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The Idea of Judicial Review in the United States of America & India

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ABSTRACT

An independent judiciary is established under the Indian Constitution to uphold citizen's rights and serve as the document's protector. Verifying that the laws passed by the legislature and the executive branch's activities comply with the Constitution; it is one of the judiciary's primary responsibilities. This is referred to as judicial review, and the Indian Constitution requires it. One of the main features of the Indian Constitution is judicial review, which makes sure that executive and legislative activities follow the constitution. This crucial procedure, which is specially adapted to the Indian setting but draws its inspiration from the American system.

According to Redform "The ability of a court to determine whether a statute, executive order, or other official action is in conflict with the written constitution and, if found to be so, to declare it unconstitutional and void" is known as judicial review. The foundation for judicial review can be found in the "Federalist" writings of Alexander Hamilton, one of the founding fathers of the American constitution in 1789. "The proper and peculiar province of the courts is the interpretation of the laws," Judges have an obligation to view a constitution as a basic law. Therefore, it is their responsibility to interpret it and any legislation passed by the legislature.

Two distinct legal systems i.e. the Common Law and Civil Law Systems or democratic theories so called the Legislative Supremacy and the Separation of Powers theory can be used to explain judicial review. For example, Parliamentary Supremacy has been established in the United Kingdom, a common law nation, meaning that judicial review of legislative acts is prohibited. However, constitutional supremacy is upheld in the United States of America (referred to as the "US"). Comparably, the Indian doctrine of separation of powers, which recognizes constitutional supremacy and the basic structure of the constitution, also allows for the examination of legislative acts[1].

As a result, the main idea behind this research paper is to present an overview and related features of judicial review and its current state, using the United States of America and India as examples. The evolution, appraisal, and conclusions taken from this work have all received significant attention. Criticism, like appreciation, plays an important role, and it has been addressed whenever it was deemed relevant.

INTRODUCTION

A High Court or the Supreme Court may conduct a judicial review to determine if a legislative or administrative act breaches fundamental constitutional principle and to declare it invalid. As a basic feature of the Constitution, this power is entrenched in the text and cannot be taken away. In recent times, several administrative judgements made by governments have been overturned, either on the basis of being unconstitutional or including procedural flaws, or on other reasons that might have been avoided with due process.

Even if the Indian Constitution is revised, this essential feature will always remain unaltered. The Constitution's Articles 32, 13, 143, 131–136, 226, 145, 246, 251, 254, and 372 provide for judicial review of legislation. In regard to High Courts, it is codified in Articles 226 and 227 of the Constitution. Articles 32 and 136 of the Constitution provide the Supreme Court the authority to conduct judicial reviews. A basic right that can be utilised to uphold the fundamental rights guaranteed by Part III is Article 32. Any administrative action may generally be subject to judicial review for the following five reasons:

1. The legitimacy of Expectation
2. Impropriety of Procedure
3. Irrationality
4. Error of Jurisdiction
5. Proportionality

[1] Edward Conard Smith & Arnold John Zurcher, Dictionary of American Politics, Barnes & Nobel, New York, 1959, p. 212.

These judicial review grounds offer a strong basis for courts to use their review power over administrative action in the interests of accountability, efficiency, and fairness—even if they are not all-inclusive and cannot be divided into separate categories.

Judicial review refers to the judiciary's ability to determine whether legislation issued by parliament, laws passed by state legislatures, constitutional provisions, or any other public regulation having legal effect is in line with the Constitution. Should it not be, the Court will decline to accord the contested state effect. The Court is unconcerned by the legislation's wisdom, expertise, or policy while deciding its constitutionality. **"It does not support or oppose any legislative policy, according to Chief Justice Marshall. Its delicate and difficult task is to decide whether legislation complies with or violates the provisions of the Constitution; once that is accomplished, its work is done.[2]"** Even though the courts believe the Act is imprudent and injurious to both public and private interests, it is required to uphold it if it is within the delegated power.

As everyone knows, the Constitution is a lengthy document that necessitates careful interpretation in order to be understood in any meaningful way. It does, however, provide the legislative and executive departments of government considerable power. As they execute their powers, they give the words of the Constitution their own interpretation. A person may file a lawsuit to have a law declared unconstitutional if they feel that the legislature has overreached its constitutional jurisdiction in enacting it. To decide whether the challenged Act is constitutional, the Court applies its interpretation of the Constitution. Judicial review has the power to determine whether a statute is lawful and to interpret the Constitution.

The American Constitution established the concept of judicial review, which has led to the Supreme Court being the most powerful court in the world. India has adopted this concept. In the US, judicial review is not restricted to federal and state laws. Its reach is wider. State constitutions, federal treaties, and directives from state and federal executive agencies are all under its purview. On the other side, they do not cover political matters. As a result, the public's confidence in the Supreme Court has been restored. A superior court's special capacity to scrutinise any decision made by a public body—constitutional, quasi-judicial, or governmental—is the ability to judicially scrutinise it.

It can only be applied when someone who has been harmed by a decision alerts the court to it. Judicial review refers to the judiciary's ability to assess and determine the validity of laws or orders. The state's ultimate law is the Constitution, and any legislation that conflicts with it is struck down by the courts[3].

THE EVOLUTION & ORIGIN OF JUDICIAL REVIEW

In the United States statutes, executive orders, and court rulings can all be scrutinised by courts to determine whether they conflict with state or federal constitutions, current laws, or both. A court that has the capacity to review cases, like the US Supreme Court, may decide to invalidate or revoke laws, legislation, or court rulings that conflict with higher authority. A part of the checks and balances system in which the government's judicial branch oversees the executive and legislative branches is judicial review. Scholars and pundits claim that one of the most well-known Chief Justices of the US Supreme Court, John Marshall, was instrumental in establishing the authority of judicial review. The Marbury v. Madison[4] ruling by Marshall was intended to create judicial review.

Nonetheless, renowned historian Edward Corwin defined "judicial review" as the courts' power and duty to invalidate any legislative or executive action taken by the federal or state governments. Facts: The issue developed from political squabbling in the weeks leading up to President John Adams' departure for Thomas Jefferson. The incoming President and Congress reversed several of Adams' judicial nominations at the end of his term and a Congressional measure that raised the number of Presidential judicial appointments. The Supreme Court declared the Act of Congress is unlawful for the first time in the fledgling republic's history. The Court solidified its position and power over judicial review by firmly emphasising that it is the judicial branch's province to state and clarify the law. Outgoing President John Adams, a Federalist, names 82 Federalist justices on the eve of his last day in office. These "midnight judges," as they were dubbed, posed a challenge to Democrat-Republican President Thomas Jefferson. Jefferson's dread of Federalist interpretation of the law materialised during the course of the next twenty years. Mr. William Marbury was one of the Midnight Judges. Jefferson's Secretary of State, James Madison, failed to forward the formal records attesting to Marbury's appointment. Marbury requested a "writ of mandamus," or an order to act, under the Judiciary Act of 1801, in a direct appeal to the Supreme Court. Chief Justice John Marshall was aware that it would be right to force Madison to produce the documents, but he was afraid that President Jefferson's refusal would damage the Court's reputation. Chief Justice Marshall holds that the Constitution is the ultimate law of the land and that any legislation that conflicts with it must be superseded[5].

COSTITUTIONAL BASIS FOR JUDICIAL REVIEW IN U.S.A

According to the American Constitution, the Supreme Court is not authorised to make a ruling of this kind about judicial review. Some authors have contested the Court's right to use it. In addition to being a betrayal of the objectives of the framers of the Constitution, President Jefferson said that the founding fathers' plan to establish three independent government departments and grant the judiciary the authority to review acts of Congress and the President was a violation of the doctrines of separation of powers and limited government. However, evidence suggests that the majority of the signatories

[2] Arthur T. von Mehran, Peter L. Murray, Law in the United States, Cambridge University Press, 2nd Edition, p.134.
[3] http://vishwabhushan.blogspot.in/2011/09/judicial-review-concept-origin-and.html, last seen on 11.03.2024
[4] The Marbury v. Madison (5 U.S(1 Cranch)137(1803)
[5] The Origins of Judicial Review, or How the Marshall Court made more out of Less, Washington and lee Law Review (Volume 56/Issue 3, Gordon S. Word)

to the Philadelphia Convention supported judicial review. They felt that the authority was already indicated in the wording of Articles III and VI, thus they did not add a specific clause[6].

Article VI Section 2 states, "This constitution and the laws of the United States adopted in pursuance thereof, as well as any treaties formed under the authority of the United States, shall be the supreme law of the land."

"The judicial power shall extend to all situations, in law and equity, arising under this Constitution, the United States' laws, as well as the, and the treaties made or to be formed, under this authority," says Article III section 2.

COSTITUTIONAL BASIS FOR JUDICIAL REVIEW IN INDIA

The central thesis of Judicial Review is that the rule of law should be the source of peace, happiness, and goodwill; the ruler lacks the legal authority to inflict suffering, oppression, and agony on the ruled and to appropriate the basic rights of individuals to opportunity and freedom, which are ingrained in the archaic Indian development and culture. Ensuring the protection of privileges, preventing their infringement, providing financial incentives, and alerting the council to constitutional compliance are the main goals of judicial review. Such a spirit was common in India.

An ancient Indian conception of law holds that it is the supreme authority and that nothing can surpass it, enabling the weak to defeat the strong. According to the Vedic concept of sway, the monarch served as the people's legal administrator and the state was a trust. The Yajur Veda typifies the location of individuals before the ruler at the hour of crowning ordinances and the response of the blessed lord to his kin on the occasion of Abhisheka (royal celebration), which reveals the concepts of ideal, sovereignty, and majority rule in the rule of law, all of which are revered in the Legal Review principle. Consequently, the soul of Judicial Review can be drawn from the key idea of law and administration, which required old India.11 In all set of experiences, no republic had an as rich legacy of the arrangement of Judicial Review as in India[7].

The roots of judicial review can be found far back into ancient India, ancient Europe, pre-revolutionary England, and the United States' provincial and post-constitutional systems. Other countries that have adopted judicial review as a legacy from the United States include Canada, Australia, Ireland, Japan, and so on. The Rule of Law had a strong stance in ancient India, implying that the law superseded the ruler and that the public authority lacked the holy right to approve any arbitrary or oppressive legislation that went against the public authority. As a result, people in ancient India imagined and valued the incomparability of law rather than the incomparability of the master. Chief Justice Coke's ruling served as a passionate basis for testing the legality of some cases in the frontier courts. As a result, the United States of America demonstrated to the world that Judicial Review could function as an artist and strong mind a majority rule government against descending into despotism and submitting to a standard of oppression—not by a specific and clear arrangement in the Constitution, but rather by legal points of reference. India was cleverer in incorporating the Judicial Review system within the actual Constitution[8].

Using this method, India was able to draft a constitution that is so distinctive and unusual that it establishes new standards for established law in the modern world. "While the court normally appends an extraordinary load to the administrative judgement, it can't abandon its obligation to decide at last on the legality of a criticised resolution," said Supreme Court of India Chief Equity Patanjali Shastri[9].

THE EMERGENCE OF JUDICIAL REVIEW IN INDIA

American and British law have been blended to create the Indian Constitution. In contrast to the English Parliament, the Indian Parliament lacks the authority to enact laws on its own. Because of this, our religious framework "brilliantly embraces them through media between the American arrangement of legal incomparability and the English standards of peerless legislative quality. The right to judicial review is the most significant feature in the Indian Constitution. India has created and implemented a vote-based system that limits the use of force by the government and, for the most part, spares it from despotism and meddling[10].

The Preamble of the Indian Constitution guarantees the equitable treatment of all Indian citizens and the judicial review of the nation's legislation. Although the majority dominates, the most successful rule is seen to depend on tyranny. For this reason, a majority rule system's effectiveness depends on the existence of an independent body. All other laws in India are derived from the Constitution, which is the unmatched standard that everyone is obliged to abide by[11].

Since all state and administrative branches of government owe their origins to the Constitution and derive powers from it, and because the Constitution can only be changed in the ways expressly specified by the Constitution, no provision of the Indian Constitution declares it to be the ultimate law that everyone must abide by. Because the founders of the Constitution were fully aware of the inherent shortcomings of judicial review, they made an effort to restrict its scope and adopted some measures to deter courts from abusing their power and serving as permanent "third loads" or "super assemblies[12].

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[6] Arthur T. von Mehran, Peter L. Murray, Law in the United States, Cambridge University Press, 2nd Edition, p.144.
[7] Jha, Chkradhar, op.cit., p.113
[8] S.P.Sathe, Judicial Activism in India, 2nd. Edition-, Oxford India Paper Backs, P.35.
[9] The State of Madras v. V.G. Row, AIR 1952, SC 196, para13.
[10] Basu, D.D., Commentary on the Constitution of India, Calcutta, 1955, p.412.
[11] Jha, Chkradhar, Judicial Review of Administrative Acts, B.M. Tripathi Private Limited, Bombay 1974, p.95.
[12] Sarkar, R.C.S., op.cit., p.353.

The writers of the Indian Constitution skillfully incorporated the Judicial Review provisions into the original text to preserve the balance of federalism, safeguard citizens' primary rights, and offer a practical tool for consistency, liberty, and opportunity. In State of Madras v. V.G. Rao, Justice Patanjali Sastri noted that Justice Khanna, a former member of the Supreme Court of India, stated in his book "Judicial Review or Conflict" that "Judicial Review has protected framework, and an authority has indeed been vested in the High Court and the Apex Court to choose about the sacred legitimacy of the arrangement of the rules[13]."

In a few articles, such as 13, 32, 131, 136, 143, 226 and 246 of the Indian Constitution, the teaching of judicial review is specifically stated.

"The State will not make any law that removes or compresses the right given by this part," says Article 13(2), "and any law made in the inconsistency of this condition will be void to the degree of the break." The main case in which the Judicial Review of India was distributed was Sovereign v. Burah[14]. Both the Privy Council and the Calcutta High Court agreed that Indian courts had the authority to conduct judicial reviews, but only in certain limited circumstances. This viewpoint was highlighted in a few distinct situations prior to the Government of India Act of 1935 yielding results. The Indian Government Act of 1935 established the League, and the Constitution of 1950 changed the direction of the Judicial Review test.

At the moment, legal review plays a crucial role in the majority rule system in India. According to the Indian Constitution of today, what it does is a sincere defence of people's rights and chances. Because the Union Parliament holds residuary power in India, there is a greater concern of association inclusion. The Indian legal executive should have this in mind while evaluating the validity of a law that arbitrarily restricts the freedom of circulation granted by the Constitution. The development, operation, and practical aspects of the Judicial Review may only be understood through a documented translation of the safeguarded advancements of Australia, Canada, India, England, and the United States of America. The framework for the legal survey appeared out of nowhere; all things considered, it progressed gradually over time, essentially based on sacred viewpoints and ideas at various stages of its established development. The sacred expansion of the United States of America demonstrates how, at every stage of the country's history, authoritative abilities were reliant on safeguarded restraints and bounds. The Government of India Act, which came into effect in 1858, made the Indian Council reliant on the English Parliament. It has been declared null and void any administrative Acts passed in India that disobey parliamentary directives and prohibitions.

The Indian Government Act of 1935 introduced federalism, which sparked an increasing awareness of judicial review in India. From 1885, when the Indian National Congress was founded, until the Indian Republic's founding, there were persistent and forceful protests against the advancement of federalism and official assertion of central privileges. India tried to establish legal management over administrative control since it has a long history of law and order that dates back to ancient India. Legal provisions were then incorporated into the actual Constitution[15].

COMPARISON OF THE JUDICIAL REVIEW SYSTEMS IN THE UNITED STATES AND INDIA

Although the American Constitution does not specifically include the concept of judicial review in any of its sections, the scope of judicial review in India is less than that of the USA.

Judges in the United States of America use judicial review very aggressively. The court has the authority to reject a statute if it is seen by the judges to be unpopular with its philosophy. However, this never occurs in India. The only grounds on which Indian judges reject a law are those of unconstitutionality.

Furthermore, it has been observed that in the United States, the Supreme Court will enact new legislation to replace any legislation that it rejects. The judiciary makes laws, even though it is not charged with creating laws. Judge-made legislation is prevalent in the United States. However, the Supreme Court of India leaves it up to the legislative branch to enact new laws when it rejects one. Others who specialise in constitutional law have referred to this as judicial activism.

In contrast to the Indian Constitution's "procedure established by law," the American Constitution guarantees "due process of law." The Supreme Court has broad authority to defend the rights of its citizens under the "due process of law," which is how the two differ from one another. It has the authority to deem laws that violate fundamental rights unconstitutional on the grounds of procedural unreasonableness as well as substantive illegality. However, our Supreme Court solely considers the substantive question—that is, whether the law is within the competence of the relevant authority or not—while evaluating whether a statute is constitutional. It is not anticipated to address the issue of its fitness, rationality, or policy ramifications[16].

Though to a lesser degree, our constitutional structure recognises the American concept of judicial supremacy. We also don't adhere to the British Principle of parliamentary supremacy in its entirety. The written nature of the Constitution, the federal system with its separation of powers, the Fundamental Rights, and the Judicial Review are only a few of the many restrictions on the Parliament's sovereignty in our nation. India essentially embodies a combination of the American concept of judicial supremacy and the British concept of legislative supremacy.

In India, the reach of judicial review is very limited as compared to the United States. The constraints on fundamental rights in India are outlined in the constitution itself; the courts are not responsible for carrying out this role. In contrast to the USA, India does not have as comprehensive a definition of these rights. This tactic was used by the drafters of the constitution because they believed it would be challenging for the courts to determine what

[13] State Of Madras vs V.G. Row.Union of India (1952) SCR 597 (1952) SCJ 253, AIR 1952 SC196.
[14] Emperor v. Burah, ILR, Calcutta, 63 (1877).
[15] Jha, Chakradhar, op.cit., p.423
[16] Rout B.C, Comparative Constitution, p.146

restrictions applied to fundamental rights and that they should be spelt out in the constitution itself. Whatever the rationale for the approach used by the drafters of the Constitution, they also believed that the court should not be elevated to the status of a "Super Legislature[17]."

Nevertheless, it must be acknowledged that the American Supreme Court has gone beyond being merely a court of law, having used the due process of law clause so extensively and using its ability to interpret the constitution broadly. It has truly assumed the role of lawmaker and has rightly been referred to as a "super legislature" or "third chamber of the legislature." The US Supreme Court has, of course, taken this stance; the constitution does not expressly grant it this authority. The Indian constitution's founders were careful not to include a provision pertaining to due process of law.

Thus, it is evident that, in comparison to the United States of America, the reach of judicial review in India is somewhat limited. India's constitution explicitly states the limitations on fundamental rights, unlike the United States, and the courts are not responsible for enforcing these restrictions. This tactic was used by the drafters of the constitution because they believed that it would be difficult for the courts to implement restrictions on fundamental rights and that it would be better to enshrine them in the constitution itself. The framers of the Indian Constitution likewise believed that the judiciary should not be elevated to the status of a "super legislature." Regardless of the rationale behind the techniques they employed, the end effect of this has been to limit the scope of judicial review in India[18].

However, it must be acknowledged that the American Supreme Court has gone beyond simply being a legal translator, as seen by the liberal interpretation of the constitution and the extensive application of the due process of law clause. It has truly assumed the role of lawmaker and has been accurately referred to as the legislature's third chamber—indeed, as a super legislature. The Indian constitution's founders took great care to avoid including the due process of law clause; instead, they refer to "procedure established by law," thus there hasn't been any room for improvement as an additional constitution maker but as a body to apply and express law.

JUDICIAL REVIEW CASES (U.S.A)

1. Plessey v. Ferguson[19]

Homer Plessey spoke to the Supreme Court after being captured and condemned for breaking the rule expecting "Blacks" to sit in isolated train vehicles. He guaranteed the alleged "Jim Crow" laws abused his Fourteenth Amendment right to "equivalent security under the law." During the legal audit, the state assured that Plessey and different Blacks were being dealt with similarly, however in various ways. The Court kept up with Plessey's conviction, deciding that the fourteenth Amendment gives "equivalent offices," not "indistinguishable offices." The Supreme Court set up "separate however equivalent" in this choice.

2. Miranda v. Arizona (1966)[20]

The Miranda freedoms development started in 1963 when Ernesto Miranda was confined and grilled in Phoenix, Arizona, for the assault of an 18-year-elderly person. Miranda, who had never mentioned counsel, admitted during the extended meeting and was eventually indicted for assault and condemned to jail. Afterwards, a lawyer documented an allure with the Supreme Court, saying that Ernesto Miranda's freedoms had encroached because he had no clue he didn't need to talk with the cops by any means. The Supreme Court upset Miranda's conviction in 1966. The Court reasoned that all suspects ought to be taught concerning their right to an attorney and the choice to remain silent while being tended to by law subject matter experts. As demonstrated by the judgment, any attestation, affirmation, or confirmation collected preceding enlightening the individual with respect to their opportunities would be illegal in Court. While Miranda was retried and condemned a resulting time, this important Supreme Court decision provoked the now-prestigious "Miranda Rights" being given to suspects by cops around the country.

JUDICIAL REVIEW CASES (INDIA)

1. Shankari Prasad vs. Union of India[21]

The Supreme Court considered the issue wherein the First Amendment Act of 1951 was tested on the grounds the right to property was limited and that it wasn't possible on account of a limitation on the alteration of Fundamental Rights under Article 13 of the Constitution (2). The contention was excused by the Supreme Court, which administered collectively. "The expressions of Article 368 are totally wide and grant parliament to adjust the constitution without any special cases." In the language of Article 13, regulation alludes to rules or guidelines sanctioned under standard administrative power and alterations to the Constitution instituted under constituent power. Article 13 (2) makes little difference to changes passed under Article 368.

2. Keshavananda Bharti vs. State of Kerala[22]

The Supreme Court settled the Keshavananda Bharti case, regularly known as the Fundamental Rights case, on April 24, 1973. The current theme was: how much in all actuality does Article 368 of the Constitution award changing power? In the interest of Union of India, it was attested that the altering authority is boundless and that any change can be made without cancelling the Constitution. Then again, the applicant contended that the revising power

[17] Prem Arora, Political Science (Indian Government and Politics), Cosmos Book Hive (P) LTD, P.543.
[18] http://www.britannica.com, last seen on 12.03.2024.
[19] Plessy v. Ferguson, 163 U.S. 537 (1896).
[20] Miranda v. Arizona, 384 U.S. 436(1966).
[21] Shankari Prasad vs. Union of India (AIR 1951 SC 458).
[22] Keshavananda Bharti vs. State of Kerala (AIR 1973 SC 1461).

was wide however not endless. Parliament is restricted from cancelling the Constitution's "fundamental element" under Article 368. An extraordinary seat of judges was shaped to hear the case. 11 of the 13 adjudicators had a troublesome and questionable essential design precept. The Supreme Court's ability to correct the Constitution under Article 368 didn't stretch out to repealing or obliterating the Constitution's essential highlights or system, as indicated by the court. Nonetheless, what the Supreme Court considered "fundamental" highlights were not spelt out or listed reliably in the different assessments given for this situation. Indeed, even before the Twenty-fourth Amendment, the larger part concluded that Article 368 included the option to change and the technique for doing as such.

CONCLUSION

Similar to the US Supreme Court, the Indian Supreme Court has the authority to conduct judicial reviews, and the constitution expressly grants it this jurisdiction. On the other hand, we observe that its jurisdiction over "judicial review" of legislation is more limited than the US Supreme Court's.

Even if the courts have the authority to conduct judicial reviews, this power cannot be used arbitrarily. The courts' authority to review legislation passed by parliament is likewise limited, in line with the limitations of parliament's lawmaking authority. The constitution gives the judiciary its authority, just like it does for other branches of government, and judges are subject to the same laws as everyone else. They have the authority to interpret and declare laws invalid, but they are not allowed to make laws themselves or provide that authority to any entity other than the national or local legislatures. Furthermore, what is obviously unlawful cannot be made constitutional by the courts. The constitution itself contains all of the authority, not the legislature or the courts.

However, we are aware that the Supreme Court has never used the concept of judicial care against the interests of the country, and justices prioritise the safety, advancement, and dignity of the nation over their own interests or conflicts. Thus, we can conclude that it is highly advantageous for both India and the United States of America.

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