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ABOUT US

WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provided dedicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

JUDICIAL REVIEW: A COMPARATIVE ANALYSIS BETWEEN U.S.A AND INDIA

AUTHORED BY - RISHAV

CHAPTER-I

INTRODUCTION

The foundation of constitutional government, judicial review, is a crucial tool for preserving democratic and rule-of-law principles and ensuring the supremacy of the constitution. It grants judges the authority to examine the actions of the executive and legislative branches of government to make sure they are compliant with the constitution. While the notion of judicial review exists in diverse forms throughout legal systems, a comparison of the United States of America (USA) and India sheds light on its use and relevance.

Judicial review dates back to the foundational case of *Marbury v. Madison* (1803) in the United States. Prior to this case, the concept was based on several philosophical and legal traditions, including classical thought and the British legal system. The American Founding Fathers, influenced by Enlightenment concepts and check-and-balance principles, argued the need for systems to avoid governmental expansion. The Supreme Court was given the authority to interpret the Constitution and invalidate laws that were in conflict with it, thanks to Chief Justice John Marshall's ruling in *Marbury v. Madison*, which created the notion of judicial review. Through Marshall's logic, judicial review was established as a cornerstone of American law and the judiciary's obligation to uphold the Constitution as the supreme law of the land.

The US has long been seen as a global leader in constitutional government thanks to its robust judicial review system. In the well-known *Marbury v. Madison* (1803) ruling, the US Supreme Court established its authority to invalidate laws that contravene the Constitution. Through constitutional interpretation, the US courts defend the separation of powers, safeguard individual rights, and guarantee the supremacy of the US Constitution.

In contrast, India, the world's biggest democracy, included the notion of judicial review into its

constitutional structure after gaining independence in 1947. The Indian judiciary, as enshrined in Articles 13 and 32 of the Indian Constitution, has been developed as the bulwark against governmental abuses and a safeguard for basic rights. Notably, the idea of fundamental structure, established in the Kesavananda Bharati case (1973), defines the boundaries of legislative power and strengthens the judiciary's jurisdiction to evaluate constitutional modifications.

Despite shared principles, the judicial review systems in the United States and India differ significantly in terms of scope, method, and jurisprudence. While the United States maintains the idea of judicial supremacy, which states that the Supreme Court's interpretations of the Constitution are final and binding, India takes a more dialogic approach, stressing collaborative interpretation of the Constitution by all arms of government.

Furthermore, differences in the two nations' political and social settings influence how judicial review is exercised. In the US, judicial activism is frequently considered as the way of advancing progressive objectives and addressing injustices, but in India, it is seen as a response to political stagnation and societal inequality.

In this comparative research, we look at the history of judicial review in the United States and India, as well as institutional frameworks, landmark cases, and social outcomes. By contrasting these two diverse forms of judicial review, we want to reveal their respective strengths, flaws, and long-term importance in the quest of constitutional democracy and justice.

Aims and objectives

- To comprehensively analyse the concept of judicial review and its significance within the framework of constitutional democracies.
- To examine the historical evolution of judicial review in both India and the USA, tracing its roots, development, and landmark cases that have shaped its trajectory.
- To identify the challenges and limitations faced by the judiciary in the exercise of judicial review, including issues related to judicial activism, judicial restraint, and judicial independence.

Review of Literature

Sargam Jain, Judicial Review: “A Comparative Analysis of India, USA & UK”, IJLMH

Volume 1, Issue 2

This paper deals with the concept of judicial review. This paper dealt with the various doctrines formulated by the Apex Court on the basis of judicial review, for e.g., Doctrine of Severability, Doctrine of Eclipse, Doctrine of Prospective Over-ruling etc. The paper also focused on Judicial Review of Constitutional Amendments, Judicial Review of Legislative Actions and Judicial Review of Administrative Actions and further look into the stand of judicial review in USA and UK. Judicial review had mainly originated in USA from the notable landmark case of Marbury vs. Madison. This paper examined as to how the U.S. Constitution does not provide power of judicial review expressly but Articles III and VI of the U.S. Constitution touch down this concept. There being no written Constitution in UK.

Likhitha Landa, “A comparative study of judicial review in the United States and India”, IJCRT Volume 10, Issue 2 February 2022

This research is meant to provide a thorough picture of the extent to which the United States and India adhere to judicial review in practice, as well as their disparities. This study discusses the origins of judicial review, as well as its character, functioning, features, importance, scope, and specialised tasks. As a result, the primary concept of this research paper is to provide an overview and related aspects of judicial review and its current state, using the United States of America and India as examples. The evolution, evaluation, and conclusions drawn from this work have all been heavily emphasised. Criticism, like admiration, plays a significant role, and this comment has been addressed whenever it was judged to be relevant.

Sharan P. “CONSTITUTION OF INDIA AND JUDICIAL REVIEW.” *The Indian Journal of Political Science* 39, no. 4 (1978): 526–37.

This paper begins with defining judicial review and further goes to Constitution of India and discusses its federal nature. The paper examines that there is few provisions in Constitution of India such as article-32, which clearly expresses the concept of judicial review. The paper had also dealt with the famous landmark case named A.K Gopalan vs State of Madras (1950). The paper explores around that how time and again the Supreme Court of India through judicial review had protected the rights of citizens.

Rao, V. Nageswara, and G.B. Reddy. "DOCTRINE OF JUDICIAL REVIEW AND TRIBUNALS : SPEED BREAKERS AHEAD." *Journal of the Indian Law Institute* 39, no. 2/4 (1997): 411–23

"JUDICIAL REVIEW, in its most widely accepted meaning, is the power of courts to consider the constitutionality of acts of other organs of government where the issue of constitutionality is germane to the disposition of law- properly pending before the courts." The paper examines the meaning of judicial review in USA and also briefly discusses about the origin of it which is from U.S.A. The paper further discusses about the judicial review in India where article-32 and 226 have been discussed briefly. Afterwards the paper examines the famous landmark case Keshwanand Bharti along with the basic structure doctrine.

Hypothesis

Despite differences in institutional structures and legal traditions, both the Indian Supreme Court and the U.S. Supreme Court play pivotal roles in safeguarding constitutional principles, promoting the rule of law, and ensuring accountability within their respective democratic systems.

Research Questions

- I. What are the foundational principles and theoretical underpinnings of judicial review, and how have these concepts evolved in the constitutional frameworks of India and the USA?
- II. What are the key similarities and differences in the institutional structures, powers, and functions of the supreme courts in India and the USA, particularly concerning their roles in exercising judicial review?
- III. What are the challenges and limitations faced by the judiciary in both countries when engaging in judicial review, and how do these challenges affect the efficacy and legitimacy of the judicial process?

Research Methodology

The researcher will rely on the doctrinal method of research. The researcher will use the latest blue book citation for footnote.

Sources of Data

The researcher will use both primary and secondary source of data.

CHAPTER-II

JUDICIAL REVIEW IN USA

The rule of law is the foundation of the United States Constitution, which has a written language and a federal democratic culture. It creates a system of checks and balances for the separation of powers. Judicial Review is an essential component of this system since it serves as a fundamental instrument for judging whether legislation passed in the US is lawful. Within this framework, the judiciary has the authority to evaluate Congress's and the President's actions and annul them if they violate the Constitution.

Articles III and IV implicitly recognize judicial review, despite the fact that it is not officially stated in the Constitution. According to Bernard Schwartz, determining a law's legality is central to the judicial power provided in the American Constitution.

The primary objectives of Judicial Review in the US are:

- **Maintaining Constitutional Integrity:** Judicial Review ensures that laws, executive orders, and political decisions align with the Constitution's provisions. By interpreting the Constitution and stopping violations of fundamental rights and principles, the judiciary defends its integrity.
- **Judicial Review acts as the check on the governmental powers.** It enables a judiciary to analyse the activities of Congress, the President, and other governmental bodies, ensuring that they remain within their constitutional boundaries and do not exceed their jurisdiction.

- Protection of right of a person: The protection of the constitutionally granted rights and liberties of individuals is one of the main objectives of judicial review. The judiciary examines laws and government actions to make sure that citizens' rights—particularly the freedoms of expression, of religion, and of due process—are not violated.
- Maintaining the Rule of Law: Judicial Review supports the notion of the rule of law by keeping the government accountable to legal and constitutional requirements. It encourages uniformity, predictability, and fairness in the implementation of laws and government policies.

Constitutional Basis of judicial review in USA :

Judicial review is based on the United States Constitution's language and structure. The Constitution does not specifically address the authority of judicial review; however, a number of clauses and concepts provide the framework for this doctrine:

The Constitution, together with federal laws and treaties, is the supreme law of the land, according to Article VI, Clause 2. This means that every action taken by the government, including presidential and congressional legislation, must be compliant with the Constitution. A law or activity is deemed invalid if it is found to be unconstitutional.

Article III, Section 2: This section explains the Supreme Court's and other federal courts' jurisdiction. In addition to appellate jurisdiction over any other issue arising under the Constitution, federal legislation, or treaties, it grants the Supreme Court original jurisdiction over cases involving ambassadors, public ministers, and interstate conflicts. The power of federal courts to interpret the Constitution and determine whether laws are constitutional is implicitly acknowledged in this clause. Two major decisions by the US Supreme Court upheld the judicial review process presumed constitutional authority. The United States Supreme Court considered the important issue of *Hylton v. United State*¹ in 1796. The case started as an attempt to overturn a federal carriage tax that Congress had enacted in 1794. Those who were subject to the tax had to pay a set sum according to how many carriages they possessed.

A significant question in the case is how to interpret Article I, Section 8, Clause 1, which gives Congress the authority to impose and collect taxes, as it relates to taxes. The carriage tax was a direct tax that was not distributed among the states in accordance with population as required by the

¹ 3 U.S. (3 Dall.) 171 (1796).

Constitution, according to the plaintiffs, which included Hylton.

Chief Justice John Jay of the Supreme Court considered whether the carriage tax qualified as a direct tax and was therefore obligated to be distributed according to the formula. The Court decided in favor of the tax's constitutionality in a 4-0 ruling (two justices dissented). Delivering the ruling, Chief Justice Jay reasoned that the carriage tax was an indirect tax, not a direct tax, and hence did not need state-by-state allocation.

The Court's ruling defined direct and indirect taxes under the Constitution and upheld Congress's extensive tax-levying authority. It set a precedent that Congress might levy some taxes, including consumption taxes or taxes on particular items, without having to divide the states' revenue according to population.

Overall, *Hylton v. United States* was a pivotal case in early American jurisprudence, setting a foundation for the interpretation of federal taxation powers and shaping the relationship between the federal government and the states in matters of taxation.

*Marbury v. Madison*² is considered among the most significant instances in the history of American law. The United States Supreme Court rendered a decision on it in 1803, and it is mostly recognized for founding the concept of judicial review in the country.

The conflict surfaced during the last few days of President John Adams' presidency. President John Adams made important political decisions in his last days in office after losing the race for a second term in 1801. James Madison, President Thomas Jefferson's secretary of state, was given orders not to give official printed papers to the officials Adams had nominated for the administration.

Judges, including Marbury. Marbury petitioned the SC for a writ of mandamus, hoping to compel Madison to deliver his commission. This resulted in the administration officials, including William Marbury, being deprived of their new positions. William Marbury then petitioned the U.S. Supreme Court, seeking a writ of mandamus to compel Madison to deliver the commission.

Among the questions was: Can the Supreme Court examine acts of Congress? William Marbury's right to be appointed as a District of Columbia justice of the peace was upheld by the Court's decision in his favour. Nonetheless, the Court found that the Judiciary Act of 1789 provision, which served as the foundation for Marbury's argument, was unconstitutional. The provision in dispute, according to Chief Justice Marshall, went outside the Court's basic constitutional

² 5 U.S. (1 Cranch) 137 (1803).

jurisdiction. Consequently, the Court decided that it was not authorized to grant Marbury's requested writ of mandamus.

The concept of judicial review—the ability of the courts to declare laws illegal if they are in violation with the Constitution—was created by Chief Justice Marshall. This ruling profoundly altered the distribution of power among the US government's branches and cemented the Supreme Court's position as the ultimate interpreter of the Constitution.

CHAPTER- III

JUDICIAL REVIEW IN INDIA

In India, judicial review is the process by which the Supreme Court and High Courts examine and invalidate government actions that are in conflict with the Indian Constitution. The Indian Constitution does not use the term judicial review directly, but it does provide an implied framework for it through articles 13, 32, 136, 142, and 226. These clauses of the constitution give the courts the authority to judge whether executive or legislative actions are lawful and uphold the values and protections found in the constitution.

In India, judicial review can take numerous forms, each having a different goal and acting under different legal frameworks. Some of the basic forms of judicial review in India include:

- **Constitutional Judicial Review:** This process involves analysing legislation, executive orders, administrative rulings, and constitutional modifications to make sure they align with the guidelines set forth in the Constitution. The constitutional supremacy thesis, which maintains that the Constitution is the supreme law of the land, serves as the foundation for this kind of assessment. Any law or conduct that violates constitutional provisions may be overturned by the Indian Supreme Court and High Court.
- **Legislative Judicial Review :** Legislative judicial review examines legislation passed by Parliament or state legislatures to determine if it is constitutional. Courts determine whether legislation correspond to the ideas and provisions contained in the Constitution, such as fundamental

rights, separation of powers, and federalism. If a statute is proven to be unconstitutional, the judiciary may declare it null and void.

▪ **Administrative Judicial Review:** Administrative judicial review examines administrative actions, decisions, or orders issued by government officials, agencies, or tribunals. Courts examine administrative acts to verify they are legal, rational, and adhere to procedural fairness norms. Administrative judicial review may address concerns such as arbitrary decision-making, abuse of authority, violations of natural justice, and procedural errors.

Constitutional Basis for Judicial Review in India³

The Indian Constitution's multiple provisions that implicitly give the judiciary the authority to assess and declare unconstitutional any legislative or executive action that violates the constitution are the main source of the country's constitutional foundation for judicial review. Important elements supporting India's constitutional foundation for judicial review include:

- *Article 13*⁴ of the Indian Constitution, also known as the doctrine of judicial review, states that any laws passed by state assemblies or Parliament that are in conflict with Part III of the Constitution's fundamental rights will be declared invalid to the extent of the inconsistency. This clause gives the courts—the Supreme Court in particular—the authority to overturn laws that violate fundamental rights.
- *Article 32*⁵ grants the Supreme Court original jurisdiction to issue writs for upholding basic rights such as habeas corpus, mandamus, prohibition, quo warranto, and certiorari. This provision enables individuals to directly approach the Supreme Court for safeguarding their fundamental rights and serves as a crucial mechanism for judicial review.
- *Article 132*⁶ confers upon the Supreme Court the power to offer special leave for the purpose of appealing decisions, rulings, sentences, orders, and decrees made by any court or tribunal operating within the territorial jurisdiction of India. With such extensive authority, the Supreme Court can ensure uniformity in judicial decisions by reviewing decisions made by subordinate courts and tribunals.

³ Mohd Faiz Khan and Syed umam Fatima Hasan, Doctrine Of Judicial Review In Indian Constitution, INTERNATIONAL JOURNAL OF LEGAL SCIENCE AND INNOVATION, Volume 2 | Issue 3, 2020

⁴ INDIA CONST. art. 13

⁵ INDIA CONST. art. 32

⁶ INDIA CONST. art. 132

- Likewise, High Courts may grant writs for the purpose of enforcing basic rights and other objectives under *Article 226*⁷. An extra channel for state-level judicial review is provided by high courts, which have authority over state governments and other authorities within their particular territories.

Judicial review in India has various characteristics which distinguish it apart from judicial review in other nations. These elements reflect India's distinctive constitutional and legal framework, as well as the evolution of judicial activism within the Indian court. Some major elements of judicial review in India are:

- **Constitutional Basis:** In India, judicial review is strongly anchored in the Indian Constitution. While the word judicial review is not officially stated in the Constitution, it is implicitly provided for in several clauses, including Articles 13, 32, 136, 142, and 226. These provisions empower the judiciary to evaluate and overturn legislation or governmental actions that violate the Constitution.
- **Basic Rights preservation:** The preservation of basic rights guaranteed by Part III of the Constitution is a critical component of judicial review in India. The Supreme Court and High Courts can enforce basic rights through writ petitions filed under Articles 32 and 226, respectively. The judiciary's broad interpretation of fundamental rights has resulted in the growth of judicial activism in India.
- **Extensive Scope:** Judicial review in India is extensive, embracing not just legislative acts but also executive actions, administrative judgments, and constitutional amendments. The power of the judiciary to evaluate constitutional modifications is based on the idea of basic structure, which was established in the *landmark case of Kesavananda Bharati v. State of Kerala* (1973).
- **Public Interest Litigation (PIL):** India pioneered the concept of Public Interest Litigation (PIL), which allows citizens to seek the courts to promote the public interest or enforce disadvantaged groups' legal rights. PIL has broadened the scope of judicial review, allowing courts to confront systemic challenges and promote social justice.

In India, judicial review has been used in a number of historic judgments that have changed the country's legal landscape and reinforced the judiciary's role as the custodian of constitutional values. Some noteworthy cases on judicial review in India are:

⁷ INDIA CONST. art. 226

- ***Kesavananda Bharati v. The State of Kerala (1973)*⁸**: This case is largely recognized as one of the most significant in Indian legal history. In a historic case, the Supreme Court outlined the Constitution's essential structure concept. The Court decided that although Parliament can make changes to the Constitution, it cannot alter the core components of the document, which include democracy, federalism, secularism, and the rule of law. The court's authority to evaluate and reverse constitutional amendments that contravene the basic structure concept was established in this decision.
- ***Maneka Gandhi vs. Union of India (1978)*⁹** In the case, the SC extended the scope of personal liberty under Article 21 of the Constitution. The Court ruled that the right to life and personal liberty embraces a greater spectrum of liberties that cannot be denied except through legal means. This ruling considerably strengthened the protection of individual rights and provided the groundwork for the judiciary's proactive involvement in protecting basic rights.
- ***Vishaka v. State of Rajasthan (1997)*¹⁰**: Responding to a petition filed by social activists, the Supreme Court issued instructions to prohibit sexual harassment of women in the workplace. This case demonstrates the judiciary's proactive approach to resolving social issues and defending the rights of marginalised groups through the judicial review.
- ***S.R. Bommai v. Union of India (1994)*¹¹**: the SC considered the President's proclamation of President's Rule in Karnataka. The Court set rules for implementing President's Rule, emphasizing the relevance of constitutional standards and federalism. This ruling underlined the judiciary's responsibility in preserving democratic principles and the federal form of government.
- ***Indira Gandhi versus Raj Narain (1975)*¹²**: This case involved a challenge to then-Prime Minister Indira Gandhi's election based on electoral malpractice allegations. In a landmark decision, the Supreme Court declared the election unlawful, highlighting the necessity of free and fair elections for democracy. This case highlighted the judiciary's responsibility as an independent arbiter in maintaining the integrity of the election system.
- ***Navtej Singh Johar vs. Union of India (2018)*¹³** This case was a watershed moment in LGBTQ rights in India. In a landmark decision, the Supreme Court overturned Section 377 of the

⁸ (1973) SCC (1) 249

⁹ (1978) SCC (2) 248

¹⁰ (1997) 6 SCC 241.

¹¹ (1994) 3 SCC 1

¹² (1975) AIR 1975 SC 2299.

¹³ (2018) 10 SCC 1.

Indian Penal Code, which criminalized consenting same-sex encounters. The Court ruled that the statute was discriminatory and infringed fundamental rights, such as equality and privacy. This ruling highlights the judiciary's role in broadening the scope of fundamental rights while encouraging inclusion and equality

CHAPTER- IV

COMPARISON

DIFFERENCES

Judicial review in both countries share some similarities but also has significant differences due to the distinct legal and constitutional frameworks of each country. Here are some key differences:

- **Constitutional Basis**

United States: Judicial review is specifically established in the US Constitution, particularly in the famous decision of *Marbury v. Madison* (1803), in which the Supreme Court claimed its authority to review and overturn legislation that are in conflict with the Constitution.

India: Although judicial review is not officially mentioned in the Indian Constitution, the Supreme Court of India has construed many clauses, including Article 13, to suggest the authority of judicial review to overturn legislation that are in conflict with the Constitution.

- **Scope**

United States: The US SC has the power to judge whether acts of Congress, state legislatures, and federal and state executive branch operations are lawful.

India: The Indian Supreme Court has the authority to examine court rulings in addition to executive and legislative actions. In order to make sure administrative actions adhere to constitutional standards, it might also assess them.

- **Separation of Power:**

United States: The US Constitution places a strong emphasis on the division of powers, and judicial review is a vital instrument for preserving this equilibrium by making sure that the legislative and executive departments stay within their constitutional bounds.

India: The Indian Constitution permits a more adaptable and peaceful implementation of the concept of separation of powers, even if the country nevertheless maintains this structure. Compared to its US equivalent, the Indian Supreme Court has intervened more frequently in legislative and executive matters.

While judicial review in both countries may have differences in their legal frameworks and procedures, there are several similarities between the two systems:

SIMILARITIES

- **Constitutional Oversight**

Both the United States and India have constitutional provisions allowing their judiciaries to assess the constitutionality of laws, presidential actions, and government decisions. In all countries, the judiciary serves as the final arbiter of constitutional conflicts, ensuring that the ideals enshrined in the respective constitutions are followed.

- **Fundamental Rights protection**

Both countries' Constitution guarantee fundamental rights, which are protected by judicial scrutiny. The judiciaries in the United States and India play an important role in protecting individual liberties such as free expression, equality before the law, the right to life and personal liberty, and protection against arbitrary state action.

- **Constitutional supremacy**

In both the United States and India, the Constitution is regarded as the supreme legal authority. Judicial review guarantees that all laws, governmental activities, and policies adhere to constitutional provisions. Any law or conduct that violates the Constitution may be overturned by either court.

- **Judicial Independence:**

Both countries' judicial review systems are based on judicial independence. The judiciary is expected to operate impartially and without interference from the executive or legislative arms of government. Judicial independence is required to protect the rule of law and ensure the integrity of the judicial review process.

- **Evolution through Precedent**

Due to important court rulings and well-established precedents, judicial review has evolved throughout time in both nations. Key rulings that have shaped the bounds of judicial review and established fundamental ideas that direct constitutional interpretation are *Marbury v. Madison* in the United States and *Kesavananda Bharati v. State of Kerala* in India.

- **Basic Structure doctrine**

USA: There isn't a formal idea in the US that is similar to India's fundamental structural ideology. The language and tenets of the Constitution serve as the foundation for the United States Supreme Court's authority to invalidate legislation; there is no express prohibition for constitutional amendment.

India: Parliament's ability to change the Constitution is limited by the fundamental structure doctrine, which was established by the Indian Supreme Court in the 1973 case of *Kesavananda Bharati v. State of Kerala*. It grants the judiciary the power to evaluate and declare unconstitutional any amendments to the Constitution that deviate from its core principles.

- **“Due process of law”**

The Indian Constitution guarantees 'procedure established by law', while the American Constitution provides 'due process of law'. The Supreme Court's extensive ability to uphold the rights of its citizens is granted by the "due process of law," which distinguishes the two. It has the authority to declare laws that violate fundamental rights unconstitutional not only on substantive grounds, but also on procedural grounds, such as being unreasonable. When considering the constitutionality of a law, our Supreme Court considers solely the substantive matter, namely whether the statute is within the authority's powers or not. It is not expected to address the topic of its logic, suitability, or policy ramifications.

CHAPTER- V

CHALLENGES AND LIMITATIONS OF JUDICIAL REVIEW

While judicial review is a valuable tool, it is not without limitations. Some of the constraints of judicial review in India include:

- **Political Backlash:** Judicial review decisions that overturn legislation or government acts can occasionally spark political backlash. Elected politicians or interest groups may criticize the judiciary for overstepping its authority and interfering in policymaking. This can cause problems between the court and other branches of government, eroding public trust in the judiciary's impartiality.
- **Legitimacy Concerns:** Opponents argue that legislation enacted by elected officials shouldn't be able to be reversed by unelected judges. When judges are perceived as enforcing their own policy preferences instead of objectively interpreting the Constitution, they cast doubt on the legitimacy of judicial review. In the public's eyes, this might erode confidence in the legal system and the courts.
- **Limited Remedies:** Court remedies frequently limit judicial scrutiny. In some situations, courts may lack the authority to grant meaningful remedies or execute their findings, especially when dealing with complex policy concerns or executive discretion. This can limit the effectiveness of judicial review in resolving systemic issues or safeguarding individual rights.
- **Judicial review necessitates significant resources, including time, knowledge, and institutional capability.** Courts may confront difficulties in managing a large amount of cases, particularly when they include complicated legal or constitutional concerns. Resource restrictions can cause delays in adjudication and have an impact on the quality and consistency of judicial decisions.
- **Enforcement Issues:** Even when courts issue rulings based on judicial review, other arms of government may face difficulties in ensuring compliance and enforcement. Executive or legislative

authorities may oppose or defy court orders, causing institutional conflicts and compromising the effectiveness of judicial review as a check on government power.

CHAPTER- VI

CONCLUSION AND RECOMMENDATIONS

In conclusion, the comparative analysis of judicial review in both countries reveals both similarities and contrasts in the methods, scope, and issues confronting each system. While both countries use judicial review to maintain constitutional values and protect individual rights, their constitutional frameworks, historical evolution, and institutional dynamics differ significantly.

Judiciary supremacy and a robust system of checks and balances are longstanding traditions in the United States, which established the concept of implied judicial review in *Marbury v. Madison*. With an emphasis on protecting the fundamental rights protected by the Constitution, judicial review is widely applied in the United States, encompassing all tiers of government.

On the other hand, the Indian Constitution expressly permits judicial review, with particular clauses empowering the court to examine and invalidate laws that deviate from basic standards. From creating the basic structure theory to expanding the scope of fundamental rights protection through innovative remedies like Public Interest Litigation (PIL), the Indian judiciary, particularly the Supreme Court, has had a significant influence on the nation's legal environment. However, issues including judicial activity, challenges to enforcement, and the social and cultural milieu all affect how successful judicial review is in India.

To strengthen judicial review in both countries, several recommendations can be made:

- I. **Enhancing Judicial Independence:** Ensuring the judiciary's independence from political influence is critical to preserving the integrity and impartiality of judicial review. Measures such as open judicial appointments and adequate financial allocation can help to protect judicial independence.
- II. **Promoting Public Education and Awareness:** Educating the public about the role and importance of judicial review can lead to a stronger understanding and support for the judiciary's constitutional

mission. Public awareness campaigns and civic education programs can help citizens understand legal processes and effectively engage with the court system.

III. Addressing Enforcement Issues: Improving methods for enforcing judicial rulings is critical to the effectiveness of judicial review. Collaboration across the judicial, executive, and legislative departments, as well as improved oversight systems, can help overcome enforcement issues and uphold rule of law.

IV. Balancing Judicial Activism and Restraint: Maintaining judicial review's legitimacy and efficacy requires striking a balance between activism and restraint. Courts should use caution and discretion when meddling in situations better left to the political branches, while staying diligent in protecting constitutional rights and ideals.

V. Continued Legal Reform and Innovation: Embracing legal reform and innovation can help judicial review become more adaptable and sensitive to changing societal concerns. Exploring alternate conflict resolution processes, harnessing technology to improve access to justice, and encouraging interdisciplinary collaboration can all help the court address complex legal and social concerns.

The United States and India can full-fill their constitutional mandates to uphold the rule of law and protect individual rights in the twenty-first century by putting these recommendations into practice and fostering a culture of constitutionalism. This will also increase the efficacy, legitimacy, and public trust in their respective judicial review systems.

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