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A STUDY OF JUDICIAL REVIEW SYSTEM IN INDIA: COMPARATIVE ANALYSIS

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ABSTRACT

Judicial review in India is rooted in the supremacy of law and empowers courts to examine the validity of actions taken by the legislature, executive, and judiciary. It serves as a vital mechanism for declaring laws or orders unconstitutional when they conflict with the Constitution. Over time, the Supreme Court has developed key doctrines such as severability, eclipse, and prospective overruling to guide the exercise of this power. Judicial review in India extends to constitutional amendments, legislative measures, and administrative actions, reflecting its broad and dynamic scope.

This paper also undertakes a comparative analysis of judicial review in India, the United States, and the United Kingdom. The concept is often traced to the landmark American case of *Marbury v. Madison*, although its early roots can be found in Lord Coke's decision in *Dr. Bonham's Case* in 1610 in England. In the United States, judicial review is not explicitly mentioned in the Constitution but is derived from its structure, particularly Articles III and VI, establishing a strong system of constitutional supremacy where courts can invalidate unconstitutional laws.

In contrast, the United Kingdom follows the principle of parliamentary sovereignty due to the absence of a written constitution. Traditionally, courts cannot question primary legislation enacted by Parliament, as it is considered the supreme expression of the people's will. However, judicial review applies to administrative and executive actions, and, in limited contexts—especially those involving human rights—courts may scrutinize legislation.

India's model represents a blend of these approaches, combining a written constitution with extensive judicial powers under Articles 13, 32, and 226. It uniquely allows judicial review even of constitutional amendments through the Basic Structure Doctrine. Across all three

jurisdictions, judicial review plays a crucial role in maintaining the rule of law, protecting fundamental rights, and preserving the balance of power.

The paper further explores shared principles such as proportionality, judicial restraint, and reasoned decision-making, while also addressing contemporary challenges including judicial overreach, enforcement issues, and the implications of digital governance. Ultimately, it argues that a balanced and principled approach to judicial review is essential to uphold constitutional values while allowing democratic systems to adapt to evolving societal and technological realities.

Literature Review

Judicial review is a fundamental feature of constitutional governance that ensures legislative and executive actions conform to the Constitution. Its modern foundation is traced to *Marbury v. Madison*, where the U.S. Supreme Court established the power of courts to invalidate unconstitutional laws. In India, judicial review, though not explicitly mentioned in the Constitution, is embedded in Articles 13, 32, and 226, and has evolved through judicial interpretation.

Early Indian cases such as *Shankari Prasad v. Union of India* and *Sajjan Singh v. State of Rajasthan* upheld Parliament's amending power over fundamental rights. This position was later overruled in *Golak Nath v. State of Punjab*, which restricted Parliament from altering fundamental rights. A landmark shift occurred in *Kesavananda Bharati v. State of Kerala*, where the Basic Structure Doctrine was introduced, limiting Parliament's amending power. This principle was reinforced in *Minerva Mills Ltd. v. Union of India*, which reaffirmed judicial review as part of the Constitution's basic structure.

Comparative literature shows that the U.S. follows strong constitutional review, while the U.K. adheres to parliamentary sovereignty with limited judicial intervention. Indian judicial review stands out for its wide scope, covering constitutional amendments, legislation, and administrative actions. Overall, literature highlights judicial review as a dynamic tool for protecting constitutional supremacy and fundamental rights.

Judicial review refers to a legal process, typically undertaken in constitutional or administrative courts, through which the validity and lawfulness of decisions or actions of public authorities

are examined. It acts as a safeguard where no adequate alternative remedy exists, ensuring that decisions are made in accordance with the law and that proper procedures are followed. The central concern of judicial review is whether legal principles have been correctly applied and whether fairness has been maintained in decision-making.

Research Questions

1. What is the scope and constitutional basis of judicial review in India?
2. How has judicial review evolved through landmark judicial decisions?
3. To what extent is judicial review part of the basic structure of the Constitution?
4. How does judicial review of constitutional amendments differ from legislative and administrative review?
5. What are the key differences and similarities between judicial review in India, the United States, and the United Kingdom?
6. What challenges does judicial review face in contemporary governance?

Research Methodology

This research adopts a **doctrinal and comparative approach**.

- **Doctrinal Method:** The study relies on the analysis of constitutional provisions, statutes, and landmark judicial decisions such as *Kesavananda Bharati v. State of Kerala*, *Golak Nath v. State of Punjab*, and *I.R. Coelho v. State of Tamil Nadu*.
- **Comparative Method:** It compares the frameworks of India, the U.S., and the UK to understand variations in scope, application, and constitutional philosophy.
- **Secondary Sources:** Books, journal articles, case commentaries, and legal databases are used to support the analysis.

The methodology focuses on qualitative analysis, emphasizing interpretation and critical evaluation rather than empirical data.

I. INTRODUCTION

Judicial review is a cornerstone of modern constitutional governance, ensuring that all organs of the State act within the limits prescribed by law. It refers to the power of courts to examine the validity of legislative enactments, executive actions, and even constitutional amendments, and to strike them down if they are found to be inconsistent with the Constitution or other superior legal norms. Rooted in the principle of the rule of law, judicial review serves as a vital

mechanism for maintaining constitutional supremacy, protecting fundamental rights, and preserving the balance of power among the legislature, executive, and judiciary.

In India, judicial review occupies a central position despite not being explicitly mentioned in the Constitution. Its foundations are embedded in various constitutional provisions such as Articles 13, 32, and 226, and it has evolved through judicial interpretation into one of the basic features of the Constitution. The Supreme Court, through landmark decisions like *Kesavananda Bharati v. State of Kerala*¹, has affirmed that while Parliament has wide powers to amend the Constitution, it cannot alter its basic structure. This doctrine ensures that the core values of the Constitution—such as democracy, rule of law, and judicial review itself—remain inviolable.

Over time, the judiciary has developed several doctrines, including severability, eclipse, and prospective overruling, to effectively exercise judicial review. These doctrines enable courts to interpret laws pragmatically while minimizing disruption to the legal system. Judicial review in India extends across three key areas: constitutional amendments, legislative actions, and administrative decisions, making its scope one of the broadest in the world.

This paper seeks to examine the concept, evolution, and scope of judicial review in India, while also providing a comparative analysis with the United States and the United Kingdom. It aims to highlight how judicial review functions as a safeguard against arbitrary use of power, ensures accountability in governance, and adapts to contemporary challenges in a rapidly changing legal and societal landscape.

II. ORIGIN OF JUDICIAL REVIEW

The origins of judicial review in India can be traced back to the colonial period. While statutes like the Government of India Act, 1858 and the Indian Councils Act, 1861 did not explicitly provide for judicial review, they imposed limitations on executive authority. The early recognition of judicial review came in the case of *Empress v. Burah*², where it was held that laws made beyond the powers granted by the Imperial Parliament could be challenged in courts. Similarly, in *Secretary of State of India v. Moment*, it was affirmed that legislative actions could not override rights granted under parliamentary statutes. In *Annie Besant v. Government*

¹ 1973 4 SCC 225

² (1878) ILR 3CAL64

of Madras³, the court further clarified that delegated legislation exceeding authorized limits would be considered void.

Although the Government of India Act, 1935 did not expressly provide for judicial review, its necessity became increasingly apparent over time. After the adoption of the Constitution in 1950, judicial review gained a firm constitutional basis through various provisions, including Articles 13, 32, 131–136, 143, 226, 227, 245, 246, and 372. Article 13, in particular, declares laws inconsistent with fundamental rights as void. The Supreme Court and High Courts, under Articles 32 and 226 respectively, are empowered to review and invalidate laws or actions that violate fundamental rights⁴.

Several important doctrines have evolved from judicial review:

- i. **Doctrine of Eclipse:** This doctrine applies to laws enacted before the Constitution came into force. Under Article 13(1), such laws become unenforceable if they conflict with fundamental rights, but they are not entirely void—they remain dormant or “eclipsed.” If the inconsistency is later removed, the law can revive. This principle was explained in *Bhikaji Narayan v. State of Madhya Pradesh*⁵, where the Court held that pre-constitutional laws remain valid but overshadowed until the constitutional conflict is resolved.
- ii. **Doctrine of Severability:** According to this doctrine, if a portion of a law is unconstitutional, only that specific part is struck down, while the remaining valid portion continues to operate—provided the two can be separated. If they are inseparable, the entire law is invalid. This doctrine was applied in *A.K. Gopalan v. State of Madras*⁶, where a specific provision of a statute was invalidated while the rest remained intact.
- iii. **Doctrine of Prospective Over Ruling:** This doctrine allows courts to overrule previous decisions without affecting past transactions or settled matters. Its effect is limited to future cases. It was introduced in *Golak Nath v. State of Punjab*⁷, where the Court overruled earlier judgments such as *Shankari Prasad v. Union of India*⁸ and *Sajjan*

³ AIR 1918 MADRAS 1210

⁴ C. D. Jha et al., *Judicial Review of Legislative Acts*. (2nd edition, 2009).

⁵ 1955 AIR 781, 1955 SCR (2) 589

⁶ 1950 AIR 27, 1950 SCC 228

⁷ 1967 SCC OnLine SC 14, 1967 AIR 1643

⁸ 1951 AIR 458

Singh v. State of Rajasthan⁹, while preserving the validity of past constitutional amendments. The Court described this doctrine as particularly suited to a dynamic and evolving society.

Judicial review in India operates across three major domains:

- **Judicial review of constitutional amendments**, ensuring they do not violate the basic structure of the Constitution.
- **Judicial review of legislative actions**, where laws enacted by Parliament or state legislatures are tested against constitutional provisions.
- **Judicial review of administrative actions**, ensuring that executive decisions are lawful, reasonable, and procedurally fair.

Overall, judicial review serves as a cornerstone of India's constitutional system, safeguarding democratic values, protecting individual rights, and ensuring that all branches of government function within their prescribed limits.

III. Meaning and Purpose of Judicial Review

Judicial review can be understood as the process by which courts examine whether legislative enactments or executive actions conform to a higher legal authority. This “superior law” may be a written constitution, legally protected rights, or established common law principles that embody fundamental values. In essence, judicial review ensures that all exercises of public power remain within legally defined limits.

The purpose of judicial review is twofold. First, it preserves the supremacy of the Constitution by preventing temporary legislative majorities from undermining long-standing constitutional principles and commitments. Second, it protects fundamental rights by ensuring that any restriction imposed by the State is lawful, based on proper authority, and meets standards of reasonableness and proportionality.

Judicial review operates primarily as an **ex-post mechanism**, meaning it comes into play after a law is enacted or an action is taken. It complements other democratic safeguards such as elections, legislative debate, and internal administrative controls. Importantly, it also promotes

⁹ 1965 AIR 845

transparency and accountability by requiring public authorities to justify their decisions, follow fair procedures, and act within the scope of their powers.

The remedies available under judicial review are flexible and context-specific. Courts may strike down unconstitutional laws, issue declarations of incompatibility, or craft nuanced relief measures designed to correct legal violations while minimizing disruption. Through these functions, judicial review plays a central role in upholding the rule of law and maintaining the balance between governmental authority and individual rights.

IV. Judicial Review as Part of the Basic Structure

The significance of judicial review in India was firmly established in the landmark case of *Kesavananda Bharati v. State of Kerala*¹⁰, where the Supreme Court propounded the Basic Structure Doctrine. According to this doctrine, while Parliament has the power to amend the Constitution, it cannot alter its basic structure. Although the Court did not provide an exhaustive definition of what constitutes the “basic structure,” Chief Justice S.M. Sikri identified certain essential features, including:

- Supremacy of the Constitution
- Republican and democratic form of government
- Secular character of the Constitution
- Separation of powers among the legislature, executive, and judiciary
- Federal character of the Constitution

He emphasized that these features are derived from the Preamble and the overall framework of the Constitution and are grounded in the principles of individual dignity and freedom. Importantly, this list was illustrative, not exhaustive.

In *Indira Nehru Gandhi v. Raj Narain*¹¹, the Court held that judicial review in election disputes was not necessarily a part of the basic structure. However, this position was clarified in later judgments. In *S.P. Sampath Kumar v. Union of India*¹², the Supreme Court reaffirmed that judicial review is a fundamental feature of the Constitution. Drawing from the reasoning in

¹⁰ 1973 4 SCC 225

¹¹ 1975 SUPP SCC 1, AIR 1975 SC 2299

¹² (1987) 1 SCC 124

Minerva Mills Ltd. v. Union of India¹³, the Court held that removing judicial review entirely would destroy the essence of the Constitution. It further ruled that if alternative mechanisms (such as tribunals under Article 323-A) are created, they must provide an equally effective system of judicial review; otherwise, such laws would violate the basic structure.

V. Grounds of Judicial Review of Administrative Action

Although administrative authorities are often granted discretionary powers, these powers are not absolute¹⁴. Courts can intervene where such discretion is misused or improperly exercised. Judicial review of administrative actions in India is generally based on the following grounds:

- **Illegality:** The decision-maker must correctly understand and apply the law governing their authority. Any misinterpretation or misuse of legal provisions renders the decision invalid.
- **Irrationality:** A decision may be struck down if it is so unreasonable or illogical that no rational person could have arrived at it.
- **Procedural Impropriety:** Administrative actions must follow fair, just, and reasonable procedures. A violation of principles of natural justice falls under this ground.
- **Proportionality:** The means used in administrative action must be proportionate to the objective sought to be achieved. Excessive or disproportionate measures can be challenged.
- **Unreasonableness:** If a decision lacks a rational basis, is arbitrary, or leads to unequal or discriminatory outcomes, it may be invalidated.¹⁵

In essence, judicial review ensures that administrative authorities act within the bounds of legality, fairness, and reason, thereby upholding the rule of law and protecting individual rights.

In India, the concept of judicial review is deeply rooted in the principle of the rule of law and reflects the supremacy of the Constitution. Although the term “judicial review” is not explicitly mentioned in the Constitution, its presence is evident throughout the constitutional framework. It functions as a crucial mechanism through which the judiciary maintains checks and balances over the actions of the legislature and executive. The primary objective of judicial review is to ensure fairness, prevent misuse of power, and protect the rights of individuals. Whenever a law

¹³ 1980 AIR 1789, 1981 SCR (1) 206

¹⁴ <https://www.lawctopus.com/academike/grounds-judicial-review-123/>

¹⁵ <https://blog.ipleaders.in/judicial-review-administrative-action-2/>

violates the Constitution—especially its basic structure or fundamental rights—the courts intervene to provide relief and uphold constitutional supremacy.

VI. Judicial Review of Parliamentary and state Legislative Actions:

Articles 245 and 246 of the Indian Constitution distribute legislative powers between Parliament and the State Legislatures. Article 245(1) states that Parliament may make laws for the whole or any part of India, and State Legislatures may make laws for their respective states. However, this power is expressly made “subject to the provisions of the Constitution.” These words impose inherent limitations on legislative authority and form the foundation of judicial review of legislative actions in India. They ensure that all laws must conform to constitutional boundaries and empower courts to examine and invalidate legislation that violates constitutional provisions.

Judicial review thus acts as a safeguard, enabling the judiciary to scrutinize whether laws enacted by Parliament or State Legislatures remain within their constitutional limits. The Supreme Court, under Article 141, establishes binding precedents, reinforcing its authority to interpret the Constitution and resolve conflicts relating to legislative competence and validity.

In *S.P. Sampath Kumar v. Union of India*¹⁶, the constitutional validity of the Administrative Tribunals Act, 1985 was challenged on the ground that it excluded the jurisdiction of High Courts under Articles 226 and 227 in service matters, thereby undermining judicial review. The Supreme Court held that although the Act limited the jurisdiction of High Courts, it did not completely eliminate judicial review, since the powers of the Supreme Court under Articles 32 and 136 remained intact. The Court further emphasized that if judicial review is excluded in a particular area, an effective alternative institutional mechanism must be provided. Without such a mechanism, the law would violate the basic structure of the Constitution.

This position was further clarified in *L. Chandra Kumar v. Union of India*¹⁷, where provisions excluding the jurisdiction of High Courts and the Supreme Court were challenged. The Constitutional Bench unanimously held that such exclusions were unconstitutional to the extent that they curtailed the powers of judicial review under Articles 226, 227, and 32. The Court reaffirmed that judicial review is an integral part of the basic structure of the Constitution and

¹⁶ (1987) 1 SCC 124

¹⁷ 1997 (3) SCC 261,

cannot be abrogated.

In *I.R. Coelho v. State of Tamil Nadu*¹⁸, the issue concerned laws placed in the Ninth Schedule, including the Tamil Nadu Reservation Act. The nine-judge bench held that any law added to the Ninth Schedule after April 24, 1973 (the date of the judgment in *Kesavananda Bharati v. State of Kerala*) would be subject to judicial review. If such laws violate fundamental rights and damage the basic structure of the Constitution, they can be struck down. However, laws upheld before this date would generally remain immune from challenge.

Through these decisions, the Supreme Court has consistently emphasized that judicial review of legislative action must be exercised on the touchstone of the basic structure of the Constitution. This ensures that while the legislature has wide law-making powers, those powers are not absolute and remain subject to constitutional limitations.

VII. Judicial Review of Constitutional Amendments

Under the Indian Constitution, Parliament possesses the power to enact laws as well as amend the Constitution under Article 368. However, this amending power is not absolute—it is subject to the limitation that the **basic structure of the Constitution cannot be altered or destroyed**. A central constitutional question that emerged over time was whether **fundamental rights could be amended** by Parliament.

The issue was first addressed in *Shankari Prasad v. Union of India*¹⁹. The case challenged the validity of the First Constitutional Amendment, which curtailed the right to property under Article 31. The Supreme Court held that a constitutional amendment enacted under Article 368 is not “law” within the meaning of Article 13(2). Therefore, it could not be invalidated for violating fundamental rights. The Court drew a distinction between **ordinary legislative power** and **constituent power**, concluding that Parliament could amend fundamental rights through constitutional amendments.

This view was reaffirmed in *Sajjan Singh v. State of Rajasthan*²⁰, where the Court held that the expression “amendment of the Constitution” includes the power to amend all provisions,

¹⁸ 2007 (2) SCC 1

¹⁹ AIR 1951 SC 458

²⁰ 1965 AIR 845,

including fundamental rights.

However, this position changed in *Golak Nath v. State of Punjab*²¹. By a narrow majority, the Supreme Court overruled its earlier decisions and held that Parliament **cannot amend fundamental rights**, as they occupy a “transcendental” position in the Constitution. The Court rejected the distinction between constituent and legislative power and ruled that fundamental rights were beyond the reach of Parliament’s amending power.

A decisive shift occurred in *Kesavananda Bharati v. State of Kerala*²², often regarded as the “Fundamental Rights case.” Here, the Supreme Court introduced the **Basic Structure Doctrine**, holding that while Parliament has wide powers to amend the Constitution, it cannot alter its basic structure. This judgment struck a balance: unlike *Golak Nath*, it allowed amendment of fundamental rights, but only so long as such amendments do not damage or destroy the basic structure. It became the judiciary’s role to determine whether a particular right forms part of that structure.

The scope of the basic structure was further expanded in *Indira Nehru Gandhi v. Raj Narain*²³, where the Court identified additional elements such as:

- Rule of law
- Judicial review
- Democracy (including free and fair elections)
- Jurisdiction of the Supreme Court under Article 32

Subsequently, in *Minerva Mills Ltd. v. Union of India*, the Supreme Court examined provisions of the 42nd Amendment. It struck down clauses that sought to exclude limitations on Parliament’s amending power. The Court reaffirmed that **limited amending power itself is part of the basic structure**. It also emphasized:

- Balance between Fundamental Rights and Directive Principles
- The continued importance of Fundamental Rights
- The essential role of judicial review

²¹ 1967 SCC OnLine SC 14, 1967 AIR 1643

²² 1973 4 SCC 225

²³ 1976 2 SCR 347

Through these landmark decisions, the Supreme Court has firmly established its authority to exercise judicial review over constitutional amendments. This ensures that while the Constitution remains adaptable, its core identity and foundational principles are preserved.

VIII. Comparative Study of Judicial Review: India, USA, and UK

Judicial review operates differently in India, the United States, and the United Kingdom, reflecting their distinct constitutional structures and legal traditions.

India has one of the lengthiest and most detailed written constitutions in the world, combining both rigidity and flexibility. As a result, the scope of judicial review in India is the broadest among the three. Although the term “judicial review” is not explicitly mentioned, its presence is clearly embedded in provisions such as Articles 13, 32, 131–136, 143, 226, 227, 246, and 372. Indian courts exercise judicial review over **constitutional amendments, legislative enactments, and administrative actions**, making it a comprehensive system rooted in constitutional supremacy.

In the United States, judicial review is also a fundamental constitutional principle, though not expressly stated in the Constitution. It is derived from its structure, particularly Articles III and VI, and firmly established through *Marbury v. Madison*. The U.S. Constitution is relatively rigid, and judicial review is primarily exercised over **legislative and executive actions**. While constitutional amendments can theoretically be reviewed, such instances are rare. The American system is also characterized by the “due process of law” doctrine, allowing courts to examine laws on both procedural and substantive grounds.

The United Kingdom presents a contrasting model due to the absence of a single written constitution. Instead, it follows the principle of **parliamentary sovereignty**, under which Parliament is the supreme law-making authority. Traditionally, courts cannot question primary legislation enacted by Parliament. Judicial review in the UK is therefore limited, focusing mainly on **administrative actions and secondary (delegated) legislation**. However, its scope has expanded in recent decades, particularly with the influence of the Human Rights framework, allowing courts to assess laws for compatibility with fundamental rights, though not to strike down primary legislation outright.

A key distinction lies in constitutional supremacy. In India and the United States, the

Constitution is the supreme law of the land, and any law inconsistent with it can be invalidated by courts. In contrast, the UK adheres to parliamentary supremacy, meaning that courts generally cannot invalidate Acts of Parliament.

Another notable difference is India's explicit recognition of **pre-constitutional and post-constitutional laws under Article 13**, a feature absent in both the U.S. and UK systems. Additionally, India has developed specific doctrines such as severability and eclipse, which guide judicial review and have parallels in U.S. jurisprudence, though less formally articulated.

Despite these differences, all three systems share a common feature: **judicial review of administrative actions**. Courts in each country ensure that administrative authorities act within their legal powers and do not exceed their jurisdiction.

In conclusion, while India adopts a broad and integrated model of judicial review, the United States emphasizes constitutional supremacy within a rigid framework, and the United Kingdom maintains a more restrained approach shaped by parliamentary sovereignty. Each system reflects a unique balance between judicial authority and democratic governance.

IX. Conclusion

Judicial review plays a vital role in upholding constitutional supremacy, safeguarding fundamental rights, and maintaining the balance of power among state organs. In India, it has evolved into a powerful and expansive doctrine, forming part of the basic structure of the Constitution. Landmark judgments such as *Kesavananda Bharati v. State of Kerala* have ensured that Parliament's amending power remains limited, thereby preserving the core identity of the Constitution.

Comparatively, while the United States follows a strong model of judicial review rooted in constitutional supremacy, the United Kingdom adopts a more restrained approach due to parliamentary sovereignty. Despite these differences, all three systems recognize the importance of judicial oversight in preventing abuse of power. However, challenges such as judicial overreach, delays in adjudication, and evolving governance structures continue to test the effectiveness of judicial review.

X. Suggestions

1. **Maintain Judicial Balance:** Courts should exercise judicial review with restraint to avoid allegations of overreach while still protecting constitutional values.
2. **Strengthen Institutional Mechanisms:** Alternative dispute resolution and tribunal systems should be made more effective without undermining judicial review.
3. **Enhance Transparency and Reasoning:** Judicial decisions should continue to emphasize detailed reasoning to ensure accountability and public trust.
4. **Adapt to Technological Changes:** Judicial review must evolve to address emerging issues such as digital governance, data protection, and artificial intelligence.
5. **Promote Constitutional Awareness:** Increasing public understanding of constitutional rights and judicial review can strengthen democratic participation.

