-kingdom-vartika-lal/> last seen on 4/4/2024

⁴ *A.K. Gopalan v State of Madras* AIR 1950 SC 27.

occurrences. The Indian case of **Golak Nath v. State of Punjab**⁵ advanced this theory, which allows for the adaptation of laws to meet the evolving needs of society.

Judicial review in India refers to the power of a court to reject the enforcement of a law or government regulation that conflicts with the Constitution of India, which is the highest law of the land. The Supreme Court of India serves as the guardian of the Constitution. Following India's independence from Britain in 1947, the Indian Constitution was drafted and came into effect on January 26, 1950. It is the world's longest written constitution, and like the Constitution of the United States of America, it has influenced the constitutions of other countries, particularly those in Asia⁶.

*Shankari Prasad v. Union of India*⁷ was the first case under the Indian Constitution. It involved the validity of the Constitution (1st Amendment) Act, 1951, which limited the "Right to Property" guaranteed by Article 31. The argument against the validity of the 1st Amendment was that Article 13 prohibits the enactment of a law that violates or eliminates a fundamental right.

However, the Supreme Court rejected this argument and held that the power to amend the Constitution, including the fundamental rights, is vested in Article 368. The Court ruled that the term "law" in Article 13(2) refers only to an ordinary law enacted in the exercise of legislative powers and does not include a Constitutional amendment, which is enacted in the exercise of constituent power.

Judicial Review under the US Constitution⁸

In the United States, there is a federal government as well as individual state governments. The federal government comprises the legislative branch, consisting of two chambers with roughly equal authority, the executive branch headed by the president, and the judicial branch responsible for judicial review. At the national level, all three branches have equal

⁵ *Golak Nath v State of Punjab* 1967 AIR 1643.

⁶ <https://legalstudymaterial.com/judicial-review-a-comparative-analysis-in-usa-uk-and-india/> last seen on 3/4/2024

⁷ *Shankari Prasad v. Union of India*

⁸ <https://www.lawinsider.in/columns/analyzing-the-judicial-systems-of-u-s-a-u-k-and-india> last seen on 1/4/24

status. The judicial power of the courts is outlined in Article III of the United States Constitution, which grants federal courts original, appellate, and jurisdiction over matters arising under law and equity.

In both India and the US, the Constitution is considered the "Supreme Law of the Land," and the judiciary acts as the guardian and interpreter of the Constitution.

India follows the "Procedure Established by Law," while the US follows the "Due Process of Law."

The original jurisdiction of the Indian Supreme Court is limited to federal matters, whereas its American counterpart has broader authority. In its appellate jurisdiction, the Supreme Court of India covers constitutional, civil, and criminal matters, while the US Supreme Court is limited to constitutional cases.

The Indian judicial system has wide discretion to grant Special Leave to Appeal, which is not the case in the American judicial system⁹.

India's judicial system has a provision for Advisory Jurisdiction, while no such provision exists in the American judicial system.

The scope of Judicial Review is limited in India, while it is broader in the USA.

Both India and the USA have granted the judiciary the power of Judicial Review, which is not the case in the UK judicial system.

Article VI of the United States Constitution establishes that the Constitution itself is the supreme law of the land. This means that all laws, including those enacted by Congress and the states, must comply with the Constitution. While the Constitution does not explicitly mention judicial review, the concept has been established through Supreme Court opinions, most notably in the case of *Marbury v. Madison*¹⁰.

In *Marbury v. Madison*, the Supreme Court affirmed its authority to review the constitutionality

⁹ https://ijlra.in/volume-3/issue-2/judicial-review-a-comparative-analysis-of-india-the-united-states-and-the-united-kingdom-vartika-lal/#_ftnref3 last seen on 1/4/2024

¹⁰ https://ijlra.in/volume-3/issue-2/judicial-review-a-comparative-analysis-of-india-the-united-states-and-the-united-kingdom-vartika-lal/#_ftnref3 last seen on 4/4/2024

of laws passed by Congress and actions taken by the executive branch. This established the principle of judicial review, which allows the courts to invalidate laws or actions that are found to be unconstitutional. Judicial review plays a crucial role in maintaining the balance of power between the branches of government and ensuring that all branches adhere to the limits set by the Constitution.

The concept of due process of law in the United States provides further protection against unconstitutional actions. Due process ensures that individuals are treated fairly by the government and that their rights are protected. The courts have used the concept of due process to nullify laws or actions that violate the rights guaranteed by the Constitution.

Overall, the principle of judicial review, as established by the Supreme Court, along with the protection provided by due process of law, helps to safeguard against the potential for an authoritarian presidency and ensures that the government operates within the bounds of the Constitution. plaintiff from passing off relief to an infringement remedy.¹¹

Judicial Review In UK¹²

Judicial review in the United Kingdom has a complex history, rooted in the doctrine of parliamentary sovereignty. The concept of judicial review was established in England in the Dr. Bonham's Case in 1610, where Lord Coke asserted the court's authority to review the legality of parliamentary statutes. However, this idea was later challenged in the case of City of London v. Wood, where Chief Justice Holt famously stated that "An Act of Parliament cando no wrong." This statement solidified the doctrine of parliamentary sovereignty, which holds that Parliament is the supreme legal authority and that courts cannot overrule its legislation.

In the UK, the legal system is based on legislative supremacy, with Parliament having the ultimate authority to make and change laws. Historically, there was limited scope for judicial review in the UK due to the doctrine of parliamentary sovereignty. However, the

¹² <https://legalstudymaterial.com/judicial-review-a-comparative-analysis-in-usa-uk-and-india/> last seen on 2/4/24

landscape began to change with the formation of the European Convention on Human Rights and the enactment of the Human Rights Act of 1998¹³.

The Human Rights Act incorporated the European Convention on Human Rights into UK law, requiring domestic courts to interpret legislation in a way that is compatible with the Convention rights. This has significantly expanded the scope of judicial review in the UK, allowing courts to review the compatibility of legislation with human rights standards.

Despite these developments, the principle of parliamentary sovereignty remains a fundamental aspect of the UK's constitutional democracy. Unlike many countries, the UK does not have a written constitution, and parliamentary sovereignty is the foundation of its legal system. This means that, ultimately, Parliament has the authority to make or repeal any law, and courts cannot invalidate legislation on the grounds of unconstitutionality¹⁴.

Judicial Review In India, USA And UK- A Comparison¹⁵

In India, the power of judicial review can be applied in three dimensions: reviewing Constitutional Amendments, Legislative Acts, and Administrative Acts. In contrast, the US Constitution is rigid, leading to rare reviews of Constitutional amendments. The US Supreme Court can scrutinize Legislative and Administrative Acts that contradict the Constitution. In the UK, there is no scope to review the validity of Legislative Acts of Parliament, but secondary legislations are subject to judicial review.

India's Constitution contains specific and extensive provisions for judicial review in Articles such as 13, 32, 131-136, 143, 226, 227, 246, and 372. Though the term "judicial review" is not explicitly mentioned in these Articles, it is implicit. In the US, judicial review is implicit in Articles IV and V, which incorporate the judicial power of the

¹³ <https://www.legalserviceindia.com/legal/article-746-judicial-review-in-india.html> last seen on 3/4/2024

¹⁴ <https://www.legalpedia.co.in/articlecontent/judicial-review-a-brief-analysis.html> last seen on 3/4/2024

¹⁵ <https://legalstudymaterial.com/judicial-review-a-comparative-analysis-in-usa-uk-and-india/> last seen on 3/3/2024

Court and uphold Constitutional supremacy. In the UK, with its unwritten Constitution, judicial review is not expressly provided for and is at the discretion of the Court¹⁶.

Article 13 of the Indian Constitution allows for the judicial review of both pre- Constitutional and post-Constitutional laws, a provision absent in the UK and USA. India's courts have formulated various doctrines like severability and eclipse, which are also implicitly incorporated in the US. However, in the UK, these doctrines are not applicable due to the absence of judicial review of legislative Acts.

Comparative Analysis : -

The Indian Constitution came into effect on January 26, 1950, following the end of British rule in 1947. It is the world's longest written constitution and one of the oldest written constitutions for self-governing nations, influencing the constitutions of other countries, especially in Asia. Members of the Indian Constituent Assembly, such as Shri B N Rau and Sir Alladi Krishnaswamy Ayyar, looked to the US Constitution as a model for India's written constitution, despite England having no written constitution.

The Government of India Act, 1858, and the Indian Council Act, 1861, limited the powers of the Governor General in Council to bypass laws. However, judicial review was not recognized by the judiciary until **Emperor v. Burah**¹⁷. In this case, the court ruled that an "aggrieved party" could seek redress. In *Annie Besant v. Madras*, the Privy Council established a clear distinction between the imperial Parliament and the subordinate Indian Legislature, ruling that any act by the latter exceeding its authority or violating the limits of the former would be illegal.

Constitutional Provisions for Judicial Review in India :-

The Government of India Act, 1935, did not include a provision for judicial review, but constitutional issues brought before the court compelled them to embrace judicial review in a broader context.

¹⁶<https://blog.ipleaders.in/judicial-review-administrative-rulemaking-powers-india-usa-comparative-study/last> seen on 3/3/24

¹⁷ *Emperor v. Burah* ILR, Calcutta, 63 (1877).

Article 13 and the Power of Judicial Review

Article 13 of the Indian Constitution defines all laws as including rules, regulations, ordinances, bylaws, notifications, customs, and usages. If any of these laws are contradictory or opposed to the Constitution, the Supreme Court and High Courts can declare them ultra vires. Article 13 upholds fundamental rights and forms the basis for judicial review. It is crucial because it legally establishes that the state cannot violate people's fundamental rights through legislation or executive orders.

Judicial Review of Administrative Actions

The Indian Constitution allows for judicial review, enabling any citizen to petition the High Court or the Supreme Court to uphold their constitutionally protected rights. Regular courts can overturn executive branch or government actions that are illegal or unjust. While the judiciary generally cannot overturn decisions made by administrative officials within their discretion, the court has authority over executive discretion in India based on a lack of discretion or misuse of judgment.

Judicial Review of Constitutional Amendments

Parliament can amend the Constitution's provisions but not its structure. In **Shankari Prasad v. Union of India**¹⁸, it was decided that basic rights cannot be altered under Article 368. **Sajjan Singh v State of Rajasthan**¹⁹ overruled the court's previous decision that Article 368 constitutional changes are outside judicial review. In *Golak Nath v. Punjab*, the Supreme Court ruled that a constitutional amendment that breaches Article 13(2) is invalid. **Keshavananda Bharti v. State of Kerala**²⁰ examined Article 368 amending power, establishing that Parliament can change fundamental rights but not the Constitution's framework under Article 368.

In **Anuradha Bhasin v. UOI**²¹, the Supreme Court ordered the Union Territory of

¹⁸ Shankari Prasad v Union of India AIR 1951 SC 458.

¹⁹ Sajjan Singh vs State Of Rajasthan 1965 AIR 845.

²⁰ Keshavananda Bharti vs State of Kerala AIR 1973 SC 1461.

²¹ Anuradha Bhasin v Union of India 1, AIJACLA, 464, 464-167, (2021).

Jammu and Kashmir to review all decisions suspending internet services, reversing any orders found to be in violation of the law. The Supreme Court held that Articles 19(1)(a) and 19(1)(g) of the Constitution guarantee people's right to free speech and the right to engage in any lawful profession, trade, business, or occupation over the internet. Any limitations on these basic liberties must comply with the requirements of Articles 19(2) and 19(6).

Current State of Judicial Review in India

Modern Supreme Court decisions are highly regarded, and judicial review has become deeply ingrained in Constitutional Law. In the case of **Joseph Shine v. Union of India**²², it was decided that Section 497 of the Indian Penal Code is unlawful. Another case, **Navjot Singh Johar v. Union**²³ of India, challenged the constitutionality of Section 377, leading to its decriminalization as it was found to violate basic rights.

Conclusion:-

Judicial review is crucial for upholding constitutional values and enforcing constitutional limitations. It ensures that government actions adhere to the Constitution and the law. Strengthening judicial review can protect individual rights and freedoms. While judicial review has faced criticism for perceived judicial overreach, it remains essential for maintaining the rule of law and protecting individual and collective rights.

India's judicial review mechanism is more extensive than that of the U.S. and the U.K. Despite its concise nature, the Indian Constitution's language and expressions are often vague and general. However, it is strictly enforced. The Indian Constitution is both rigid and flexible due to its extensive provisions. It uses precise language and terminology. Unlike the U.K., which lacks a codified constitution, limiting judicial oversight, India allows for three types of judicial review. Courts in India can review changes to the Constitution, laws, and regulations. In contrast, the stringent requirements of the U.S. Constitution mean that it is rarely reviewed or amended. The Indian Supreme Court has the authority to assess any legislative or administrative act that violates the constitution. In the U.K., courts can scrutinize secondary legislation, but not parliamentary legislation.

²² Joseph Shine vs Union of India 2018 SC 1676.

²³ Navjot Singh Johar vs Union of India AIR 2018 SC 4321

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