



ILE MULTIDISCIPLINARY
JOURNAL

VOLUME 3 AND ISSUE 1 OF 2024

INSTITUTE OF LEGAL EDUCATION



ILE MULTIDISCIPLINARY
JOURNAL

WHILE THERE'S RESEARCH THERE'S HOPE

ILE MULTIDISCIPLINARY JOURNAL

APIS – 3920 – 0007 | ISSN – 2583-7230

(OPEN ACCESS JOURNAL)

Journal's Home Page – <https://mj.iledu.in/>

Journal's Editorial Page – <https://mj.iledu.in/editorial-board/>

Volume 3 and Issue 1 (Access Full Issue on – <https://mj.iledu.in/category/volume-3-and-issue-1-of-2024/>)

Publisher

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Chairman of Institute of Legal Education (Established by I.L.E. Educational Trust)

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JUDICIAL REVIEW: A SYSTEMATIZED TOOL FOR GOVERNING NATION IN COMPARITIVE ANALYSIS WITH USA & UK

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BEST CITATION – T. JAYAVARTHINI, JUDICIAL REVIEW: A SYSTEMATIZED TOOL FOR GOVERNING NATION IN COMPARITIVE ANALYSIS WITH USA & UK, ILE MULTIDISCIPLINARY JOURNAL, 3 (1) OF 2024, PG. 167-177, APIS – 3920-0007 | ISSN – 2583-7230.

ABSTRACT

This study compares judicial review in the United States, United Kingdom, and India, and looks at it as a formalized mode of operation for states. The system of judicial review, one of the most vital aspects of constitutional government, allows the courts to examine the constitutionality of legislative enactments, executive orders, and administrative regulations to preserve the Constitution's supremacy and the rights of individuals. This paper will compare and contrast the judicial review systems in these three jurisdictions, with the intent of finding the strengths, weaknesses and limitations in the execution of this power. This project attempts to add to the continuing dialogue on the judiciary's part in upholding constitutionalism, the rule of law, and democratic government by examining the subtleties of judicial review in the USA, UK, and India.

Keywords: Judicial Review, Constitutional Governance, Comparative Constitutional Law, USA, UK, INDIA.

INTRODUCTION

Judicial review is the process by which courts interpret and ensure the supremacy of the Constitution by reviewing the constitutionality of legislative acts, executive actions, and administrative decisions. It empowers the judiciary to assess whether laws and governmental actions are consistent with constitutional provisions and, if found unconstitutional, to invalidate them. This authority is essential in ensuring that no branch of government exceeds its constitutional limits, maintaining the rule of law and protecting individual rights.

'Article 13(1) declares that all laws in force in the territory of India immediately before the commencement of this Constitution shall be void to the extent to which they are inconsistent with the provisions of Part III of the Constitution. Clause (2) of this Article provides that the state shall not make any law which takes away or abridges the fundamental rights conferred by Part III of the constitution: and any law made in

contravention of fundamental rights shall to the extent of contravention, be void.¹⁶⁵

Judicial Review is the power of courts to examine the actions of the legislative, executive, and administrative arms of government and to determine whether such actions are consistent with the constitution. In essence, it's a check on the power of the government to ensure that it doesn't overstep its boundaries or violate the rights of citizens.

If a court finds that a law or government action is unconstitutional, it can declare it null and void. This creates an opportunity to maintain a democratic system, as it prevents tyrannical government.

The Main objective of Article 13 is to secure the paramountcy of the Constitution especially with regard to fundamental rights¹⁶⁶.

Key points about judicial review:

¹⁶⁵Dr. J.N. Pandey, Constitutional Law of India, Pg.76, (15th Edition, 2015)
¹⁶⁶Renu Vs District and Session Judge, Tis Hazari, AIR 2014 SC 2175



Checks and balances: It's a fundamental principle of the separation of powers.

Constitutional basis: The power is derived from the constitution.

Limited power: Courts cannot create laws, only interpret them.

Important role: It safeguards individual rights and prevents government overreach.

Article 13(1) is prospective in nature. All pre-constitution laws inconsistent with Fundamental Rights will become void only after the commencement of the Constitution. They are not void *ab initio*. Such inconsistent law is not wiped out so far as the past Acts are concerned. A declaration of invalidity by the courts will, however, be necessary to make the laws invalid. The Supreme court in *Keshava Madhav Menon Vs State of Bombay*¹⁶⁷, observed: "There are no fundamental right that a person shall not be prosecuted and punished for an offence committed before the Constitution came into force. So far as the past acts are concerned the law exists notwithstanding that it does not exist with respect to the future exercise of the Fundamental rights"¹⁶⁸.

This content further deals with the how the evolution of Judicial review took place in India and the legal position in USA, UK along with the limitation and comparative analysis of both the countries with that of India.

RESEARCH QUESTION

Whether India requires broader interpretation in the concept of judicial review compared to USA, UK?

CONSTITUTIONAL PROVISIONS FOR JUDICIAL REVIEW

While the constitution does not explicitly grant courts the authority to invalidate laws, it establishes clear limitations on each branch of

government. If these limitations are violated, the law in question becomes null and void.

The court is responsible for determining whether any constitutional limitations have been violated.

Some constitutional provisions that support the process of judicial review include:

- Article 13 declares that any law which contravenes any of the provisions of the part of Fundamental Rights shall be void.
- Articles 32 and Articles 226 assign the roles of protector and guarantor of fundamental rights to the Supreme Court and High Courts.
- Articles 251 and Articles 254 state that if there is a conflict between union and state laws, the state law will be considered void.
- Article 246(3) guarantees the exclusive powers of the state legislature over matters related to the State List.
- Article 245 establishes that the authority of both Parliament and State legislatures is governed by the provisions of the constitution.
- Articles 131-136 grant the court the authority to resolve disputes among individuals, between individuals and the state, and between states and the union. In doing so, the court may need to interpret constitutional provisions, and the interpretations provided by the Supreme Court become binding law for all courts in the country.
- Article 137 grants the Supreme Court the unique authority to review any judgment or order it has issued. A criminal order can be reviewed and overturned only if there are clear errors evident in the record.
- Article 372(1) establishes the authority for judicial review of legislation enacted prior to the constitution.

¹⁶⁷Keshava Madhav Menon Vs State of Bombay AIR 1951 SC 128

¹⁶⁸ Dr. J.N. Pandey, Constitutional Law of India, Pg.76, (15th Edition, 2015)



PURPOSE OF JUDICIAL REVIEW

- **Ensuring Constitutionality:** In order to safeguard the supremacy of the constitution, Judicial review ensures the law and executive actions in conformity with the constitution.
- **Protection of individual rights:** Courts use judicial review as a tool to protect the individuals against the infringement of rights by unconstitutional laws and government actions.
- **Maintain Separation Of Powers:** It helps balance power among the three branches of government by preventing any branch from exceeding its constitutional authority.
- **Check on Government Power:** Judicial review acts as a check on the powers of the legislature and executive, preventing arbitrary actions and abuses of power.
- **Upholding the Rule of Law:** Judicial review ensures that governmental actions follow legal procedures and principles, promoting accountability and justice.
- In systems with judicial review, the courts act as guardians of the Constitution, ensuring that neither the executive nor the legislature can undermine its authority.

EVOLUTION OF JUDICIAL REVIEW IN INDIA

a) Initial Development (1950s-1970s)

In the early decades post-independence, judicial review was cautiously applied. Some significant developments include:

*A.K. Gopalan v. State of Madras*¹⁶⁹,

In this case, the Supreme Court took a narrow view of judicial review, ruling that different Fundamental Rights were to be treated in isolation from one another. This judgment reflected a conservative

interpretation of rights and the scope of review.

*Shankari Prasad v. Union of India*¹⁷⁰,

The Supreme Court upheld the First Amendment, ruling that the Parliament had the power to amend Fundamental Rights. It took a limited view of judicial review concerning constitutional amendments.

b) Expansion of Judicial Review (1960s-1980s)

The nature of judicial review expanded significantly in the 1960s and 1970s, often in response to legislative or executive overreach.

*Golak Nath v. State of Punjab*¹⁷¹,

The Supreme Court reversed its earlier position, ruling that Parliament could not amend Fundamental Rights. This was a critical moment, asserting the judiciary's power to limit parliamentary authority.

*Kesavananda Bharati v. State of Kerala*¹⁷²,

In this landmark case, the Supreme Court introduced the "basic structure doctrine." The court held that while Parliament could amend the Constitution, it could not alter its basic structure. This doctrine cemented judicial review as a tool to protect the core principles of the Constitution, such as democracy, federalism, and Fundamental Rights.

c) Consolidation and Judicial Activism (1980s-2000s)

In the following decades, the judiciary took an increasingly active role in scrutinizing executive actions and legislation.

*Minerva Mills v. Union of India*¹⁷³,

The Supreme Court reaffirmed the basic structure doctrine, holding that limited amending power was itself a part of the Constitution's basic structure.

¹⁷⁰ Shankari Prasad Vs Union of India, 1951 AIR 458

¹⁷¹ Golaknath Vs State of Punjab, 1967 AIR 1643

¹⁷² Keshavanandha Bharathi Vs State of Kerala, AIR 1974 SC 1461

¹⁷³ Minerva Mills Vs Union of India, AIR 1980 SC 1789

¹⁶⁹ A.K. Gopalan Vs State of Madras, 1950 AIR 27



*S.P. Gupta v. Union of India*¹⁷⁴,

This case marked a pivotal moment in Indian legal history by expanding the scope of judicial review and introducing the concept of Public Interest Litigation (PIL). This landmark ruling empowered the judiciary to address matters concerning the broader public good, allowing for legal actions on issues such as environmental conservation, human rights protection, and governance reforms. By enabling individuals or groups to file cases on behalf of those unable to represent themselves, the PIL mechanism enhanced the judiciary's role in safeguarding citizens' rights and promoting public welfare, significantly strengthening judicial oversight.

D) Modern Developments and Continuing Expansion (2000s–present)

Judicial review in India continues to evolve, with courts taking a proactive stance on governance issues.

*Vineet Narain v. Union of India*¹⁷⁵,

The Supreme Court issued guidelines on the appointment and functioning of agencies like the Central Bureau of Investigation (CBI), showcasing the court's increasing intervention in administrative governance.

In *I.R. Coelho v. State of Tamil Nadu*¹⁷⁶,

The Supreme Court reaffirmed that laws included in the Ninth Schedule of the Constitution, which are intended to shield them from judicial review, can still be reviewed if they contravene the basic structure of the Constitution.

Recent Examples

The Supreme Court has used its power of judicial review in cases related to electoral reforms, privacy rights (e.g., *Puttaswamy Vs. Union of India*,¹⁷⁷ recognizing the right to

privacy as a Fundamental Right), and policies like the Aadhaar Act.

EVOLUTION OF JUDICIAL REVIEW IN USA & UK

The concept of judicial review was not explicitly provided for in the early constitutions of many countries but developed through judicial interpretation and key rulings. Its origins can be traced to various historical contexts, particularly in the United States and subsequently adopted by other nations, with their own variations.

USA

In 1794, *United States Vs Tale Todd*¹⁷⁸, was decided by the Supreme court of the United States in which Act of Congress was declared unconstitutional. It is said that this was the first case in which the Supreme court a statute of Congress was unconstitutional.

In 1796, in *Hylton Vs United States*¹⁷⁹, Chief Justice Chase observed that "It is necessary for me to determine whether the court constitutionally possessed the power to declare an Act of the Congress void on the ground of its being contrary to and in violation of the Constitution, but if the courts has such powers, I am free to declare it but in a clear case."

In the case of *Marbury Vs. Madison* (1803) in the US, where the Supreme Court asserted its right to review the constitutionality of laws.

The power of judicial review in its modern form originated in the United States with the landmark case of *Marbury Vs. Madison* (1803). In this case, Chief Justice John Marshall established the principle that the judiciary has the authority to review and strike down laws and executive actions that are inconsistent with the U.S. Constitution. The decision emphasized that the Constitution is the supreme law of the land and that it is the judiciary's role to interpret it.

Key points from *Marbury v. Madison* :

- The case involved a dispute over judicial appointments made by President John Adams,

¹⁷⁴ S.P. Gupta Vs Union of India, 1982 2 SCR 365

¹⁷⁵ Vineet Narain Vs Union of India, 1 SCC 226

¹⁷⁶ IR Coelho Vs state of Tamilnadu,, 1999 7 SCC 580

¹⁷⁷ Justice K.S. Puttaswamy Vs Union of India, AIR 2018 SC (SUPP) 1841

¹⁷⁸ United States Vs Tale Todd. 15 Washington and lee law Review. 220. 230 (1991)

¹⁷⁹ Hylton Vs United States, 3 U.S. 171.



which his successor, President Thomas Jefferson, refused to honor.

- The Supreme Court, under Marshall, ruled that it could not force the executive branch to deliver the appointments, but more importantly, it asserted the power of the Court to declare legislative acts unconstitutional.
- This decision set the precedent for judicial review and established the judiciary as a co-equal branch of government, capable of checking the powers of the legislative and executive branches.

Since *Marbury Vs. Madison*, judicial review has become an essential feature of American constitutional law, allowing the U.S. Supreme Court and lower courts to assess the constitutionality of laws, executive orders, and administrative actions.

The particular phraseology of the Constitution of the United States confirms and strengthens the principle, supposed to be essential to all written constitutions, that a law repugnant to the constitution is void, and that courts, as well as other departments, are bound by that instrument¹⁸⁰.

UK

In the UK, judicial review is focused on administrative actions rather than constitutional matters due to the doctrine of parliamentary sovereignty.

In the United Kingdom, judicial review developed more gradually, shaped by the principle of parliamentary sovereignty. British courts cannot strike down primary legislation (acts of Parliament) but can review the legality of executive actions and administrative decisions. Judicial review in the UK primarily focuses on ensuring that governmental actions comply with the law rather than assessing the constitutionality of statutes.

Key features of judicial review in the UK:

- Judicial review is more limited in scope compared to the U.S. due to parliamentary

sovereignty, where Parliament is the ultimate legal authority.

- Courts in the UK focus on reviewing executive and administrative actions to ensure that they are lawful, rational, and procedurally fair.
- The introduction of the Human Rights Act of 1998 has expanded judicial review to include the assessment of whether laws comply with the European Convention on Human Rights, though courts cannot invalidate primary legislation but may issue declarations of incompatibility.

LEGAL POSITION OF JUDICIAL REVIEW IN INDIA

The entire Part III of the Constitution including Article 13(1) is Prospective. All laws which are inconsistent with the provisions of Part III of the Constitution after commencement deems to be void. The inconsistency referred to in Article 13(1), therefore, does not affect the transaction past and closed before the commencement of the Constitution or the enforcement of rights and liabilities that has accrued under the “inconsistent laws” before the commencement of the Constitution¹⁸¹.

The unconstitutional procedure laid down by a pre-constitution Act is to be followed in respect of ‘pending’ proceedings or in respect of new proceedings instituted with regard to pre-constitution rights or liabilities. Just as there is no vested right in any course of procedure there is no vested liability in matters of procedure in the absence of any special provision to the contrary¹⁸².

If in case, the proceedings had been completed or become final before the commencement of the Constitution, nothing in the Fundamental Rights chapter of the constitution can operate retrospectively so as to affect the proceedings¹⁸³.

Doctrine of Eclipse

The inconsistent provisions is amended so as to remove its inconsistency with the fundamental rights, the amended provision

¹⁸¹ Keshavan Madhava Menon Vs State of Bombay, 1951 SCR 228

¹⁸² Lachmandas Kewalram Vs State of Bombay, 1952 SCR 710.

¹⁸³ Abdul Khader Vs State of Mysore, AIR 1953 SC 35.



cannot be challenged on the ground that the provision had become dead at the commencement of the constitution and cannot be revived by the amendment. All acts done under the law since the amendment will be valid notwithstanding the fact of inconsistency before the amendment. It is known as Doctrine of Eclipse^{184, 185}

In *P.E. Mathew Vs Union of India*¹⁸⁶, S. 17 of Indian Divorce Act, a Central pre-constitutional Law, was challenged as arbitrary, discriminatory and violative Article 14. The court did agree that S.17 was unjustified and discriminatory yet it did not say so. The court left the matter to the Legislature to amend the law adopting the plea that personal laws do not fall under the purview of the Fundamental Rights. The court ruled that personal laws are outside the scope of Article 13(1) as they are not laws as defined in Article 13(3)(b).

After the commencement of the Constitution, several acts have been passed by Parliament and the State legislatures modifying several aspects of these personal laws¹⁸⁷.

Doctrine of Severability

According to Article 13, a law is void only 'to the extent of the inconsistency or contravention' with the relevant Fundamental Right. The above provision means that an Act may not be void as it whole; only a part of it may be void and if the part is severable from the rest which is valid, then the rest may continue to stand and remain operative. The Act will then be read as if the invalid portion was not there. If, however, it is not possible to separate the valid from the invalid portion, then the whole of the statute will have to go¹⁸⁸.

Based on this Doctrine, in the case of *RMDC Vs Union of India*¹⁸⁹, the Prize Competition Act which was broad enough to include competitions of a gambling nature as well as those involving skill. Under Article 19(1)(g), parliament could restrict prize competitions

only of a gambling nature but not those involving skill.

Doctrine of Waiver

In the case of *Bashshar Nath Vs CIT*¹⁹⁰, the question of Whether Fundamental Right guaranteed by Part III of the Constitution be waived by a citizen? Has been aroused and in this case the petitioner, whose matter had been, referred to the Investigation Commission under Section 5(1), Taxation of Income (Investigation Commission) Act, 1947, was found to have concealed a large amount of his income. The Petitioner, to escape heavier penalty, agreed as a settlement under Section 8-A to pay Rs. 3,00,000/- in monthly instalments, by way of arrears of tax and penalty. In the meanwhile, the Supreme court, in *Suraj Mall Mohta & co., Vs A.V. Vishvanatha Shastri*¹⁹¹, held that Section 5(1), Taxation of Income (Investigation Commission) Act, 1947 was ultra vires the Constitution, as it was inconsistent with Article 14. The assessee, in view of the ultra vires character of the settlement, invited the court to hold that he was absolved of his obligation under the settlement. The respondent, on the other hand, contended that even if Section 5(1) was invalid, the assessee, by making a settlement of the case had waived his right guaranteed under Article 14. While S.R. Das CJ and Kapur J confined their decision to the fundamental right actually involved in the case and held that right under Article 14 could not be waived. Bhagwati and Subbba Rao JJ held that it was not open to a citizen to waive any of the fundamental rights conferred by Part III of the Constitution. S.K. Das J, who dissented, held, on the analogy of the US constitution, that where a right or privilege guaranteed by the Constitution inheres in the individual and is primarily intended for his benefit, it can be waived, provided such waiver is not forbidden by law and does not contravene public policy or public morals. The law is now settled that the fundamental rights cannot be waived¹⁹². In an non-fundamental

¹⁸⁴ Deep chand Vs State of U.P. AIR 1959 SC 648

¹⁸⁵ Durga Das Basu's Shorter Constitution of India, Pg.41 (13th Edition, 2000)

¹⁸⁶ P.E. Mathew Vs Union of India, AIR 1999 Ker 345

¹⁸⁷ M.P. Jain's 'Indian Constitutional Law, Pg.868 (7th Edition, 2010)

¹⁸⁸ Kameshwar Pd. Vs State of Bihar, AIR 1962 SC 1166.

¹⁸⁹ RMDC Vs Union of India, 1957 AIR 628

¹⁹⁰ Bashshar Nath Vs CIT, AIR 1959 SC 149

¹⁹¹ Suraj Mall Mohta & Co., Vs A.V. Vishvanatha Shastri, AIR 1954 SC 545

¹⁹² Nar Singh Pal Vs Union of India, (2000) 3 SCC 588



right case, the court has also held that a person cannot waive his right unless he knows of it^{193, 194}

LEGAL POSITION OF JUDICIAL REVIEW IN USA:-

The remarkable power of Supreme court of USA is judicial review or the ability of the court to declare a Legislative or Executive act in violation of the Constitution. This doctrine is not explicitly found in the text of the Constitution itself but established through the case of *Marbury Vs Madison* (1803).

After *Marbury's* case the expansion of judicial review in the United States of America in very broad nature, its widened scope of judicial review in the United States in present scenario. The Supreme court in the recent case of *Reed Vs Town of Gilbert, Arizona*¹⁹⁵, passed an ordinance concerned with Gilbert town which prohibits the display of outdoor sign except some signs which are political signs which defined as communicating ideas and another one directional signs which defined as directing the public to church or other qualifying event. This ordinance was challenged by a church and its priest.

Justice Clarence Thomas on behalf of the majority held that distinction of the majority held that distinctions drawn by the ordinance were impermissible. It was held that all "content based law" requires the exacting form of judicial review and strict scrutiny. Court further held that content based law which are target speech based on its communicative content are presume to be unconstitutional and may be justified only if the Govt. proves that they are narrowly tailored to serve compelling State interest¹⁹⁶.

As a corollary of the twin doctrines of a limited government and separation of the Powers, there has developed the doctrine of judicial review by which courts exercise the power of annulling any Legislative measure or Executive action which in their opinion goes

beyond the Constitution. The federal judiciary acts as a guardian of the Constitution. It interprets the constitution and decides the competency of Congress or State legislatures. If in the opinion of the courts a particular act is beyond the authority given to Congress or State legislatures or that it encroaches upon the domain of either of the two legislatures or seeks to deny or abridge the civil liberties of the people, then, such an act is declared unconstitutional or ultra vires and hence inoperative. Similarly, any act of the Executive, which is deemed in excess of or beyond its constitutional authority, may be held unconstitutional.

When in 1933, Congress in a desperate effort armed the President with large discretionary powers to deal with the economic crisis, the Supreme court intervened and in the *Panama Refining Company Vs Ryan* held that this as an invalid delegation of legislative power to the Executive. Another part of the National Industrial Recovery Act authorised the representatives of each industry to make codes of fair practices applicable to all members of the industry under the supervision of the President and empowered him to promulgate the codes as law. This provision the Supreme court also declared void¹⁹⁷. "We think", the court rule "that the code making authority thus conferred is an unconstitutional delegation of legislative authority."

The Doctrine of judicial review has been subjected to severe criticism during recent times. Its supporters defend it as necessary to preserve a free and limited government, and that is also helps to establish a stable government by guarding against legislative precipitancy and executive arbitrariness. The critics, on the other hand, assert that the courts infringe upon the Legislative and Executive functions and retard the working of representative government. It is further maintained that the process of judicial review delays pressing social and economic policies so necessary to meet changing conditions. We shall revert to the

¹⁹³ Motilal Padampat Sugar Mills Co., Ltd., Vs State of U.P. (1979) 2 SCC 409.

¹⁹⁴ V.N. Sukla's Constitution of India, Pg.43 (12th Edition, 2013).

¹⁹⁵ Reed Vs Town of Gilbert. 135 S. Ct. 2218.

¹⁹⁶ Mr. Rahul Raman, A Comparative Study of Judicial Review in India, The United States and the United Kingdom, Law Mantra, Volume 3 Issue 10, 2018.

¹⁹⁷ Schechter Vs United States, 295 U.S., 495 (1935)



details of this controversy at its appropriate place¹⁹⁸.

After passage of Fourteenth Amendment (1869), the provisions of the Bill of Rights were only applicable to the federal government. After the Amendment's passage, the Supreme court began ruling that most of its provisions were applicable to the states as well. Therefore, the court has the final say over when a right is protected by the Constitution or when a Constitutional rights is violated¹⁹⁹.

LEGAL POSITION OF JUDICIAL REVIEW IN UK

The Constitution of UK is unwritten and it has never been devised and reduced in writing. The Englishmen never drew out the political system in the shape of a formal document and, consequently, there is no single place in which 'The Constitution' as a whole is clearly and definitely written down. Here in the Constitutional law and Statutory or ordinary law stand at par with one another. Both emanate from the same source and undergo the same procedure in passing and amending them. Obviously, then, no court of any other authority can legally refuse to enforce and set aside any enactment of Parliament.

Jennings has aptly remarked "If the Constitution consists of institutions and not of the paper that describes them the British Constitution has not been made but has grown and there is no paper"^{200,201}

In UK's constitutional democracy "Parliamentary Sovereignty" reigns. In England, the people own full authority and are sovereign.

The power of Parliament is supreme and unlimited. It embraces a vast field including the making of laws, levying of taxes, the sanction for declaring of war and making peace. It controls and supervises all governmental machinery. It can dethrone kings; it can elect Kings; it can abolish Kingship. The power and jurisdiction of Parliament, said sir Edward Coke, "is so

transcendent and absolut, as it cannot be confined either for persons or causes within any bounds."

Erskine May said, "The Constitution has assigned no limits to the authority of Parliament over matters and persons within its jurisdiction. A law may be unjust and contrary to sound principles of government; but parliament is not controlled in its discretion, and when its errs, its errors can only be corrected by itself."

De Lolme declared that "Parliament can do everything but to make a woman a man, and a man a woman." But like various other remarks made by De Lolme this statement also involves confusion. If the power of Parliament be envisaged wholly from the legal point of view, the proposition that Parliament cannot make a man a woman is inaccurate. Should Parliament enact a law causing a confusion in the sexes, legally speaking, a man would be a woman and not other body can set the law aside on the grounds that it is unconstitutional or undesirable. Parliament is not legally subject to any physical limitation.

"The Sovereignty of Parliament", said Dicey, "is from a legal point of view the dominant characteristic of our political institutions", and the principle of Parliamentary sovereignty, he added, "means neither more nor less than this, namely, that Parliament thus defined has, under the British Constitution, the right to make an unmake any law whatever; and further no person or body is recognized by the law of England as having a right to override and set aside the legislation of Parliament."²⁰²

The Rule of Law means that the ordinary law of the land is of universal application, that there is no division into separate system of law, one for officials and another for the ordinary citizens. The Rule of Law is closely interwoven with the supremacy of Parliament. If Parliament passes legislation which is contrary to the principles of the Rule of Law, it imperils its own supremacy, sovereignty of Parliament.

¹⁹⁸ Anup Chand Kapur's Select Constitutions, 13th Edition, p.143

¹⁹⁹ (United States Court)(<https://www.uscourts.gov/about-federal-courts/educational-resources/about-educational-outreach/activity-resources/about>) (last visited Oct,9 2024)

²⁰⁰ Jennings, W. Ivor, *The Law and the Constitution*, p.8

²⁰¹ Anup Chand Kapur's Select Constitution, 13th Edition, p.1

²⁰² Dicey, A., *Introduction to the law of the Constitution*, pp.39-40



LIMITATIONS ON JUDICIAL REVIEW

Judicial review is a powerful mechanism that allows the judiciary to ensure that laws, executive actions, and policies conform to the Constitution. However, it is not without limitations. Various legal, procedural, and practical constraints restrict the extent to which courts can exercise this power. These limitations serve to maintain a balance between the judiciary and the other branches of government, ensuring that judicial review does not lead to judicial overreach.

There are certain limitations on the exercise of power when it comes to judicial review by the high courts and the Apex Court. In fact, when the judiciary oversteps its boundary and intrudes into matters that are authorised by the executive, it is termed judicial activism; whereas, when power is exploited further, it can lead to judicial overreach. The Limitation of Judicial review is enlisted below:

Restricts the functioning of the government

The scope of judicial review is limited, both in terms of availability and function. Here, the role of the court is to perform a review on the method through which an outcome was deduced so as to determine whether such a finding is defective and must be rescinded, instead of re-making the ruling in question or investigating the merits of the decision deduced. In short, it is only allowable to the degree of determining whether the method of reaching the inference was properly adhered to or not. It is not a decision in itself.

Constitutional and Legal Limitations

Doctrine of Separation of Powers

One of the fundamental limitations on judicial review is the principle of separation of powers. This doctrine maintains that the judiciary, legislature, and executive are separate and co-equal branches of government, each with distinct functions. Judicial review must respect this balance and refrain from encroaching upon the roles and prerogatives of the legislature and executive. Courts cannot substitute their

judgment for that of the legislature or executive when it comes to policy matters or political questions.

In the United States, the Supreme Court has invoked the political question doctrine to avoid ruling on issues that are considered the exclusive domain of the legislative or executive branches. Similarly, in India, the judiciary often emphasizes judicial restraint in policy matters to avoid infringing on the powers of the executive and legislature.

Parliamentary Sovereignty

In countries like the United Kingdom, where the doctrine of parliamentary sovereignty prevails, judicial review is limited in scope. UK courts cannot strike down primary legislation passed by Parliament, as Parliament is the supreme legal authority. The judiciary can review executive actions and secondary legislation, but not primary legislation unless it conflicts with European law or the Human Rights Act of 1998.

The UK's judiciary can issue declarations of incompatibility if a law conflicts with the European Convention on Human Rights, but it does not have the authority to invalidate or overturn such laws.



COMPARISON OF JUDICIAL REVIEW IN INDIA, USA & UK

COMPARATIVE TABLE FOR JUDICIAL REVIEW IN INDIA, USA, UK

Feature	India	USA	UK
Constitutional Basis	Not explicitly given but via provision of Constitution such as Articles. 13, 32, 226	Establish in <i>Marbury Vs Madison</i>	No codified constitution; focuses on legality
Scope	Broad, includes constitutional amendments	Broad, cannot review amendments	Limited, cannot strike down primary legislation
Judicial Activism	Strong, especially through Public Interest Litigation	Periodic activism (Eg., Civil rights)	Traditionally restrained, growing influence
Parliamentary sovereignty	Doctrine of Basic Structure held through <i>Keshavananda Bharati</i> case restricts it	No Doctrine of Parliamentary Sovereignty	Strong Parliamentary Sovereignty
Constitutional Amendments	Subject to Judicial review	Not subjected to Judicial review	Not applicable
Checks and Balance	Judicial review serves as a check on the legislative and executive branches.	Courts ensure that the other branches do not exceed their constitutional authority.	No Substantive check on legislative power

CONCLUSION

Answering the research question, the Concept of Judicial Review in India is broader when compared to other nations of USA & UK. The UK's constitution was unwritten is a stumbling block for judicial scrutiny. This concept was articulated in the virtue of judgments in USA. Thus India does not require broader interpretation but USA in need of specific provision on Constitution and UK requires judicial control over parliament.

SUGGESTION

My suggestion on this comparative analysis of Judicial Review in India, USA, UK is Indian Constitution doesn't explicitly states about Judicial Review in its provisions, rather provides remedies via its provisions. Thus, explicit provisions on Judicial Review will be ameliorative. In USA, Judiciary has control over congress but not over to constitutional amendments, thus in which enhanced power is emerging need. In UK, the rule of law prevail over anything, the role of judicial activism deemed necessary.



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