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Emerging Trends of Judicial Review – A Comparative Study of the USA, India and the UK

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The arena of judicial review has expanded over the years; it is not just limited to the statutory laws but covers other areas of policy decisions, executive actions, environmental issues, and the clemency power of the President, etc. While the supremacy of the Constitution is the hallmark of the constitutionality of all legislative, executive, and administrative actions in most jurisdictions, Parliament holds supreme power in the UK. Judicial Review is an indispensable power granted to the judiciary to ensure the balance of power and maintain checks on the effective functioning of each organ of the state. The foundation of this doctrine could be traced to the rule of law, and through the principles of separation of powers enshrined in the provisions of the Constitution. Limited government theory is the predominant basis for the applicability of this doctrine. It does not take into consideration the righteousness of a decision, but has a deterrent effect on the illegality in the procedure acquired by different organs to carry out their functions. Over the years, the courts have adopted a wide approach to interpreting the Constitution. The Court's jurisdiction to exercise this power of review has developed extensively, therefore, the author in this research takes into consideration various judicial precedents that have consequently led to the growth of this power to uphold the fundamentals of the Constitution and ensure justice The author in this paper adopts a comparative approach to acknowledge the extent of judicial review in India, USA and UK. This paper gives a brief insight into the origin of the historical background of judicial review and further explains its growth over the years into different spheres. The author seeks to explain such growth through the present scenario prevailing in the different jurisdictions and highlights the expansive power that courts in the UK are adopting while endorsing parliamentary supremacy.

Keywords: *judicial review, trend, USA, India, UK.*

INTRODUCTION

The Judicial review is a powerful weapon that looks over the arbitrary and whimsical actions of the legislature and the executive. It plays an indispensable role in holding the supremacy of the constitutional principles in the working of the various organs of the state. Judicial review is implicitly mentioned in Articles III and IV of the Constitution of America and holds its power through the doctrine of ultra vires. The Courts of law exercise a supervisory power over legislative as well as other governmental action of the state. Judicial review scrutinises the unbridled powers of the legislature and the executive. It is a dynamic concept that has evolved over the years among different jurisdictions and upholds the supremacy of principles of separation of powers and the rule of law to ensure that each branch of the state works without infringing the restrictions imposed on it.

Courts under this power of review do not consider the facts of the case, but keep a check on the validity of laws and policy-making of the legislature and the executive, respectively. Public authorities are mandated to act within the bounds and the authorities vouchsafed by the constitution to uphold the supremacy of the rule of law. Whilst some countries find its explicit mention in their constitution, others have developed it through judicial precedents. Unlike the courts of India and the USA, the power of judicial review vested in the courts of the UK is limited to administrative actions. The supremacy of parliament is the dominant feature of the jurisdiction of the UK. The power to file a judicial review is granted to an individual who is affected by the decision in question. While Indian courts have taken a Suo Motu action in some cases, no such power prevails in other jurisdictions.

JUDICIAL REVIEW AND JUDICIAL CONTROL

Judicial control includes judicial review in its ambit. Where judicial review exercises supervisory power, judicial control is 'corrective' in nature. Judicial review is exhibited in the writ system under the constitution, whereas judicial control has a wider scope and includes every statutory action taken, appeals filed, injunctions granted, etc., against the administration.

HISTORICAL BACKGROUND

The concept of judicial review is not stagnant and has evolved with the changing dynamics of law. Its scope has widened over the years with the emerging jurisprudence in different arenas among different countries. This doctrine was first propounded in 1610 by Lord Coke in the case of Dr. Thomas Bonham v College of Physicians.[1] In this case, it was held that any act of Parliament that was against common law and rights would be declared void. In Calder v Bull,[2] the applicability of the doctrine of judicial review to issues that were outside the scope of constitutional provisions was held valid.

The doctrine gained worldwide recognition through the Marbury v Madison,[3] a case wherein, supremacy of the Constitution was established. It was held that if a dispute arises between ordinary legislation and the constitutional provisions, the latter shall prevail under all circumstances. The ultra vires doctrine bolsters the court with a fundamental duty to take an action against any transgression of powers made by the inferior body against the orders of a higher authority.

Judicial review existed before the inception of the Indian Constitution. The doctrine was first highlighted in 1877 in the case of Emperor v Burah,[4] wherein the court recognised the right of an aggrieved party to challenge the constitutional viability of an act framed by the Governor General's Council. The Government of India Act 1935 established a federal system which accords plenary powers to the legislature at the central and state levels and enjoys prime authority in their respective subject matters. Therefore, in Secretary of State v Moment,[5] it was held by Lord Haldane that the right conferred on an Indian by the Parliament Act 1858 cannot be taken away by any other legislation. Federal courts were later entrusted with the powers of interpreting and determining the validity of the legislation.

JUDICIAL REVIEW IN INDIA

Judicial review is a pivotal aspect of the Indian Constitution that bestows the power of supervisory jurisdiction on the judiciary under its various provisions, i.e. Articles 13, 32, 131-

[1] *Dr. Thomas Bonham v College of Physicians* [1610] 8 Co Rep 114
[2] *Calder v Bull* [1798] 3 US 386
[3] *Marbury v Madison* [1803] 5 US 137
[4] *Emperor v Burah* (1878) ILR 3 Cal 64
[5] *The Secretary of State For India v J. Moment* (1913) 15 BomLR 27

136, 141, 143, 226, 227, 245, 246, and 372 on legislative, executive, and administrative actions.[6] Judicial review aims at protecting fundamental rights of the citizens of the state by scrutinising various constitutional amendments, legislative and executive actions, and upholding the supremacy of its constitutional law. In Re Delhi Laws Act,[7] it was held that the legislature derives its power from the Constitution and is subject to some limitations, which, if exceeded, violate the rights under Part III and are unconstitutional.

Judicial Review of Constitutional Amendments: The rigid structure of constitutional amendments has undergone tremendous changes over the years. The question of the amenability of the constitutional amendments was raised in various case laws. In Shankari Prasad,[8] it was held that the constitutional amendments were not subject to Article 13(2) and were considered valid even though arbitrary. This decision was later overruled in Golak Nath v State of Punjab.[9] In Kesavananda Bharati v State of Kerala,[10] the court observed that the power of amendment applies even to fundamental rights, and it does not abridge the doctrine of basic structure. Limited power of amendment was recognised as a rule under Minerva Mills v Union of India,[11] as such, unlimited powers would have been a threat to the basic structure. The irregularity in the procedure of amendment under Article 368[12] it is another ground of judicial review of amendments.

Article 13 of the Constitution vests the power in the judiciary to hold the laws, both post- and pre-constitutional, which are inconsistent with the constitutional provisions, as unconstitutional and void. The article applies to all the laws. The power to enact the central and state laws has been granted under Articles 245 and 246 of the Constitution. Any enactment that exceeds such powers is violative of the constitutional principles. Article 13(2) has interpreted law as inclusive of all the rules, enactments, notifications, regulations,

[6] Sargam Jain, 'Judicial Review: A Comparative Analysis of India' (2018) 1(2) International Journal of Law Management & Humanities <https://www.ijlmh.com/wp-content/uploads/2019/03/Judicial-Review-A-Comparative-Analysis-of-India-USA-UK.pdf> accessed 19 March 2025

[7] *In Re The Delhi Laws Act, 1912, The Ajmer Merwara (Extension) v The Part C States (Laws) Act, 1950* (1951) 1 SCR 747

[8] *Sri Sankari Prasad Singh Deo v Union of India & State of Bihar* (1951) 1 SCR 89

[9] *I. C. Golaknath & Ors v State of Punjab & Anrs* (1967) 2 SCR 762

[10] *Kesavananda Bharati Sripadagalvaru and Ors v State of Kerala and Anr* AIR 1973 SC 1461

[11] *Minerva Mills v Union of India* (1981) 1 SCR 206

[12] Constitution of India 1950, art 368

customs, or usage having the authority of law.[13] An enactment is declared valid unless it is violative of the fundamental provisions of the Constitution.[14]

In S. P. Sampat Kumar v Union of India[15] and L. Chandra Kumar,[16] the power of the HC to review an administrative action was under challenge, and it was held that the Exclusion of the jurisdiction of the HC and SC was viewed as violative of the basic structure. Validity of the laws under the Ninth Schedule was scrutinised in the I.R. Coelho case[17]. It was held that any law under this schedule that was against fundamental rights would be subject to judicial review. In recent cases of Joseph Shine v Union of India[18] and Navjot Singh Johar v Union of India,[19] the apex court struck down the legislation on the grounds of manifest arbitrariness and constitutional invalidity.

Judicial Review of Administrative Actions: The administrative actions are subject to the power of judicial review under Article 226 of the Constitution on the grounds of irrationality, illegality, and procedural impropriety.[20] In Tata Cellular v Union of India,[21] it was held that the SC can exercise power on administrative decisions only if it involves an element of arbitrariness. The Wednesbury principle in Associated Provincial Picture Houses Ltd. v Wednesbury Corp[22] states that judicial review will apply to an administrative action if it is so unreasonable that no reasonable, prudent man would have taken it. This principle was reiterated by the apex court in Municipal Council Neemuch v Mahadeo Real Estate,[23] and Sarvepalli Ramaiah v The District Collector, Chittoor District,[24] wherein it was held that the court, while applying the power of review, will not adjudicate on the facts of the case.

[13] Sweksha Bhadauria, 'Analysis of Judicial Review Power of the Supreme Court of India' (*Lingaya's Vidyapeeth*) <https://www.lingayasvidyapeeth.edu.in/judicial-review-power-of-the-supreme-court-of-india/> accessed 25 June 2025
[14] *Ibid*
[15] *S.P. Sampath Kumar Etc v Union of India & Ors* (1987) 1 SCR 435
[16] *L. Chandra Kumar v Union of India & Ors* (1997) 3 SCC 261
[17] *I.R. Coelho (Dead) th LRs v State of Tamil Nadu & Ors* AIR 2007 SC 861
[18] *Joseph Shine v Union of India* (2019) 3 SCC 39
[19] *Navjot Singh Johar v Union of India* AIR 2018 SC 4321
[20] *Council of Civil Service Unions v Minister for the Civil Service* [1984] 3 AII ER 935
[21] *Tata Cellular v Union of India* (1996) 6 SCC 651
[22] *Associated Provincial Picture Houses Ltd. v Wednesbury Corp.* [1948] 1 KB 223
[23] *Municipal Council Neemuch v Mahadeo Real Estate* (2019) 10 SCC 738
[24] *Sarvepalli Ramaiah (D) tr LRs v The District Collector, Chittoor District* (2009) 4 SCC 500

Judicial Review of Executive Decisions –

On the Speaker's power of privilege in the State Legislature: In Arunava Ghosh,[25] the HC of Calcutta observed that the power of privilege of the house was subject to judicial review on grounds of irrationality, arbitrariness, and lack of constitutionality.

On Economic Policy: In BALCO Employees Union (Regd.) v Union of India,[26] it was viewed that unless the policies of the government are unreasonable or irrational, the court's power of review is limited. This principle was reinstated recently by the SC in the Vasavi Engineering College Parents Association case.[27]

On Clemency Power/Mercy Petition by the President: In Epuru Sudhakar & Anr,[28] the Grounds of judicial review on the mercy petition granted by the President were laid down. Any order passed without the application of mind or consideration of relevant facts and is a mala fide order, is subject to judicial review. A quick contemplation and rejection of the mercy petition is held to be no ground for judicial review.[29]

JUDICIAL REVIEW IN THE USA

The doctrine of judicial review is propounded from the doctrine of ultra vires and finds its traces under Articles III and IV of the American Constitution. The doctrine was first expounded in Marbury's case in 1803. Article III of the Constitution empowers the court to exercise judicial review while performing its original and appellate functions, whereas Article IV. Article VI recognises the predominance of the Constitution as the highest law. In the USA, the power of review extends to both federal and state laws. The power of SC to exercise its jurisdiction and overrule the unconstitutional acts of the judiciary, executive, and legislatures was extended in Cooper v Aaron.[30] Article III lays down the treason clause, which holds the supremacy of the Constitution against federal and state laws.

[25] *Arunava Ghosh v The Speaker, West Bengal Legislative Assembly & Ors* (2013) WP No 1125/2013
[26] *BALCO Employees Union (Regd.) v Union of India & Ors* (2020) 2 SCC 333
[27] *Vasavi Engineering College Parents Association v State of Telangana* (2019) 7 SCC 172
[28] *Epuru Sudhakar & Anr v Govt. of AP & Ors* (2006) 8 SCC 161
[29] *Mukesh Kumar v Union of India* (2020) 2 SCALE 596
[30] *Cooper v Aaron* [1958] 358 US 1

CASE LAWS

Brown v Board of Education,[31] State laws that violated the equality principle under the Fourteenth Amendment of the Constitution were held invalid by the SC and hence struck down.

In Roe v Wade,[32] the court, while upholding the right to privacy as the law of the land, quashed all the state legislations under which abortion was illegalised.

In Lawrence v Texas,[33] the SC legalised same sex marriages by quashing state laws in fourteen states.

In Obergefell v Snyder,[34] the SC quashed the state legislations that ban same sex marriages by a majority of 5-4 on the grounds of infringement of equal protection laws under the Fourteenth Amendment and the doctrine of due process.

In National Federation of Independent Business v Sebelius,[35] the law on health care proposed by the then-President was challenged. The Patient Protection and Affordable Care Act mandated that each citizen of America should hold medical health insurance by 2014. This was opposed by several states on the ground that it does not constitute an act under the commerce clause and hence was not within the jurisdiction of the federal law. The majority upheld the contention that the act could not persuade the applicability of the necessary clause. Other contention raised by the states was that the act was coercive as the federal government threatened to withdraw the medical aid from the states that failed to comply with the law. Hence, the court, by applying the doctrine of severability, recognised the taxing power but struck down the part that was against the necessary clause as unconstitutional.

In States of Washington & Minnesota v Trump,[36] the objections were raised on the power of the court to exercise judicial review in the policy matters of national security and immigration. This contention was denied by the court, and it was held that there exists no precedent, and such power was within the constitutional jurisdiction of the power bestowed

[31] *Brown v Board of Education* [1954] 347 US 483
[32] *Roe v Wade* [1973] 410 US 113
[33] *Lawrence v Texas* [2003] 539 US 558
[34] *Obergefell v Snyder* [2015] 576 US 644
[35] *National Federation of Independent Business v Sebelius* [2012] 569 US 519
[36] *States of Washington & Minnesota v Trump* [2017] 847 F.3d 1151

on the courts. It was further illustrated by citing Boumediene v Bush.[37] The actions of the executive on national security were within the court's power to review. Therefore, the court, on the failure of the government to give evidence for its due process clause, refused to entertain the stay request of the President.

JUDICIAL REVIEW IN THE UK

The judicial review doctrine was first propounded in 1610 by Lord Coke in Dr. Thomas Bonham v the College of Physicians. In this case, he held that it was the Act of Parliament that exercises control over many cases. But later, the supremacy of parliamentary legislation flourished in England, which was evident from the case of City of London v Wood,[38] wherein CJ Holt laid down that though the act of Parliament may lead to several peculiar things, it can commit no wrong.[39]

Judicial review in the UK extends to all administrative and executive actions, the secondary legislation, i.e., all the delegated legislation, ministerial acts, rules, regulations, and all other directions that are subject to parliamentary scrutiny. Initially, judicial review did not apply to the basic legislation framed by the Parliament, but was extended with the formation of the Human Rights Act 1998.

Human Rights Act 1998: The UK ratified the European Convention on Human Rights, and its provisions were later found evident under the Human Rights Act 1998. This act allowed the interpretation of executive decisions and varied enactments by the judges in consonance with the human rights provisions and thereby upholding human rights.

Grounds of Judicial Review:[40] The administrative court can exercise this power on the premise of illegality, irrationality, fairness, and proportionality. It has the power to pass quashing orders, orders of prohibition and injunction, discretionary and declaratory orders, or may award damages to the plaintiff.

[37] *Boumediene v Bush* [2008] 553 US 723
[38] *City of London v Wood* [1701] 12 Mod. Rep. 669
[39] Jain (n 8)
[40] *Ibid*

PRESENT SCENARIO

Jackson and Ors v Attorney General:[41] This case first highlighted the view that the court has the power to strike down the law that is fundamentally against the values of the people. The court, though it respected the supremacy of the parliament but thereby recognised the power of judges to review the statutes that are illegal in their basic notions. This view was expressly supported by the lordships. It was held that parliamentary supremacy is derived from the common law and was constructed by the judges themselves, and therefore, could be changed at the instance of judges.

In Evans v Attorney General,[42] the court, with a majority of 5:2, on the applicability of the legality principle, revoked the order passed by the attorney general u/Sec.53 of the Freedom of Information Act, 2000. The said section empowers the Minister or the Attorney General to reverse the order of disclosing any information given by an Information Commissioner or the tribunal. While three judges questioned the legality of such a provision, others questioned the power of the Minister or the Attorney General to reverse the tribunal's order. The court, through its judgment, aimed at balancing public interest by striking down the said legislation. It was therefore concluded that the court, while upholding its idea of the rule of law, has adopted such an inquisitive view of judicial review, which has further encouraged litigation against the existing legislation.

R (on the application of Miller) v The Prime Minister.[43] The question before the courts was whether they could exercise judicial review on the prorogation of the time for debates in parliament by the Prime Minister. This has led to a huge cry and opposition among the people. A suit was filed before the court to contest the legality of such actions. Although the HC of England and Wales held that the matter was far from its jurisdiction, the Scottish SC gave an affirmative response. The case was later laid down before the SC of the UK, wherein the court derived its power to take such action against the acts of the government through the landmark Case of Proclamations, 1611. Therefore, addressing the illegality of such actions, the court ruled that the said action undermines the sovereignty of Parliament by restricting its power to carry out its daily functions.

[41] *Jackson and Ors v Her Majesty's Attorney General* [2005] UKHL 56
[42] *R (on the application of Evans) v Attorney General* [2014] EWCA Civ 254
[43] *R (on the application of Miller) v The Prime Minister* [2019] UKSC 41

COMPARATIVE STUDY

The constitution of India and the USA is the Grundnorm and sole source of power that guides all organs of the state on their limits, whereas parliamentary sovereignty is the governing power that prevails in the UK. While the Indian Constitution adopts a flexible approach, the USA has a rigid Constitution[43]. The scope of this doctrine is wider in India as compared to the USA and the UK. Judicial review is not defined under the Indian Constitution, but finds an implied mention under its various provisions, whereas the USA draws its power from due process of law under the Constitution. The UK exercises a limited review power on the administrative actions and anything done under the authority of secondary legislation, whereas the Indian Constitution extends the applicability of such power even on the constitutional amendments. The Constitution of the USA does not provide such a flexible power of review of constitutional amendments.[44]

The provision for judicial review of pre-constitutional laws is an exclusive feature of the Indian Constitution and does not prevail under the jurisdiction of the USA and UK.[45] Grounds of challenging administrative actions are the same among all jurisdictions. Several doctrines have been formulated by the Indian Courts, i.e. doctrine of eclipse, severability under Article 13, while deciding the question of judicial review. While these doctrines are implicit under the US Constitution, it does not find any mention under the laws of the UK.

These countries have embraced the process of judicial review to uphold the supremacy of the rule of law embodied in their Constitutions. India, by adopting the interpretations of the USA, due process of law has given wider connotations to its legislative acts while determining their validity by the constitutional principles. But with the changing dynamics of law, the courts in all three jurisdictions have taken a wider view of this power to ensure justice among all sections of society.

Legitimacy of Judicial Review:[46] Recent tweets of the US president raised a question on the judiciary and the legitimacy of its judicial review; it was a sharp attack against the powers of

[44] *In Re The Delhi Laws Act, 1912, The Ajmer Merwara (Extension) v The Part C States (Laws) Act, 1950* (1951) 1 SCR 747

[45] Priya Rao and Abhay Kumar Tiwari, 'Comparative study of Indian Judicial Review System with the U.S.A. and U.K.' (2019) 9(2) International Journal of Advances in Social Sciences <https://doi.org/10.52711/2454-2679.2021.00006> accessed 21 May 2025

[46] *Ibid*

judges to take or rebut the actions of the executive was into consideration. Such experiences have been part of Indian history, where the executive exercised its arbitrary powers, which were against the fundamental values of the constitution. Hence, the judiciary draws the legitimacy of such a function from the system of checks and balances to control the exacerbated acts of the executive.

Judicial Review and Separation of Powers: In the USA, the doctrine of separation of powers is defined in rigid terms under the written constitution, whereas in India, though the power is distributed among the different organs of the state, the constitution does not adopt the doctrine in its absolute terms.[47] Over the years, the concerns of various scholars, jurists, and judges on the exercise of their respective powers by all the organs have increased. This could be witnessed from the 2007 incident wherein Justice A.K. Mathur and Justice Markandey Katju made a strong opposition against the increasing role of the court in forming laws by citing various case laws.[48]

He believed that the courts should enforce laws and not create them. It was later held that such an approach was based on idealism, where the sole rule-making power rests with the legislature, but it does not hold good where several areas are still unaddressed. Therefore, here the role of the judiciary as the protector of fundamental principles of the constitution is recognised and justifies its power to lay down such guidelines and rules. But to ensure the proper and efficient functioning of each organ within the mandate of the doctrine of separation of powers, any such encroachment would be subjected to judicial review.

CONCLUSION

Rule of law and Separation of powers are elementary to a constitutional democracy in upholding the constitutional values and protecting the fundamental provisions of the constitution through judicial review. This power of review applies to all the executive, legislative, and administrative decisions to ensure justice. Any infringement or intrusion by any organ of the state into the functions of another branch is violative of the Constitution and is subject to judicial review. Judicial review should be exercised sparingly, i.e., the parties should prefer other alternatives prevailing before the courts through revision and appeals. It

[47] Alok Prasanna Kumar, 'Legitimacy of Judicial Review' (2017) 52(7) Economic and Political Weekly <https://www.epw.in/journal/2017/7/commentary/legitimacy-judicial-review.html> accessed 07 May 2025
[48] Bhadauria (n 13)

is subject to certain limitations; it cannot interfere with the merits of the decision, but is concerned with the procedure adopted. While the courts of India and the USA acquire such power from the written constitution, the courts in the UK draw it from the Human Rights Act 1998, but it is limited to secondary legislation and administrative decisions. The ambit of the doctrine has widened over the years in different jurisdictions, as could be witnessed through the various judicial precedents above-mentioned. Recent judgments acknowledge the subjective view that courts in the UK are assuming to render decisions while recognising the supremacy of parliamentary legislation.

The courts in the USA are also playing an active role in combating the arbitrary actions of the executive and exceeding legislative competence of the federal and state governments, as could be observed in the recent Washington v Trump.[49] Wherein changes in the postal services were challenged as violative of the administrative power to make rules and infringement of the state's right to regulate elections. Such an active role could also be witnessed by the Indian judiciary in setting aside the capricious legislation and the whimsical actions of the executive. The courts declared the penal provisions of Sections 497 and 377 of the Indian Penal Code as violative of equal rights, hence, unconstitutional.

[49] *Washington v Trump et al* [2025] No 2:2025cv00244