

A COMPARATIVE ANALYSIS OF JUDICIAL REVIEW IN THE US AND INDIA

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ABSTRACT

Judicial Review is the epitome of the incomparable excellence of law. The capacity to review any legal action or rule, regardless of its importance, is known as judicial review. The Court has the authority to examine administrative actions and audit the actions of the legal executive. Law and order is the principle behind it. The judicial review process serves as a check and balance to prevent corruption. It is the exceptional tool the Court uses to declare any legislation or rule of peace that conflicts with or attempts to overthrow the fundamental tradition that must be upheld as unconstitutional and unenforceable. The “Theory of Limited Government” and “Supremacy of the Constitution with the necessity that ordinary law must adhere to the Constitutional law” are the two main tenets of judicial review. The idea of legal activism is a part of this system since judicial review is a part of it. The Indian constitution has come a long way in establishing a free legal executive with the authority of judicial review to determine the legality of any rule and any leader behaviour. The Supreme Court of India developed a number of judicial review-based doctrines, including the Doctrine of Severability, the Doctrine of Eclipse, the Doctrine of Prospective Overruling, and others. “Judicial Review of Constitutional Amendments”, “Judicial Review of Legislative Actions”, and “Judicial Review of Administrative Actions” are three crucial areas of judicial review in India. The primary goal of judicial review is to determine whether administrative demonstrations are unlawful. It adapts the constitution to the contemporary circumstances and demands. The instant article will talk about the same ideas.

KEYWORDS:

Received: Jan 04, 2023; **Accepted:** Jan 24, 2023; **Published:** Feb 16, 2023; **Paper Id:** IJPSLIRJUN20231

INTRODUCTION

Backdrop

To maintain the matchless quality of established regulation and safeguards the citizens' crucial freedoms. Furthermore, keeping up with the government balance between the Union and the States are the primary goals of Judicial Review. Authoritative and regulatory powers among the Center and the Condition of the constitution are likewise yet primary objectives of Judicial Review. The Judicial Review, with respect to administrative activities, should be possible on specific grounds of jurisdictional blunder, unreasonableness, procedural inappropriateness, proportionality, and authentic articulation^[2]. Judicial Review of its definability against administrative power doesn't think about its insight, experience, and strategy but considers consistency with the fundamental design of the constitution^[3]. The legal executive, being the gatekeeper of financial privileges and authority of sacred struggles with respect to the division of power between the Union and States, is capable of judicially auditing government and state activities, consequently re-establishing public faith.

The two U.S. and Indian constitution accommodates the Judicial Review of regulative and regulatory powers alongside the exercise of abilities by established, public, quasi-judicial and administrative specialists at both Union and State level. In any case, the extension in the U.S. is more extensive and attributable to the trial of fair

treatment of regulation and not the methodology laid out by regulation. Aside from re-establishing public faith, Judicial Review also legitimizes power and shields sacred privileges from unjustifiable infringements by specialists.

In the U.S., Judicial Review as a check and equilibrium system was consolidated through the case of *Marbury v. Madison*^[4], where Chief Justice John Marshall expressed that,

“The subject power, together with oaths to uphold the constitution that judges take, requires that the courts so declare when they believe that acts of the courts so declare when they believe that act of the congress violates the constitution. When the Supreme Court of the United States invalidates an act of the congress or of a state legislature on the ground that it is not in conformity with the constitutional powers and provisions it is exercising the powers of the judicial review.”

Judicial Review at a Glance

Judicial Review is, in many cases, described through just authenticity and self-administration. It takes into consideration sensible conflicts with respect to critical sacred issues. Each branch has its own established understanding, which is non-restricting to different branches. It welcomes legal executives for nonstop pondering, instead of transcription, among court and law-making bodies on protected translation. The standard of the greater part isn't identical to a run of unanimity and could stomp on over interest of minorities.

When the governing body dismisses consistent assessment in the illumination of deficient portrayals by chosen individuals due to the absence of legitimate insight, Judicial Review enables Court to safeguard the basic privileges of people as committed. The convention of legal incomparability is comprehensive and responsive to sacred standards. Also, considering the vulnerable side of viewpoint and the non-need weight of latency, the council needs foresightedness and time to appreciate and evaluate the effect of its activities alongside overlooking freedoms-based claims. Subsequently, Judicial Review is expected to legitimize and safeguard the financial privileges of people.

Key Components in Judicial Review

One of the fundamental ideas of the court is the authority of judicial review. The SC uses judicial reviews to examine decisions made by state legislatures, federal legislatures, and parliamentary representatives. If it is determined that one or more of the provisions of a regulation that the Supreme Court deemed illegal contradict the requirements of the constitution, the rule cannot be sustained by the public authority. Declaring a rule "ultra-vires" of the constitution is what this is known as. A court has the authority to use judicial review to decide whether a statute or other government action is in violation of the written constitution and, if so, to proclaim it to be such. This served as the basis for judicial review.

The judiciary enforces the limits of the constitution on the main and regulatory organs by using this power. Judicial Review serves as an illustration of how the division of powers functions in a modern legal framework. The hierarchy of administrative standards is viewed differently depending on where you are, and this rule is understood differently there as well. As a result, there are regional and national differences in the process and reach of judicial review.

Fundamentally, India has maintained the Doctrine of Separation of Powers as the cornerstone of the Constitution and Sacred Matchless quality, allowing for the criticism and assessment of the governing processes. Similar to this, one of the significant political pledges made by the United States of America is the Judicial Review Convention. In the well-known “*Marbury v. Madison*” judgement, C.J. Marshall of the USA SC developed the idea of judicial review. C.J. Marshall

detailed the legal executive's authority to evaluate the council-made regulations in this situation. The Court would find any such rule to be ultra-vires of the constitution if it were to violate the constitution, it was further said. It assists in policing various governmental agencies. Protecting individual liberties, limiting governmental power, and upholding equality for everyone are the three fundamental objectives of judicial review. Without judicial review, the arrangement of common liberties would be very different from what it is now. C.J. Marshall of the U.S.A. Supreme Court established judicial review with the following objectives:

- To safeguard the principal freedoms of the citizens.
- To maintain the guideline of the incomparability of the constitution.
- To keep up with government harmony, i.e., the balance between the Centre and the States.

Judicial Review in the United States of America

The US Constitution is the oldest tradition that must be upheld. Its incomparability is protected by the Supreme Court, which has the power to understand it and stop Congress and the President from violating it. This method served as the foundation for the Supreme Court's Judicial Review force. Under "Judicial Review," the U.S.A SC has the authority to annul or reverse any law passed by Congress or the states.

Any law that occasionally violates or modifies to conform to or suit the US Constitution or disregards the constitution may be invalidated or annulled by the United States Supreme Court. It is now regarded as the Supreme Court's most distinctive quality and ability. Therefore, it is entirely possible to say that Judicial Review is the Supreme Court's tool for determining the sacred legality of federal and state laws at any stage during a lawsuit. It is the power to disapprove regulations that are regarded as beyond their authority. In *Hilton v. Virginia*, the U.S. Supreme Court used this power.

It's interesting to note that in 1803, the U.S. Supreme Court ruled against a congressional rally using the judicial review authority. The Supreme Court accepted the existence of the theory of implied powers and applied it in its decision in the *Marbury v. Madison* case. C.J. Marshall defended and discussed the role of judicial review in this situation to put a halt to an unlawful state or federal government exhibition. The Supreme Court also made reference to Art VI, Section 2 of the United States Constitution, which reads,

"This Constitution and the laws of the United States which shall be made in pursuance thereof; and all treaties made or which shall be made under the authority of the United States, shall be the supreme law of the land, and the judges in every state shall be bound thereby, anything in the constitution or laws of any state to the contrary notwithstanding. "

This clause in the constitution was interpreted to mean that the adjudicators have the power and responsibility to protect the supremacy of the constitution by banning any federal or state laws from contravening its provisions.

Chief Justice Marshall outlined this principle in rendering his decision in this case, which included a translation of the *Legal Executive Demonstration 1789*.

"a written Constitution is superior to all other acts of government 5 (1803) made under it; and it is the sworn duty of federal judges to follow the constitution and give effect only to constitutional law and determine which law prevails where there is conflict. If a Congressional law conflicted with the Constitutional law, the Court was bound to uphold the constitution as the highest law of land;/ Courts are to respect the Constitution and the Constitution is superior to any ordinary Act of legislature. "

Since then, the S.C. has exercised this extraordinary jurisdiction and held several administrative acts invalid and unconstitutional. Since 1803, it was only used in the Dred Scott case in the year 1857.

The entire regulation is declared unconstitutional if the part or sections declared unlawful is, in any case, so essential to the legislation that it would be impossible for it to function without them. The majority of people make the decision. In some circumstances, it consists of more than one constituted authority.

The legal framework for judicial review, which has a very broad reach, is provided by the Fifth Amendment of the United States Constitution. One of its provisos is that “the Government cannot deprive someone of life, liberty, or property without due process of law.” Due Process of Law refers to the principle that no one's rights to life, liberty, or property may be restricted arbitrarily or without cause by the law, the chief, or even the adjudicators during the imposition of sanctions. Simply said, it is a free and egalitarian place to start working toward equity's objectives. This method has been employed by the Supreme Court to assess the legality of rules. The Supreme Court takes into account two things when starting the judicial review:

- Whether the law was formed completely in compliance with the constitution's requirements; and
- Whether the law is reasonable and fair and achieves the goals of justice and "fair treatment of regulation."

If the law does not meet one of these two standards, it is ruled unconstitutional. The following are the restrictions on the Supreme Court's ability to conduct the judicial review:

- The Court does not direct Judicial Review about issues of policy.
- The Court must justify its ruling and identify the provisions of the constitution that it disregarded before declaring a regulation unlawful.
- Only in matters presented before the Supreme Court does it perform Judicial Review. It isn't able to begin the course on its own.
- The law declared unconstitutional no longer applies to future events. The previously completed work on its premise is still large.
- The Court must demonstrate the law's invalidity before it may be declared void.

Constitutionality of Judicial Review in the United States of America

Remembering the regulation of division of force and restricted government, the designers of the U.S. Constitution had not furnished legal executive with the force of Judicial Review. Besides, Alexander Hamilton planned to concede the ability to save regulations to the Supreme Court. He suggested the 'Independent Judiciary' being the fittest bar to protect infringements by different branches, subsequently advancing a check and equilibrium component. There is no particular arrangement consolidated in the constitution yet the force of Judicial Review is suggested in Article III Section 24 and Article VI Section 25. The requirement of human rights principle has made genuine explanations behind the foundation of Judicial Review in the U.S.A. The judiciary has been vivaciously chipping away at the assurance of financial privileges and minority interests tormented with lacking portrayal in the dynamic cycle. A portion of the outstanding choices are Plessey v. Ferguson^[5] wherein the Supreme Court imagined the guideline of 'separate but equal' and held that the fourteenth amendment guarantees the right to 'equal,' not 'same' offices; “Weeks v. United States”^[6] which thought the milestone'

exclusionary rule' and made confirmations removed in absurd and unlawful pursuit and seizure prohibited in the courtroom, in this way safeguarding fifth amendment right. Other cases are Virginia Leading group of Schooling v. Bamente^[7] and Tinker v. Des Moines School District^[8].

The Concept of Judicial Review in India

The judicial review mechanism is also applicable in India. The Indian Constitution does not mention the phrase "judicial review," but the arrangement of the different Articles has shown to the Supreme Court the authority of judicial review. When assessing the legitimacy of a leader request or regulatory sanctioning request, the Supreme Court may additionally take into account the following reasons.

- The infringement of fundamental rights
- Not within the purview of the institution that framed it.
- It goes against the constitution's rules.

The scope of judicial review in India was significantly broadened by the Indian Supreme Court by its decision in the Menaka Gandhi case. The U.S. ideal of due process of law was included in our constitution when the SC acknowledged the concept of natural justice as a fundamental part of regulation in this case. Justice Mukherjee noted^[10] the following in relation to "Charanjit Lal v. Union of India"^[9]:

"The court should prima facie lean in favour of constitutionality and should support the legislation if it is possible to do so on any reasonable ground."

The Indian courts have used their judicial review power with extreme care and have placed greater weight on the constitution's specific language than on its overall meaning. Without the assistance of anybody else, Judicial Review under the Indian Constitution continues in a class. Under the Indian Constitution, the skyline of judicial review was expanded clearly beyond a "formal" translation of "government" structures. Without a doubt, the discussions of the Constituent reveal that the judiciary was considered an "arm of the social insurgency" and an extension of the freedoms.

Judicial Review was subsequently seen as being tempered by the desire to create a different general public in light of social justice and government assistance, despite being considered the fundamental and necessary prerequisite for defending the rights & freedoms of the people. The growing fissiparous and incendiary inclinations brought about by the Union of India and its aftermath and the overriding necessity for "security of the State" only served to further fuel the interaction and seal the deal. As a result, the much-discussed "Due Process Clause," which had recently been incorporated into the first Draft Constitution, became a "major loss" and was removed from the Privileges to Individual Freedom category. The phrase "unless according to procedure established by law" was substituted for it in Article 21 of the new Indian Constitution, while the phrase "except by authority of law" was used in Article 31 (1). While this new arousal was occurring, a number of agreements were incorporated into the sacred record to limit the freedoms envisioned in Articles 19, 21, and 31 and reduce the force of the Supreme Court's Judicial Review to that of a "formal" audit.

The constitution has been in effect for a while now since it was enacted, but it is unquestionably difficult to give an honest appraisal of the development of the Judicial Review, as well as its unique heads and tendencies. A.K. Gopalan v. Province of Madras served as a firm and effective foundation for the Indian Supreme Court's Audit power. This case

produced a series of guidelines that would ultimately serve as the model for the fundamental legal approach to dealing with the Indian Constitution, in addition to clarifying the rule of Judicial Review & the base upon which it would rest in the future.

While limiting the scope of an individual's privileges to opportunity and individual freedom, the "Gopalan" choice provided for the recognition of social goals through its reasonable articulation of the standard of legal submission to regulative insight and watchfulness and by emphasizing friendly control of individual freedoms. Even while it extols the people's basic liberties as holy and supernatural, the "Golakhnath" case has surely made it extremely difficult to impose benign government aid regulation. The SC of India has used its judicial review authority in a number of cases. We might make references to the cases of "Golakhnath"⁽¹¹⁾, Bank Nationalization ⁽¹²⁾, Privy Purses Abolition ⁽¹³⁾, Keshwananda Bharti ⁽¹⁴⁾, Minerva Plants ⁽¹⁵⁾, etc.

In reality, the SC has never accepted the U.S. practice even though it uses the force of judicial review. The Golakhnath decision from 1967, in which the Supreme Court ruled that the Parliament does not have the right to reduce or remove the Crucial Freedoms guaranteed by the constitution through an amendment to the constitution, may be considered one of the most significant cases it has resolved. By virtue of its judicial review power, it elevated the Principal Privileges above the power that made up the Parliament and made them superior to it. In the Bank Nationalization and Privy Purse's decisions, the Supreme Court followed this reasoning and pushed for the Parliament's right to curtail important freedoms. The Congress Government was forced to enact the 24th, 25th, and 26th Constitutional Amendments in 1973 and 1980 due to the Supreme Court's actions. Additionally, it attempted to limit the Supreme Court's authority to issue an order affecting Articles 14, 19, and 31 of the Constitution as long as the law was passed to implement Article 39(b) of the Directive Principles (c).

These adjustments were put to the test in the Keshvanand Bharati case. The Indian Constitution's Forty-second Amendment was an attempt to restrict the reach of judicial review at the time of the crisis. The SC lost the power to decide whether the central standards were indeed sacred since only the Supreme Court had that power. As a result of the Supreme Court's decision in S.R. The Janata government made an effort to give the judiciary back the authority that had been stripped from it during the emergency in Bommai and others v. The Association of Indian States. With the passing of the Forty-third Amendment in December 1977, the Supreme Court's pre-emergency position on the validity of judicial review of the regulations set by the Parliament and the State Councils was restored. The court has expanded its authority by declaring "Judicial Review" to be a core constitutional principle. As a result, the Supreme Court of India has addressed issues, including those pertaining to strategy, in addition to interpreting the constitution's language.

Judicial Review in India and the United States of America. Correlation

Although Judicial Review is used to a lesser extent in America than in India, no provision of the American Constitution specifically mentions Judicial Review. The adjudicators in the U.S.A. apply for judicial review in a very firm method. In the unlikely event that the adjudicators find a particular regulation and/or its rationale objectionable, the legal executive may also reject the regulation. But in India, something like this never happens.

A regulation is rejected by the Indian authorities solely on the grounds that it is unlawful. Additionally, it has been observed that in the United States., if the SC strikes down a law, the Court will replace it with a new one. Even though it is not one of the legal executive's duties to create regulations, the legal executive does so. Such rules created by judges are

fairly common in the U.S.A. However, if the SC strikes down regulation in India, the Court refers the decision to create new regulations to the administrative. Some of the protected specialists have also referred to this as legal activism.

Unlike the “procedure established by law” found in the Indian Constitution, the US Constitution guarantees “due process of law.” The difference between the two is that the Supreme Court is given considerable latitude under “due process of law” to ensure the security of its citizens' privileges. It has the authority to declare laws that violate fundamental liberties null and void on the grounds that they are unconstitutional on a general level and absurd on a procedural level. When determining whether or not a regulation is judicially enforceable, our Supreme Court only considers the relevant question: whether or not the rule falls within the purview of the relevant authority. Going into the issue of its sensitivity, appropriateness, or strategic recommendations is not customary. The American legal standard of unsurpassed quality is also somewhat perceived in our current system. We also do not entirely adhere to the English Guideline of Parliamentary Matchless Quality. The power of the Parliament in our country is subject to several restrictions, including those imposed by the constitution, the federal system with the separation of powers, the Major Freedoms, and the Judicial Review. India essentially has a hybrid of the American ideal of unrivalled legal excellence and the English rule of legislative incomparability. In India, the reach of judicial review is rather broader than it is in the United States of America. In contrast to the U.S.A., where the restrictions are spelled out in the real constitution, India's primary privileges are not as clearly codified. Additionally, the courts have not been given this task. The constitution's creators approved this strategy because they thought it could be difficult for the courts to comprehend the restrictions on the significant privileges and that a comparable clause should be included in the real constitution. Whichever the justification for the method the framers of the constitution took, the inevitable result of this has been to limit the scope of judicial review in India. The legal executive should not be elevated to the level of a "Super Judiciary," according to constitutional academics. Nevertheless, it must be noted that the American Supreme Court has gone above and beyond its duties as a plain interpreter of the law by using its constitutional interpretation jurisdiction broadly and by widely using the fair treatment of regulatory statements. Since it has really taken on the role of a rule-maker, it has been appropriately referred to as a "third office of the law-making body, for certainly, as a super council."

Whatever the justification for the techniques used by the drafters of the constitution, the inescapable result of this has been to restrict the scope of judicial review in India. The drafters of the Indian constitution believe that the court should not be given "Super Executive" status. However, it must be noted that by utilising its constitutional interpretation authority so liberally and by treating regulatory obligations fairly to such a degree, the American Supreme Court has exceeded the role of a more impartial regulator. In truth, it has taken on the function of a rule maker and is appropriately referred to as a "third office of the council, without a doubt, as a super. The "third office of the council," which functions as a type of super regulatory authority, is accurately defined as having taken on the role of a producer of rules.

Despite the fact that it is not specifically required under the constitution, the U.S. Supreme Court has certainly adopted this stance. The Supreme Court of India participates in the power of judicial review, much as the Supreme Court of the United States and the constitution expressly accept this ability. The Indian judicial system, including the Supreme Court, cannot make decisions in accordance with the method outlined in the statute that was made by the legislative body since it is not a Third Chamber.

Critical Examination

Judicial Review is the most rigid weapon in contradiction of the unlawful activity of authority by the Executive and Legislative. Legal activism has extended its extension to protect freedoms and guarantee financial equity. It guzzles a feeling of good administration and government assistance to the state. In any case, rising patterns of legal activism have, at specific times, appeared as legal excess, which requires balance. In this manner, the force of Judicial Review should be practiced taking into contemplation the cut-off points counted in the constitution. As to the United States of America, where the force of Judicial Review is indistinct and immense, its activity by the legal executive should not be outlandish, low, erratic, and tremendously infringing the area of different branches.

It very well may be reasoned areas of strength for that of the survey can be utilized to execute essential privileges, and financial freedoms can be made enforceable through the feeble type of Judicial Review in instances of regulation in repudiation with the equivalent. The legal executive can have a dialogical approach with official and regulatory specialists, which may help them outline regulations as per human freedoms and financial privileges. Insurance of key privileges all the while goes with common and financial freedoms. They are not elite of one another. Accordingly, exchanges and communications among branches would bring about the realistic acknowledgement of wanted positive privileges.

In the act of Judicial Review, the regulations and alterations are likely to be law and order predominant in various nations. The U.S. legal executive is enabled to rescind illegal regulations, while the surveying force of the U.K.'s legal executive is simply decisive, i.e., can guide the assembly to correct the law in the event of a contradiction. Some contend that people's financial privileges are safeguarded in the powerless type of Judicial Review. Nonetheless, Judicial Review's act is considered politically real as it shields financial freedoms and goes about as a defender of cultural obligation to get even-handed equity.

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