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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated 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

ELUCIDATING A MULTIFACETED ARRAY OF SIMILARITIES AND DISPARITIES OF THE JUDICIAL SYSTEMS AND CONSTITUTIONS BETWEEN INDIA AND THE USA

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The Indian and US constitutions, pivotal in governance, diverge in scope and structure. India's 1950 Constitution, expansive and intricate, enshrines comprehensive fundamental rights, encompassing social and economic aspects. Its parliamentary system features a President as head of state and a Prime Minister as head of government. In contrast, the concise US Constitution, since 1787, prioritizes civil liberties and a federal system. The US employs a presidential system with a stronger emphasis on state autonomy. Despite differing lengths and approaches to rights, both uphold democracy, rule of law, and citizen rights while guiding their nations' governance.

India's judiciary, comprising the Supreme Court, High Courts, and lower courts, differs structurally from the US judiciary, which includes federal and state courts, all subject to the Supreme Court. India's system leans towards a unified structure, while the US operates a dual court system. The appointment process contrasts too: Indian judges appointed by the President after consultation, whereas in the US, nominations by the President and Senate confirmation prevail. Both uphold justice and interpret laws but diverge in structure, jurisdiction, and appointment mechanisms, shaping their distinct roles within their nations' legal landscapes.

Keywords: Constitution, Judiciary, Operates, Jurisdiction, Interpret.

INTRODUCTION

The judiciary plays a pivotal role in upholding the principles of justice within a democratic framework. Rooted in the Constitution, the judiciary serves as the guardian of the rule of law, ensuring the protection of individual rights and the maintenance of a just society. In many countries, including the United States, India, and others, the judiciary is an independent branch of government, distinct from the legislative and executive branches.

The Constitution, often considered the supreme law of the land, provides the foundational framework for governance and outlines the distribution of powers among various branches. It serves as a social contract, embodying the collective will of the people and establishing the fundamental rights and duties of citizens. The judiciary interprets and applies constitutional provisions, ensuring their adherence to the principles of justice, equality, and due process.

Judicial systems vary globally, encompassing diverse legal traditions and structures. Commonly, they involve hierarchical levels, with lower and appellate courts culminating in a supreme court. Judges, appointed or elected depending on the jurisdiction, wield the authority to resolve disputes, interpret laws, and review government actions for constitutional validity.

The concept of judicial review, a cornerstone of constitutional governance, empowers the judiciary to scrutinize the constitutionality of legislative and executive acts. This authority enables the judiciary to safeguard individual liberties and maintain a delicate balance of power among branches of government.

In essence, the judiciary and the Constitution form an intertwined fabric that not only delineates the legal landscape but also safeguards the core principles of justice, democracy, and the protection of individual rights.

ORIGIN AND DEVELOPMENT

INDIAN CONSTITUTION

The origin and development of the Indian Constitution trace back to the struggle for independence against British colonial rule. The demand for a constitutional framework that would reflect the

aspirations of a newly independent India gained momentum during the early to mid-20th century. The Constituent Assembly, constituted in 1946, played a crucial role in shaping the Indian Constitution. The assembly, comprising representatives from various regions, communities, and political ideologies, was tasked with drafting a constitution for the independent nation. Dr. B.R. Ambedkar, a prominent jurist and social reformer, chaired the drafting committee, and the process involved extensive debates, discussions, and consultations. The Constituent Assembly adopted the Constitution on January 26, 1950, marking the Republic Day of India¹.

The Indian Constitution draws inspiration from various sources, including the Constitution of several democratic nations, the Government of India Act of 1935², and the teachings of Mahatma Gandhi. It is a comprehensive document that reflects the diverse socio-cultural fabric of the country and enshrines fundamental rights, directive principles of state policy, and a federal structure with a strong emphasis on unity in diversity³.

The Constitution of India underwent amendments over the years, adapting to the evolving needs of the nation. Key amendments addressed issues such as social justice, economic development, and political representation. The Indian judiciary, through landmark decisions, has played a vital role in interpreting and upholding the constitutional provisions, contributing to the evolution of constitutional jurisprudence⁴.

In summary, the Indian Constitution originated from the collective vision of leaders who envisioned a sovereign, socialist, secular, and democratic republic⁵. Its development reflects the complex tapestry of India's history, struggles, and aspirations, making it a dynamic and living document that continues to guide the nation.

¹ January 26, 1950: How India observed its first Republic Day, available at: <https://indianexpress.com/article/explained/explained-history/january-26-1950-when-india-became-republic-9127785/>

² Government of India Act, 1935 25 & 26 Geo. 5. c. 42

³ Preamble, **The Constitution of India, 1950**

⁴ Prof. (Dr.) Mahendra Pal Singh, CONSTITUTIONALISM IN INDIA IN COMPARATIVE PERSPECTIVE, NUJS LAW REVIEW 11 NUJS L.Rev. 643 (2018)

⁵ Preamble, **The Constitution of India, 1950**

USA CONSTITUTION

The origin and development of the United States Constitution are rooted in the aftermath of the American Revolutionary War (1775-1783)⁶ and the shortcomings of the initial governing document, the Articles of Confederation⁷. The Constitutional Convention⁸, held in Philadelphia in 1787, aimed to address the weaknesses of the Articles and create a more effective and enduring system of governance.

Delegates from the thirteen states gathered at the Constitutional Convention, where key figures such as James Madison, Alexander Hamilton, and George Washington played influential roles. The convention's discussions led to the drafting of the U.S. Constitution, a groundbreaking document that established the framework for the federal government.

The Constitution, ratified in 1788, created a federal system with a division of powers between the central government and individual states. It introduced a separation of powers among the executive, legislative, and judicial branches to prevent the abuse of authority. The Bill of Rights⁹, the first ten amendments to the Constitution, was added in 1791 to safeguard individual liberties.

The Constitution has since undergone amendments to reflect the changing needs and values of American society. Notable amendments include those addressing issues such as slavery, suffrage, and civil rights. The judiciary, through landmark decisions such as *Marbury v. Madison* (1803)¹⁰ and *Brown v. Board of Education* (1954)¹¹, has played a crucial role in interpreting and shaping constitutional law.

The flexibility of the Constitution, along with the principles of federalism and checks and balances, has allowed it to endure for over two centuries. It stands as a foundational document that embodies the ideals of democracy, individual rights, and the rule of law in the United States¹².

⁶ The American Revolution, available at: <https://www.archives.gov/research/military/american-revolution>

⁷ Articles of Confederation, 1781

⁸ The Constitutional Convention, 1787

⁹ The Bill of Rights, 1791

¹⁰ 5 U.S. (1 Cranch) 137 (1803)

¹¹ 347 U.S. 483 (1954)

¹² Rule of Law and Democracy: Addressing the Gap Between Policies and Practices available at: <https://www.un.org/en/chronicle/article/rule-law-and-democracy-addressing-gap-between-policies-and-practices>

JUDICIAL SYSTEMS

The Indian judicial system is a complex structure comprising the Supreme Court at the apex, followed by High Courts and lower courts. It operates on a federal structure, with each state having its own judiciary. The Supreme Court serves as the ultimate appellate authority, ensuring uniform interpretation of laws¹³. High Courts have jurisdiction over states and union territories, dealing with appeals and original cases. Lower courts, including district and subordinate courts, handle civil and criminal matters at the grassroots level. India follows an adversarial legal system, where parties present evidence and arguments. The judiciary plays a crucial role in upholding the rule of law, protecting fundamental rights, and ensuring justice for all citizens.

The United States judicial system is a federal structure with a three-tiered hierarchy. The Supreme Court stands at the pinnacle, serving as the ultimate interpreter of the Constitution and the final appellate court. Beneath it, the country is divided into 13 federal appellate circuits¹⁴, each containing district courts that handle original cases and appeals. The judiciary operates independently of the executive and legislative branches, ensuring a system of checks and balances. Judges are appointed for life, promoting judicial independence. The Supreme Court's decisions set legal precedents that guide lower courts. The adversarial system prevails, where opposing parties present evidence and arguments. The U.S. judiciary plays a vital role in safeguarding constitutional principles, individual rights, and maintaining the rule of law.

COMPOSITION OF COURTS

INDIAN HIERARCHY OF COURTS

A. SUPREME COURT OF INDIA

The Indian judiciary operates on a three-tier hierarchy, with the Supreme Court at the apex, followed by High Courts, and then district and subordinate courts. The lower courts function under the supervision of higher courts.

The Supreme Court of India, positioned as the country's highest court and guardian of the Constitution

¹³ Prof. Dr G.B. Reddy* and Pavan Kasturi, A Comprehensive Analysis on Judicial Legislation in India, SCC Online, 2022

¹⁴ Court Jurisdiction, United States Court of Appeals for the Federal Circuit, available at: <https://cafc.uscourts.gov/home/the-court/about-the-court/court-jurisdiction/>

under Part V, is detailed in Articles 124-147. Article 124(1)¹⁵ stipulates the Supreme Court's composition, consisting of a Chief Justice of India and 34 judges. Its jurisdiction encompasses original, appellate, and advisory aspects. Article 124(2)¹⁶ outlines the appointment process, where the President of India, in consultation with judges from the Supreme Court and High Courts, nominates every Supreme Court judge through a warrant under his hands and seal.

The Supreme Court of India serves as the highest and ultimate court of appeal according to the Indian Constitution, operating under the regulations outlined in the Supreme Court Rules of 1966¹⁷. Comprising a Chief Justice of India and 30 other judges, this apex court conducts its proceedings. All hearings in the Supreme Court are conducted exclusively in the English language. The constitutional provision for the appellate jurisdiction of the Supreme Court in civil cases is defined in Article 133¹⁸. According to Article 133, individuals can appeal to the Supreme Court only if the High Court of a state grants approval for a plea regarding any judgment in a civil proceeding.

B. HIGH COURTS OF INDIA

The provisions for the High Courts in India are outlined in Articles 214-231 of the Constitution. Each High Court comprises a Chief Justice and other Judges, with the President of India having the authority to appoint judges¹⁹. Additional judges may be assigned for up to two years to manage workload. In the absence of a permanent judge (excluding the Chief Justice), an acting judge can temporarily serve as Chief Justice. High Courts do not have a prescribed minimum number of judges, varying between Courts and States.

These courts, established by Article 214 of the Constitution²⁰, derive their power from it. Judges for High Courts are appointed by the President of India in consultation with the Chief Justice of India, the Chief Justice of the respective High Court, and the Governor of the state.²¹ The determination of the number of judges in a High Court is based on factors such as the previous year's average main cases nationally or the average rate of main cases disposed of per judge annually in the topmost high court.

¹⁵ The Constitution of India, 1950, art. 124(1)

¹⁶ The Constitution of India, 1950, art. 124(2)

¹⁷ Supreme Court Rules, 1966

¹⁸ The Constitution of India, 1950, art. 133

¹⁹ The Constitution of India, 1950, art. 216

²⁰ The Constitution of India, 1950, art. 214

²¹ The Constitution of India, 1950, art. 217

C. DISTRICT COURTS OF INDIA

The decisions made by District Courts fall under the appellate jurisdiction of the High Court, as detailed in Articles 233-237 of the Constitution of India. Each District Court is led by a District Judge, accompanied by several Assistant District Judges. The appointment of District Judges for both civil and criminal cases is within the authority of the State Governor, based on the recommendation of the state's Chief Justice.²²

Operating at the district level, District Courts are administered by district judges appointed by the state government. Additional District Judges and Assistant District Judges are also part of the District Court to manage the increased workload, with both having comparable authority to District Judges.

USA HIERARCHY OF COURTS

The federal court system in the United States comprises three key tiers: district courts (trial level), circuit courts (first level of appeal), and the Supreme Court (ultimate appellate level). With 94 district courts, 13 circuit courts, and one Supreme Court nationwide, these courts function differently from state courts. In civil cases, federal courts possess limited jurisdiction, hearing only cases authorized by the U.S. Constitution or federal statutes. Federal district courts handle cases originating from federal statutes, the Constitution, or treaties, known as "original jurisdiction." For cases solely based on state law, federal courts offer "diversity jurisdiction," allowing lawsuits involving parties from different states. Criminal cases, however, are exclusive to state or federal courts. Federal judges, appointed by the President and confirmed by the Senate, serve for life unless impeached.²³ Magistrate judges, appointed by district judges, serve for a specified term. The principle of double jeopardy²⁴ does not prevent both federal and state governments from pursuing charges for the same act.

A. DISTRICT COURTS

District courts function as the primary trial courts within the federal system, presided over by at least one United States District Judge appointed by the President and confirmed by the Senate for a lifelong term. Responsible for both civil and criminal trials, district courts align with U.S. Attorney districts, where the U.S. Attorney serves as the principal federal prosecutor.

²² The Constitution of India, 1950, art. 233

²³ Judgeship Appointments by President, available at: [https:// www.uscourts.gov/judges-judgeships/authorized-judgeships/judgeship-appointments-president](https://www.uscourts.gov/judges-judgeships/authorized-judgeships/judgeship-appointments-president)

²⁴ The 5th Amendment 1791, US Constitution

District court judges, serving as long as they exhibit "good behavior," face potential impeachment and removal by Congress. Nationwide, there are more than 670 district court judges²⁵. Certain tasks may be delegated to federal magistrate judges, appointed by a majority vote of district court judges for eight years (full-time) or four years (part-time), with the possibility of reappointment.

Magistrates handle various responsibilities, including overseeing specific criminal cases, issuing warrants, conducting initial hearings, setting bail, and deciding motions. Specialized federal trial courts exist for subjects like bankruptcy, tax, claims against the federal government, and international trade.

B. CIRCUIT COURTS

After a federal district court renders a decision, the case can undergo an appeal process in a United States court of appeal. The country is divided into twelve federal circuits²⁶, each handling appeals for specific regions. For instance, the United States Court of Appeals for the Fifth Circuit oversees cases from district courts in Texas, Louisiana, and Mississippi. The Federal Circuit Court of Appeals holds nationwide jurisdiction, particularly for issues like patents.

Circuit courts, with judges ranging from six to twenty-nine, serve lifetime appointments after presidential nomination and Senate confirmation. Appeals to circuit courts, following a district court decision, involve a panel of three circuit court judges. Parties present arguments through written "briefs," and oral arguments are scheduled where attorneys address judges' inquiries. Some appeals may undergo an "en banc hearing," involving the entire circuit court, a process that varies in the Ninth Circuit²⁷. En banc decisions, carrying substantial weight, follow panel rulings, and once an opinion is published, subsequent panels cannot overturn it. Specialized courts exist for specific subjects like veterans claims and military matters beyond the Federal Circuit.

²⁵ US Constitution, art. 3 sec. 1

²⁶ How the US court system functions, available at: <https://usinfo.org/enus/government/branches/fine.html#:~:text=The%20U.S.%20Courts%20of%20Appeals%20is%20divided%20geographically,which%20also%20hears%20cases%20involving%20the%20federal%20government.>

²⁷ Supra 26

C. SUPREME COURT

The Supreme Court of the United States, the apex court in the American judicial system, possesses authority over appeals from both federal and state courts dealing with federal law. It can review cases from state supreme courts, especially if they involve constitutional issues like the First Amendment²⁸.

However, if a case is based solely on state law, unrelated to federal matters, the Supreme Court cannot consider it. Following rulings from circuit courts or state supreme courts, either party may opt to appeal to the Supreme Court. Unlike circuit court appeals, the Supreme Court isn't obligated to hear every appeal. Parties may submit a "writ of certiorari,"²⁹ requesting the court to review the case. If granted, the Supreme Court proceeds with briefs and oral arguments; if denied, the lower court's decision stands. Certiorari is infrequently granted, with less than 1% of appeals reaching the high court³⁰. Typically, the court intervenes when there are conflicting national decisions on an issue or when a significant error occurs.

The nine members, referred to as "justices," including one chief justice, are appointed for life by the President and confirmed by the Senate. The chief justice, chosen by the President and approved by Congress during a vacancy, oversees the court's administration. While the Constitution imposes no specific requirements for justices, current members are typically lawyers, often having served as circuit court judges or law professors. The Supreme Court convenes in Washington, D.C., with its annual term lasting from the first Monday of October until late June the following summer³¹.

POWER OF JUDICIAL REVIEW

In India, judicial review has an extensive scope, encompassing not only legislative enactments but also executive actions. The courts possess the authority to invalidate laws violating the Constitution and can issue writs like Habeas Corpus, Mandamus, Prohibition, Certiorari, and Quo Warranto to safeguard citizens' fundamental rights.³²

²⁸ The First Amendment, 1791

²⁹ Rule 14: Content of a Petition for a Writ of Certiorari

³⁰ Supra 29

³¹ Supreme Court convenes person for the first time in 18 months, available at: <https://www.washingtontimes.com/news/2021/oct/4/supreme-court-convenes-person-first-time-18-months/>

³² The Constitution of India, 1950, art. 226 and art. 32

The Constitution outlines five types of writs:

1. Habeas Corpus³³ – compelling the production of a unlawfully detained person.
2. Mandamus³⁴ – directing a public official to fulfill a lawful duty.
3. Prohibition³⁵ – preventing a lower court or tribunal from exceeding its jurisdiction.
4. Certiorari³⁶ – nullifying an order from a lower court or tribunal.
5. Quo Warranto³⁷ – investigating the legality of a person holding a public office.

Judicial review plays a pivotal role in the Indian Constitution by enabling the judiciary to check the actions of the legislative and executive branches. It ensures governmental adherence to constitutional limits and protects citizens' rights. Additionally, judicial review upholds the rule of law, preserving a balance of power among the three branches of government. This mechanism is crucial for safeguarding constitutional principles in the face of evolving circumstances and challenges. The history of the Indian judiciary is marked by significant cases showcasing the instrumental role of judicial review. From Parliament's amendment power assertion in *Shankari Prasad v. Union of India*³⁸ to the groundbreaking *Kesavananda Bharati v. State of Kerala*³⁹, establishing the 'Basic Structure' doctrine, these cases underscore the transformative influence of judicial review. Numerous instances over the years highlight the judiciary's use of judicial review to annul laws contravening the Constitution. In the landmark case of *Golaknath v. State of Punjab (1967)*⁴⁰, the Supreme Court ruled that Parliament lacked the authority to amend Fundamental Rights. The 24th Amendment⁴¹ later reversed this decision, granting Parliament the power to amend any constitutional section, including Fundamental Rights. In the pivotal case of *Kesavananda Bharati v. State of Kerala (1973)*⁴², it established limitations on Parliament's amending power, asserting that the Constitution's basic structure was unalterable. Affirming the right to travel abroad as integral to personal liberty under Article 21⁴³, the Supreme Court broadened the scope of personal liberty, shielding it from arbitrary

³³ Supra 32

³⁴ Supra 32

³⁵ Supra 32

³⁶ Supra 32

³⁷ Supra 32

³⁸ [1952] SCR 89 (1951)

³⁹ (1973) 4 SCC 225; AIR 1973 SC 1461

⁴⁰ 1967 AIR 1643; 1967 SCR (2) 762

⁴¹ The 24th Amendment Act, 1971

⁴² (1973) 4 SCC 225; AIR 1973 SC 1461

⁴³ The Constitution of India, 1950, art. 21

government restrictions in the case of *Maneka Gandhi v. Union of India (1978)*⁴⁴

The case of *Vishaka v. State of Rajasthan (1997)*⁴⁵, acknowledging sexual harassment at the workplace as a violation of women's fundamental rights, the Supreme Court outlined guidelines for employers to prevent and address such workplace harassment. These cases exemplify the judiciary's commitment to upholding constitutional principles through the exercise of judicial review.

On the other hand, the concept of judicial review in the United States evolved gradually. While absent in the original Constitution, state courts before 1787 already practiced judicial review to annul laws conflicting with state constitutions. In 1789, the Judiciary Act⁴⁶ granted federal courts the power of judicial review over state acts. The U.S. Supreme Court first exercised this power in 1803 in *Marbury v. Madison*⁴⁷, declaring an act of Congress unconstitutional under the doctrine of Implied Powers. Chief Justice John Marshall justified this review by emphasizing the supremacy of the Constitution. Over time, the Supreme Court, following *Marbury v. Madison*, regularly employed judicial review, nullifying nearly 100 Congressional statutes that conflicted with the Constitution. The process isn't automatic; the court reviews laws only when specifically challenged during litigation. In the 21st century, *the Dred Scott case*⁴⁸ is criticized, but its philosophy aligning with the framers' understanding is acknowledged.

Presently, judicial review's origin lies in judicial decisions, particularly in Chief Justice John Marshall's leadership. Discussions, such as in *the New York State Rifle and Pistol Association case*⁴⁹, highlight concerns about the Supreme Court's perceived political influence. Democratic senators warn of public mistrust, suggesting that a justice voting against their policy preferences is essential to maintaining judicial independence and averting calls for court restructuring.

In the landmark case of *Marbury v. Madison (1803)*⁵⁰, the issue raised was on who can ultimately decide what the law is? This decision gave the Court the ability to strike down laws on the grounds

⁴⁴ AIR 1978 SC 597; (1978) 1 SCC 248

⁴⁵ AIR 1997 SC 3011

⁴⁶ The Federal Act, 1789

⁴⁷ 5 U.S. (1 Cranch) 137 (1803)

⁴⁸ 60 U.S. 393

⁴⁹ 597 [U.S.](#) 1

⁵⁰ 5 U.S. (1 Cranch) 137

that they are unconstitutional (a power called judicial review). In the case of *McCulloch v. Maryland (1819)*⁵¹, the issue raised was can Congress establish a national bank, and if so, can a state tax this bank? The Court held that Congress had implied powers to establish a national bank under the "necessary and proper" clause of the U.S. Constitution. The Court also determined that United States laws trump state laws and consequently, a state could not tax the national bank. This decision established two important principles for constitutional law that continue today: implied powers and federal supremacy. In this pre-Civil War case, the question was whether Congress had the constitutional power to prohibit slavery in free territories. A second question was whether the Constitution gave African Americans the right to sue in federal court. The Dred Scott case became a central issue in the debate surrounding the expansion of slavery and further fueled the flames leading to the Civil War in *Dred Scott v. Sandford (1857)*⁵².

In the case of *Roe v. Wade (1973)*⁵³, does the Constitution prohibit laws that severely restrict or deny a woman's access to abortion? The Court concluded that such laws violate the Constitution's right to privacy. The Court held that, under the Fourteenth Amendment⁵⁴ Due Process Clause, states may only restrict abortions toward the end of a pregnancy, in order to protect the life of the woman or the fetus. Roe has become a center-piece in the battle over abortion-rights, both in the public and in front of the Court.

SEPARATION OF POWERS

The doctrine of Separation of Powers, dividing governance into the Legislature, Executive, and Judiciary, is characterized by three key features: distinct individuals for each organ, non-interference among organs, and adherence to mandated functions. In the intricate context of India, conflicts occasionally arise between these branches. The doctrine plays a crucial role in preventing autocracy, preserving individual liberties, fostering efficient administration, maintaining the judiciary's independence, and curbing arbitrary or unconstitutional laws by the legislature. The Indian Constitution establishes the Parliament, State legislative bodies, the President, Governors, and the Supreme Court, High Court, and subordinate courts as the respective branches. Constitutional articles,

⁵¹ 17 U.S. (4 Wheat.) 316 (1819)

⁵² 60 U.S. (19 How.) 393 (1857)

⁵³ 410 U.S. 113

⁵⁴ The 14th Amendment, 1868 US constitution

such as Article 50⁵⁵, guide the separation of judiciary and executive, though enforcement is limited. Various court cases, including *Kesavananda Bharati v State of Kerala*⁵⁶ and *Indira Nehru Gandhi v. Raj Narain*⁵⁷, underscore the significance of this doctrine in upholding democratic principles and delineating the functions of different branches in the Indian governance system.

The U.S. Constitution establishes three distinct yet equally important branches of government: the legislative branch (responsible for making laws), the executive branch (tasked with law enforcement), and the judicial branch (responsible for interpreting laws). This structural design by the Framers aims to prevent any single branch from acquiring excessive power, creating a system of checks and balances.

The case of *U.S. v. Alvarez*⁵⁸ exemplifies the interplay of authority among these branches. The Legislative Branch, represented by Congress, initially passed the Stolen Valor Act of 2005⁵⁹, targeting individuals falsely claiming high military honors. However, the Judicial Branch, specifically the Supreme Court, declared the Act unconstitutional in 2012, citing infringement on free speech rights protected by the First Amendment⁶⁰. In response, the Executive Branch, including the Pentagon and the President, swiftly initiated the establishment of a government-funded national database for verifying military honors.

The Legislative Branch, acknowledging the constitutional issues, promptly enacted the Stolen Valor Act of 2013⁶¹. This revised legislation maintained the prohibition on false military honor claims but made specific adjustments, including repealing the ban on wearing such awards without legal authorization and narrowing the scope of prohibited decorations.

SIMILARITIES OUTLINED

India and the USA, as diverse democracies, share significant similarities in their constitutions and judiciary. Both nations, deeply committed to democratic values and the rule of law, possess carefully

⁵⁵ The Constitution of India, 1950, art. 50

⁵⁶ (1973) 4 SCC 225; AIR 1973 SC 1461

⁵⁷ AIR 1975 SUPREME COURT 2299, 1976 2 SCR 347

⁵⁸ 567 U.S. 709 (2012)

⁵⁹ The Stolen Valor Act, 2005

⁶⁰ The First Amendment, 1791

⁶¹ The Stolen Valor Act, 2013

crafted written constitutions serving as the foundation of their legal systems. This commitment extends to fostering an independent judiciary for impartial justice administration. Notable parallels include aspects like constitutional review, federal structures, safeguarding fundamental rights, and a tiered court system. Amidst complex socio-political dynamics, their judiciaries play pivotal roles in upholding constitutional principles, maintaining checks and balances, and adapting to evolving societal needs. This introduction paves the way for an exploration of the intriguing commonalities and differences in the constitutional and judicial realms of India and the USA.

1. **Independent Judiciary:** Both India and the USA boast an independent judiciary, ensuring that judges can make decisions without external influence, contributing to a fair and impartial legal system.
2. **Constitutional Review:** In both countries, the judiciary holds the power of judicial review, allowing them to assess the constitutionality of laws and governmental actions, ensuring they align with constitutional principles.
3. **Written Constitutions:** India and the USA share the characteristic of having written constitutions that serve as the supreme law of the land, establishing the fundamental principles and structure of their respective governments.
4. **Federal Structure:** Both nations operate under a federal structure, where powers are distributed between the central government and individual states or regions, with the judiciary playing a role in settling disputes arising from this division.
5. **Hierarchy of Courts:** Both countries have a hierarchical system of courts, with a supreme court at the apex, followed by intermediate and lower courts, creating a structured legal framework for the adjudication of cases.
6. **Fundamental Rights:** The judiciaries in India and the USA are tasked with safeguarding fundamental rights enshrined in their constitutions, protecting citizens from government overreach and ensuring equal protection under the law.
7. **Judicial Activism:** Both judiciaries exhibit instances of judicial activism, where the courts actively interpret and apply the constitution to address societal issues, shaping legal precedents and influencing public policy.
8. **Role in Checks and Balances:** The judiciary in both countries plays a crucial role in the system of checks and balances, ensuring that neither the executive nor legislative branches exceed their constitutional powers.

9. Appointment of Judges: In India and the USA, judges are appointed through a process that emphasizes legal expertise and integrity, aiming to maintain the quality and independence of the judiciary.
10. Adaptability: The judiciaries of both nations demonstrate adaptability to changing social, political, and technological landscapes, allowing for the interpretation of constitutional principles in contemporary contexts to meet evolving challenges.

DISPARITIES OUTLINED

India and the USA, despite being diverse democracies, exhibit significant disparities in their constitutions and judiciary systems. While both nations share foundational principles of democracy and the rule of law, the variations become apparent in their constitutional structures and legal frameworks. These disparities manifest in distinct approaches to constitutional review, the organization of federal structures, protection of fundamental rights, and the hierarchy of courts. As India and the USA grapple with distinct socio-political contexts, their judiciaries diverge in roles, functions, and adaptability to evolving needs. This introduction sets the stage for an exploration of the intriguing differences that shape the constitutional and judicial landscapes of India and the USA, reflecting the unique historical, cultural, and legal contexts of each nation.

1. Constitutional Origins and Age: The foundational disparities between India and the USA lie in their constitutional origins. The United States Constitution, dating back to 1787, is one of the oldest, influenced by Enlightenment ideals. In contrast, India's Constitution, adopted in 1950, is a relatively recent document reflecting post-colonial aspirations and socio-political dynamics.
2. Preamble Differences: The Preambles of the two constitutions emphasize distinct values. While the U.S. Preamble stresses individual freedoms and a more limited government role, the Indian Preamble highlights justice, liberty, equality, and fraternity, emphasizing social justice and inclusivity.
3. Form of Government: The USA follows a presidential system, with a clear separation between the executive and legislative branches. In contrast, India employs a parliamentary system, where the executive is drawn from the legislative branch.
4. Federal vs. Quasi-Federal Structure: The USA's federal structure delineates powers between the national government and states. India, while federal in structure, is often described as quasi-federal due to a strong centralizing tendency, especially during emergencies.

5. **Amendment Procedures:** The amendment processes differ significantly. The U.S. Constitution has a stringent amendment process, requiring a two-thirds majority in both houses of Congress. India's Constitution allows amendments with a two-thirds majority in Parliament, making it relatively more flexible.
6. **Role of the President:** The U.S. President holds significant executive powers and is the head of state and government. In India, the President is a ceremonial head of state, with executive powers vested in the Prime Minister.
7. **Judicial Appointment Process:** In the USA, federal judges, including Supreme Court justices, are nominated by the President and confirmed by the Senate. In India, judges of the Supreme Court and High Courts are appointed by the President based on the advice of the Chief Justice and a collegium of judges.
8. **Judicial Review Scope:** The scope of judicial review differs, with the U.S. Supreme Court having the authority to strike down laws based on unconstitutionality. In India, while the judiciary has the power of judicial review, Parliament can amend the Constitution, limiting this power.
9. **Fundamental Rights:** The enumeration and scope of fundamental rights vary. The U.S. Constitution emphasizes individual liberties, while India's Constitution includes socio-economic rights in addition to civil and political rights.
10. **Role of Directive Principles (India):** India incorporates Directive Principles of State Policy, guiding the government in matters of social and economic justice. The USA lacks a direct equivalent, emphasizing a more limited role for government intervention in socio-economic matters.

ONGOING OBSTACLES

The Indian judicial system faces persistent challenges that impede its effectiveness. A primary concern is the staggering backlog of cases, leading to prolonged delays in justice delivery. This issue is exacerbated by an overburdened judiciary, reflecting the need for an increased number of judges and improved infrastructure. Access to justice remains uneven, with socio-economic factors influencing the ability of individuals to navigate the legal system.

Corruption and ethical concerns within the judiciary further erode public trust, demanding measures to ensure judicial integrity. The constitutional amendment process is often slow and rigid, hindering

timely adaptations to evolving societal needs. The lack of specialization in the judiciary contributes to delays and inefficiencies in handling complex legal matters.

While technological integration in court proceedings is underway, it remains a work in progress. The judicial system's generalist approach and varying levels of judicial activism also pose ongoing challenges. Addressing these obstacles necessitates comprehensive reforms, increased resource allocation, and a concerted effort to uphold the constitutional principles of justice, fairness, and accessibility.

On the other hand, The United States judicial system grapples with ongoing challenges that impact its efficiency and fairness. One critical issue is the persistent caseload backlog, leading to delays in court proceedings and hindering timely access to justice. The system's complexity, coupled with a shortage of judges and resources, contributes to this backlog, highlighting the need for judicial reforms and increased funding.

Access to justice disparities persists, with socio-economic factors influencing the ability of individuals to navigate the legal system effectively. Ethical concerns and perceived politicization of judicial appointments raise questions about the impartiality and independence of the judiciary, impacting public trust.

Constitutional challenges include the difficulty in amending the U.S. Constitution, a process designed to be deliberate but sometimes proving inflexible in addressing contemporary issues. The interpretation of constitutional rights in evolving societal contexts poses ongoing debates, such as those surrounding privacy rights in the digital age.

While the U.S. judicial system is technologically advanced, issues of cyber security and the digital divide persist. Striking a balance between judicial activism and restraint remains a challenge, reflecting the tension between interpreting the Constitution's intent and adapting to societal changes. Addressing these obstacles requires a comprehensive approach to maintain the integrity, accessibility, and effectiveness of the U.S. judicial system and Constitution.

REFORMS THAT CAN MAKE THE GOVERNANCE EFFECTIVE

To bolster the effectiveness of Indian governance, comprehensive reforms are imperative. Judicial reforms should prioritize swift appointments, introducing specialized benches, and embracing technology for efficient case management. Administrative efficiency can be achieved by streamlining bureaucratic processes, adopting e-governance, and ensuring merit-based appointments within the bureaucracy.

Electoral reforms are crucial, necessitating measures for political transparency, accountability in funding, and a reevaluation of the electoral system to address issues like criminalization and regional biases. Police reforms should focus on modernization, training, and accountability mechanisms to address instances of misconduct.

Anti-corruption measures demand the strengthening of independent anti-corruption agencies and the promotion of transparency in public transactions. Educational reforms should concentrate on quality and accessibility, aligning curricula with industry needs. Similar attention is needed for healthcare, with a focus on strengthening infrastructure and making quality healthcare accessible.

Decentralization initiatives, empowering local bodies with financial autonomy, and facilitating public participation can enhance governance at grassroots levels. Environmental policies should enforce sustainable practices, coupled with public awareness initiatives. Finally, embracing digital transformation across sectors will not only improve connectivity but also facilitate efficient public service delivery. These multifaceted reforms collectively hold the potential to foster transparency, accountability, and effectiveness in Indian governance.

On the other hand, to enhance the effectiveness of governance in the United States, several key reforms are crucial. Electoral reforms should prioritize campaign finance reform to address concerns about transparency and influence. Considerations for a more proportional representation system may help mitigate polarization and ensure fair representation.

Judicial reforms should address the issue of lengthy confirmation processes for federal judges, ensuring timely appointments to maintain a fully functioning judiciary. Police reforms must focus on community policing, training, and accountability measures to build trust and address concerns related

to systemic issues.

Anti-corruption measures should strengthen ethics laws for public officials, enhance transparency in lobbying, and reinforce oversight mechanisms. Educational reforms should target disparities in access and quality, with investments in teacher training, digital infrastructure, and curricular updates.

Infrastructure investment is pivotal, addressing the nation's needs while creating jobs and boosting economic growth. Environmental policies should prioritize sustainability, renewable energy, and climate resilience measures. Health care reforms should aim at improving accessibility, affordability, and addressing disparities in the healthcare system.

Embracing digital transformation in government services can enhance efficiency, transparency, and accessibility. Decentralization efforts, empowering local governments and communities, could contribute to more responsive governance. By strategically implementing these reforms, the USA can fortify its governance system, ensuring it is adaptive, accountable, and inclusive.

CONCLUSION

In conclusion, while the Indian and USA judicial systems and Constitutions share certain fundamental principles rooted in democracy and the rule of law, they exhibit notable similarities and disparities. Both nations uphold the separation of powers, maintaining independent judiciaries to ensure a check on the executive and legislative branches. The commitment to protecting fundamental rights is evident, although the scope and enumeration of these rights differ, reflecting unique historical and cultural contexts.

However, disparities emerge in the constitutional structures, amendment processes, and forms of government. India's parliamentary system contrasts with the USA's presidential system, influencing the dynamics of governance. The age difference between the two constitutions also shapes their approaches to contemporary challenges.

Judicially, both countries face challenges like caseload backlogs and issues of access to justice. Yet, differences exist in the appointment processes, the scope of judicial review, and the role of technology in court proceedings.

In navigating these similarities and disparities, both nations stand to benefit from learning and adapting best practices to address ongoing challenges, ensuring that their judicial systems and Constitutions continue to evolve in response to the needs of their diverse societies.

