
EXAMINING JUDICIAL REVIEW: THE CONVERGENCE OF JURISPRUDENTIAL DOCTRINES, CONSTITUTIONAL PROVISIONS & PRACTICE IN INDIA & UNITED STATES

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ABSTRACT

This research paper critically examines the concept, evolution, and operational framework of judicial review in two of the world's largest democracies, India and the United States. Judicial review serves as a fundamental mechanism to uphold the supremacy of the Constitution and safeguard civil liberties by enabling the judiciary to invalidate legislative and executive actions that violate constitutional provisions. The paper explores the historical origins of judicial review, tracing its formal establishment in the U.S. through *Marbury v. Madison* and its evolution in India through cases like *Kesavananda Bharati v. State of Kerala*. A comparative approach is employed to analyze jurisprudential doctrines, such as the separation of powers, checks and balances, and proportionality, and their role in shaping judicial review. The article highlights key similarities between the two systems, including the use of precedent and the judiciary's role in preserving democratic values. Simultaneously, it underscores major differences in judicial philosophy, such as the U.S. emphasis on originalism and textualism versus India's more activist and expansive interpretative approach, supported by Public Interest Litigation (PIL). The study also evaluates the limitations imposed on judicial review in both countries, including constitutional constraints, political doctrines, and institutional boundaries. It ultimately argues that while the methods differ, judicial review in both jurisdictions remains an essential guardian of constitutionalism and justice. The paper concludes by advocating for

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a balanced and responsible exercise of judicial power to ensure the continued protection of individual rights and democratic governance in an evolving global landscape.

Keywords: Judicial Review, Constitution of India, U.S. Constitution, Separation of Powers, Checks and Balances, Basic Structure Doctrine, Public Interest Litigation (PIL), Judicial Activism, Textualism, Originalism, Supreme Court of India, U.S. Supreme Court, Constitutional Supremacy

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(A) INTRODUCTION:

It is emphatically the province and duty of the judicial department to say what the law is...If two laws conflict with each other, the courts must decide on the operation of each...This is of the very essence of judicial duty.

- John Marshall²

Judicial Review is one of the core and essential features of not only the modern day constitutional democracies but from the day which marked the inception of concept of the term Power. It is a weapon to control and safeguard the Rule of law and ensure to guarantee and protect the rights of individuals and rights of certain class of people. It keeps an eye and review the decision of the Legislative and the Executive branch of the government to protect the constitutional principles of a country. This paper examines the convergence of jurisprudential thoughts, constitutional provisions and judicial review processes in India and the United States, two countries with distinct legal traditions but identical values of democracy. This research seeks to highlight the importance of judicial review in ensuring justice and encouraging accountability within governmental institutions by analysing their history, fundamental principles, and modern day results.

Historical Context of Judicial Review in USA & India:

Judicial review had prominently originated in USA from the notable landmark case of Marbury vs. Madison.³ The judgment by Lord Coke, in Dr. Bonham vs. Cambridge University, the concept of judicial appeal was used for the first time in England in 1610.⁴ In this particular case, the Royal College of Physicians barred Dr. Bonham from practicing in London because

²In the unanimous 1803 Supreme Court ... “It is emphatically the province and duty of the judicial department to say what the law is. Those who apply the rule to particular cases, must of necessity expound and interpret that rule. If two laws conflict with each other, the courts must decide on the operation of each.” ...

<https://billofrightsinstitute.org/essays/marbury-v-madison>

³ Marbury v. Madison, 5 U.S. 137, 138 (1803).

⁴ Dr. Bonham vs. Cambridge University 8 Co. Rep. 107a, 113b, 77 Eng. Rep. 638, 646 (1610)

he did not have a license. The case is also known for violating the principles of natural justice due to monetary biasness. The concept of "judicial review" was then used in *Marbury v Madison* in 1803. After analysing the U.S constitution in *Marbury vs. Madison*, the US Supreme Court found that the Article 3 & Article 4 of the constitution the inferred the powers of Judicial Review. The Court ruled that the US Constitution is the supreme law of the land, and it is the judiciary's responsibility to overrule state laws and legislative acts that violate its provisions. Chief Justice Marshall said, "It neither approves nor condemns any legislative policy. Its delicate and difficult office is to ascertain and declare whether the legislation is in accordance with or in contravention of the provision of the Constitution; and having done that its duty ends." This case established a critical balance among the branches of government.⁵ Subsequent rulings widened the concept of judicial review in the United States, implementing it to resolve questions of federalism, civil rights, and the separation of powers. For example, in *Brown v. Board of Education* (1954)⁶, the Supreme Court used judicial review to overturn racial segregation in public schools, emphasizing its role in protecting constitutional rights and adapting the Constitution to modern principles of society.

The concept of judicial review developed in India as a result of British colonialism and has since become an important part of governance. British rule developed the legal concepts of parliamentary sovereignty and judicial independence, although judicial review was not an established concept. Following independence in 1947, Indian constitutional framers looked on various constitutional judicial review models, especially those of the United States and the United Kingdom, to shape their governing system. The makers of the Indian Constitution acknowledged the need for an independent judiciary to preserve individuals' basic rights and enforce the Constitution as the supreme law of the country.⁷ Dr. B.R. Ambedkar, the chief architect of the Indian Constitution, emphasized judicial review as a necessary safeguard for democracy, observing that it was crucial for safeguarding individual rights and limiting government powers.⁸

In India, Judicial review is the power bestowed upon the judiciary by the constitution itself by which the judiciary can examine the legislative enactments and executive orders of the state government and the central government and this right is possessed by both the supreme court

⁵ Bray, J. (2017). Judicial Review and the United States Constitution. *Harvard Law Review*, 130(6), 1868-1896.

⁶ *Brown v Board of Education*, 347 US 483 (1954)

⁷ Dworkin, R. (1986). *Law's Empire*. Harvard University Press.

⁸ Constituent Assembly Debates, vol. 7, 953 (Dr. B.R. Ambedkar)

and the high court of the country. The high court, under articles 226⁹ and 227¹⁰ of the constitution and the supreme court under articles 32¹¹ and 136¹² of the constitution, have the authority to set aside any law passed by the government if it is unconstitutional and they can also declare it null and void. In India, judicial review is based on the condition that the constitution is the ultimate law of the land, all the government organs draw their administrative powers within the constitutional framework and shall not do anything in violation with the constitution.¹³ The landmark decision in *Kesavananda Bharati v. State of Kerala* (1973) played a vital role in developing the concept of judicial review by establishing the basic structure doctrine, which holds that certain fundamental features of the Constitution, such as democracy, secularism, and judicial review itself, cannot be changed even by constitutional amendments.¹⁴

(B) Jurisprudential Foundation for Judicial Review in India & USA:

The convergence of jurisprudential theories is especially important in the context of judicial review. In both India and the United States, various doctrines have been used to regulate the process of judicial review. These include the concepts of separation of powers, checks and balances and doctrine of proportionality. The theory of separation of powers guarantees that no one branch of government has uncontrolled authority, while checks and balances enable each branch to limit the powers of the others. In contrast, proportionality acts as a standard for assessing the suitability of government actions in relation to their objectives, ensuring that individual rights are not needlessly compromised.

The practice of judicial review in both countries reflects their unique socio-political contexts and judicial philosophies. In the United States, the judiciary often adopts a more restrained approach, adhering to doctrines such as originalism and textualism, which emphasize the importance of interpreting the Constitution as it was originally intended. This approach can lead to a more conservative application of judicial review, prioritizing stability and continuity

⁹ Constitution of India 1949, art 226.

¹⁰ Constitution of India 1949, art 227.

¹¹ Constitution of India 1949, art 32.

¹² Constitution of India 1949, art 136.

¹³ V.N. Shukla's Constitution of India, Mahendra Pal Singh, 13th Edition, 2017, Eastern Book Company, Lucknow, 2019.

¹⁴ *Kesavananda Bharati v State of Kerala*, AIR 1973 SC 1461

in legal interpretations.¹⁵ The rationale for judicial review may also be found in the works of Alexander Hamilton, one of the authors of the American Constitution in 1789.

In contrast, the Indian courts have taken a wider perspective for Judicial review to engage in the issues of social justice, equity and fundamental rights. There are many cases where the Supreme Court of India has interpreted constitutional provisions in the manner which would promote social welfare and social justice. In *State of Karnataka v. All India Manufacturers Organisation*¹⁶, the supreme court held: "when the state's acts of omission or commission are tainted with extreme arbitrariness and with mala fides, it is certainly subject to interference by the constitutional courts in this country.....we make it clear that while the state government and its instrumentalities are entitled to exercise their contractual rights they must do so fairly, reasonably and without mala fides; in the event that they do not do so, the court will be entitled to interfere with the same." Judicial activism and PIL are the common ways for the judiciary to solve problems relating to social justice and public welfare. The Supreme Court through the judicial review has tackled socioeconomic rights and preserved the environment with certain acts, broadening its impact on public policy. For example, in *MC Mehta v. Union of India*¹⁷, the Supreme Court enforced environmental restrictions, demonstrating that judicial review is not only about constitutional interpretation, but also about upholding justice in a more general way.

(C) Judicial Review in Civil & Common Law Countries:

In common-law countries such as the United States and the United Kingdom, judicial review is often transformed by judicial interpretation and precedent, but in civil law systems such as continental Europe, it is frequently codified and limited to constitutional courts. Mixed-law systems, as seen in India and South Africa, include parts of both civil and common law traditions, providing unique frameworks for judicial review that reflect different socio-political environments.

Common law systems, which are mostly found in the United States, the United Kingdom, and Canada, act on the basis of judicial precedent, with courts playing an important role in interpreting and applying laws. In common-law countries, judicial review allows courts to

¹⁵ Scalia, A. (1997). *A Matter of Interpretation: Federal Courts and the Law*. Princeton University Press.

¹⁶ *State of Karnataka v. All India Manufacturers Organisation*, AIR 2006 SC 1846

¹⁷ *MC Mehta v Union of India*, AIR 1987 SC 1086.

evaluate the legality of legislative and executive actions, with the authority to declare it as unconstitutional. This is influenced from the concept of stare decisis, a principle that encourages continuity and consistency by sticking to court precedents. In the United States, judicial review was established in *Marbury v. Madison* (1803), where Chief Justice John Marshall said that "it is emphatically the province and duty of the judicial department to say what the law is"¹⁸. In the United States, judicial review on constitutional grounds is a power granted to ordinary courts at both the federal and state levels, with the final say reserved to the Federal Supreme Court in the form of an appeal. Whereas in the UK, the idea of parliamentary sovereignty, which holds that Parliament is the highest legal authority, has slowed the growth of judicial review¹⁹. The doctrine of Judicial review has been influenced from Article III and VI of the US Constitution. Under Article III it is provided that "the judicial power of the United States shall be vested in one Supreme Court and in such inferior courts as the Congress may from time to time ordain and establish."²⁰ In addition, under Article VI it is also stated that "the Constitution is the supreme law of the land and the judges of every state shall be bound thereby and no State or Federal law is allowed to violate the U.S. Constitution."²¹

In civil law countries, judicial review is more limited. Civil law systems, which are common in countries like France, Germany, and Japan, can be identified by a codified set of laws that emphasize legislative supremacy. Civil law countries are often hesitant to give courts significant powers to invalidate laws, as legislative bodies are seen as the primary law-making authority. Judicial review in civil law countries is sometimes based in a special constitutional court to determine the constitutionality of laws. This approach seeks to prevent judges from exercising excessive interpretive autonomy while also ensuring that law making stays under parliamentary power. Examples are Germany's Federal Constitutional Court and France Constitutional Council, which are dedicated to reviewing the constitutionality of laws.

Mixed law systems, like those in India, South Africa, and Israel, incorporate features of both civil and common law traditions. These systems have written constitutions that specifically give courts the authority of judicial review. In India, judicial review is not only enshrined in the Constitution, but it has grown into a comprehensive framework for preserving constitutional principles. The Indian court is authorized to evaluate both legislation and

¹⁸ *Marbury v. Madison*, 5 U.S. 137, 138 (1803).

¹⁹ James, Masunga, A Comparative Study of Judicial Review in Common Law and Civil Law Jurisdictions (May 26, 2023).

²⁰ Article III of the US constitution, 1787

²¹ Article IV of the US constitution, 1787

executive action under Articles 13, 32, and 226 of the Indian Constitution, making it one of the most active systems of judicial review worldwide.²² Article 13(2) of the Indian Constitution prohibits the state from enacting laws that contravene fundamental rights, thereby establishing a framework for judicial review. The Supreme Court of India, have taken an active role in upholding constitutional rights. The concept of PIL allows individuals or groups to bring issues of public importance to court, therefore increasing access to judicial review. The Indian judiciary is well-known for its judicial activism, with courts intervening to enforce social justice measures, safeguard environmental regulations, and uphold the rights of oppressed groups of people. Mixed-law systems, such as those in India and South Africa, demonstrate the multifaceted nature of judicial review. These systems strike a balance between principles of civil and common law traditions, allowing judges to uphold constitutional supremacy while addressing social challenges. Mixed law countries, provide a complete framework for judicial review for complex social and political issues.

While both the United States and India use judicial review, their approaches and scope differ because of constitutional frameworks and jurisprudential opinions. The United States has a more constrained approach to judicial review, which comes from its constitutional beliefs of limited government along with originalism and textualism. In the United States, judicial review primarily focuses on specific cases and issues, emphasizing the judiciary's function as an interpreter rather than a policymaker.²³ In the United States, judicial review is implied through judicial interpretation, but in India, it is specifically mandated in the Constitution, providing specific limits and functions for the judiciary. In contrast, India's judiciary has a broader role in constitutional interpretation. Indian court participates in judicial activism, addressing not just legal, but also social and economic concerns. The theory of the fundamental structure gives Indian courts the right to nullify constitutional amendments that contradict key fundamental principles of democracy. This broad range of judicial review, supported by PIL, has enabled the Indian court to respond to public interest issues, increasing its influence in areas typically governed by the government.²⁴ Another important distinction is the function of judicial review in amending the Constitution. In the United States, constitutional changes are not subject to judicial review if they follow Article V. In India, however, the judiciary has the authority to

²² Sathe, S.P., "Judicial Activism in India: Transgressing Borders and Enforcing Limits", (2nd edn, Oxford University Press, 2002)

²³ Sunstein, C.R., "One Case at a Time: Judicial Minimalism on the Supreme Court", (Harvard University Press, 1999)

²⁴ Galanter, M., "Law and Society in Modern India", (Oxford University Press, 1992)

evaluate changes to ensure that they do not infer with the basic structure of the Constitution, maintaining judicial control over constitutional changes.

(D) Limitations on Judicial Review in India & USA:

In both India and the United States, judicial review is limited by constitutional, procedural, and political regulations meant to balance judiciary's power with that of other parts of government.

Limitations in India:

India's judicial review system has its foundation in the Constitution, and the Supreme Court and High Courts are only competent to interpret constitutional provisions and determine the constitutionality of executive and legislative procedures. In India, judicial review serves to protect fundamental rights while maintaining the supremacy of the Constitution. However, its power is limited by different restrictions.

1. Parliamentary Sovereignty and the Basic Structure Doctrine:

The Indian Parliament has significant legislative powers, including the ability to amend the Constitution under Article 368. The basic structure doctrine was first adopted by the Supreme Court in *Kesavananda Bharati* case²⁵. As per the doctrine, Parliament cannot alter the basic features of the Constitution, such as democracy, the rule of law, or secularism. Despite this, its implementation is subjective, based on the judiciary's interpretation. This brings a constraint since the judiciary cannot overturn parliamentary amendments unless they violate the Constitution's basic structure.

2. Public Interest Litigation (PIL) and Judicial Restraint:

PIL has expanded the scope of judicial review by allowing people and groups to file a petition in the courts on behalf of those whose rights may be violated. However, this wide approach creates a self-imposed constraint on the court, which frequently exercises restraint to keep from judicial overreach. In *State of Rajasthan v. Union of India*²⁶, the Supreme Court stated that PIL should not be used to substitute legislative or executive decision-making power.

²⁵ *Kesavananda Bharati v State of Kerala*, AIR 1973 SC 1461

²⁶ *State of Rajasthan v Union of India* (1977) 3 SCC 592

3. Judicial Deference to Executive Decisions:

The idea of judicial deference frequently limits judicial review, particularly in areas of foreign policy, national security, and economic policy. Indian courts have traditionally shown less interest in these areas, respecting the executive's authority. For example, in *ADM Jabalpur v. Shivkant Shukla*²⁷, the Supreme Court controversially affirmed the suspension of fundamental rights during an emergency, demonstrating judicial deference.

4. Doctrine of Separation of Powers:

Despite the fact that the separation of powers is not expressly written in the Constitution, the Indian court upholds this principle by abstaining from interfering in matters that are solely legislative or executive in nature. The court reaffirmed in *Ram Jawaya Kapur v. State of Punjab*²⁸ that the Constitution implicitly requires the separation of powers, which prevents the judiciary from interfering with legislative and executive decisions.

5. Immunities and privileges for the President, Governor and the Judges of Supreme court and High Court:

The Indian Constitution grants specific privileges and immunities to the President, Governors, and Supreme Court and High Court judges. The courts have no power to investigate the actions of these people unless they have acted in their individual capacities. To maintain the independence of the executive branch, the president and the governor are immune from prosecution for official actions taken while performing their duties under article 72²⁹, article 161³⁰ and article 361³¹ of the Indian Constitution. Although the Indian Constitution does not specifically state the extent of this immunity, judges have had complete immunity when carrying out their duties since the beginning, preventing it from limiting their impact on society.

6. Judicial Review on Amendments:

By emphasizing the supremacy of legislative law, particularly with relation to constitutional amendments, the 42nd Amendment³² of 1976 limited judicial review. It aimed to limit judicial review of some legislation by prohibiting judicial interference in laws covered by the Ninth

²⁷ *ADM Jabalpur v Shivkant Shukla* AIR 1976 SC 1207

²⁸ *Ram Jawaya Kapur v State of Punjab* AIR 1955 SC 549

²⁹ Constitution of India 1949, art 72.

³⁰ Constitution of India 1949, art 161.

³¹ Constitution of India 1949, art 361.

³² Constitution (Forty-Second Amendment) Act 1976.

Schedule. But in *Minerva Mills v. Union of India*³³, the Supreme Court upheld judicial review as a component of the Basic Structure, restricting parliamentary power to change the basic rules of the Constitution. In addition, the 44th Amendment³⁴ of 1978 limited the judiciary's role in property-related matters by changing Article 31 to remove the right to property from the list of Fundamental Rights and instead place it under Article 300A as a legal right. Despite the Supreme Court's 2007 decision in *I.R. Coelho v. State of Tamil Nadu*³⁵, which held that laws in the Ninth Schedule could still be reviewed if they violate the Basic Structure, the Ninth Schedule and its subsequent amendments still pose a challenging issue because judicial review is still limited over certain legislation.

Limitations in USA:

While American courts have great power to exercise judicial review, it comes across severe limits that prevent judicial overreach.

1. Constitutional & Doctrinal Limits:

The concept of Judicial review is not directly mentioned in the United States Constitution, rather it is implied in *Marbury v. Madison*³⁶. The assumed character of judicial review in the Constitution limits its scope, especially since courts must interpret the language without interfering with legislative authority. Furthermore, the principles of textualism and originalism confine judicial review to interpretations of the Constitution based on its meaning and original intent³⁷. The doctrine of stare decisis also serves as a self-imposed restriction. This approach limits judicial review by fostering consistency and predictability, as seen in *Planned Parenthood v. Casey*³⁸, in which the Court upheld its prior *Roe v. Wade* decision against public pressures.

2. The Political Question Doctrine:

The political question theory limits judicial review by prohibiting courts from considering problems that are deemed improper for the courts to resolve due to their basic political nature. This approach was famously stated in *Baker v. Carr*, in which the Supreme Court outlined criteria for determining whether an issue presents a non-justiciable political issue, particularly

³³ *Minerva Mills Ltd v Union of India* AIR 1980 SC 1789.

³⁴ Constitution (Forty-Fourth Amendment) Act 1978.

³⁵ *I.R. Coelho (Dead) by LRs v State of Tamil Nadu* AIR 2007 SC 861.

³⁶ *Marbury v. Madison*, 5 U.S. (1 Cranch) 137 (1803)

³⁷ A Scalia, *A Matter of Interpretation: Federal Courts and the Law* (Princeton University Press 1997).

³⁸ *Planned Parenthood v. Casey*, 505 U.S. 833 (1992).

when the case encompasses constitutionally mandated areas for other governmental agencies³⁹. The idea promotes the separation of powers by stating that certain issues, such as foreign policy and impeachment, are solely the responsibility of the executive and legislative branches. This limitation is also obvious in decisions such as *Nixon v. United States* (1993), where the Court declined to consider Senate impeachment processes, citing the Constitution's grant of sole power over impeachment⁴⁰.

3. Standing and Justiciability Requirements:

The concept of standing limits judicial review by requiring only individuals with a strong, direct stake in an issue to bring it to court. To have standing, a plaintiff must show actual harm, causation, and the possibility of redress if the court rules in their favour. In *Lujan v. Defenders of Wildlife*, the Supreme Court denied standing to plaintiffs who could not demonstrate direct injury from government policies that harmed wildlife, confirming the standing requirement as a constraint on judicial review⁴¹. Similarly, the idea of mootness forbids courts from considering cases in which the matter has been resolved or is no longer relevant, as in *DeFunis v. Odegaard* (1974), where the plaintiff's graduation made the case moot⁴². The ripeness doctrine further limits judicial review by prohibiting courts from participating in cases where issues have not yet completely grown or become solid. In *Abbott Laboratories v. Gardner* (1967), the Court ruled that judicial review could not be used unless a matter had grown into a major controversy. These requirements ensure that courts do not provide advisory opinions and instead determine cases with genuine controversies.⁴³

4. Congressional Power to Limit Jurisdiction:

The Exceptions Clause of Article III gives Congress the right to limit the Supreme Court's appellate jurisdiction, imposing a structural limitation on judicial review. This power enables Congress to limit the Court's capacity to hear particular cases, as seen in *Ex parte McCardle*⁴⁴, in which Congress withdrew the Court's jurisdiction over habeas corpus proceedings under certain conditions. Congress can also create, amend, or eliminate lower federal courts and limit their jurisdiction, impacting judicial review in the federal system. For example, in cases

³⁹ *Baker v. Carr*, 369 U.S. 186 (1962).

⁴⁰ *Nixon v. United States*, 506 U.S. 224 (1993).

⁴¹ *Lujan v. Defenders of Wildlife*, 504 U.S. 555 (1992).

⁴² *DeFunis v. Odegaard*, 416 U.S. 312 (1974).

⁴³ *Abbott Laboratories v. Gardner*, 387 U.S. 136 (1967)

⁴⁴ *Ex parte McCardle*, 74 U.S. (7 Wall.) 506 (1869).

involving federal problems, Congress may limit jurisdiction over specific issues, limiting the Court's ability to evaluate specific issues.

5. Self-Restraint and Judicial Minimalism:

Another key limitation on judicial review is the concept of judicial self-restraint, in which judges choose not to make wide interpretations that may have an impact on social or political policies. Justice Felix Frankfurter's judicial minimalism ideology instructs courts to make narrow decisions, resolving only the current issues⁴⁵. This approach was obvious in *Washington v. Glucksberg*⁴⁶, when the Court refused to create a new substantive right to assisted suicide, holding that such social matters should be dealt by the legislature rather than the courts.

6. Federalism and State Sovereignty:

The ideas of federalism and state sovereignty also restrict judicial review. Certain subjects are strictly within the authority of states under the federalist system, limiting the capacity of federal courts to interfere. This is supported by the Eleventh Amendment, which prohibits federal courts from considering some cases against state governments without their permission. In *Alden v. Maine*⁴⁷, the Supreme Court upheld state immunity from private lawsuits in federal court, emphasizing the importance of state sovereignty in limiting judicial engagement.

Comparative Analysis:

Although judicial review serves to limit legislative and executive power in both India and the United States, its restrictions are specific to each country's constitutional frameworks and judicial ideologies. Indian courts frequently rely on the basic structure doctrine, but the American judiciary is constrained by the political question doctrine and the stare decisis rule. Furthermore, the US judiciary's emphasis on originalism and limited willingness to overturn precedent contrast sharply with the Indian judiciary's more liberal view of rights. Both systems reflect a contradiction between judicial review and democratic principles. Indian courts have encouraged judicial activism, particularly in public interest litigation, whereas US courts have generally been reserved.

⁴⁵ FH Frankfurter, *Of Law and Men* (Harcourt 1956).

⁴⁶ *Washington v. Glucksberg*, 521 U.S. 702 (1997).

⁴⁷ *Alden v. Maine*, 527 U.S. 706 (1999).

(E) Similarities & Differences in Judicial Review in India & USA

Similarities in Judicial Review between India & USA:

Aspect	Explanation
Judicial Supremacy	Both systems empower courts to review and held certain actions of legislative and executive that are contrary to the Constitution as unconstitutional
Constitutional Interpretation	Indian courts interpret the Constitution, particularly fundamental rights, through judicial review. US courts use judicial review to interpret the Constitution, particularly the Bill of Rights. Both courts interpret constitutional provisions to judge the legality of laws and actions by government.
Power to Declare Laws Unconstitutional	Indian courts can declare laws unconstitutional if they violate the Indian Constitution under Article 13, whereas the US Constitution does not grant the power to declare laws unconstitutional, but it's power is derived from Articles III and VI.
Influence of Precedent	Both legal systems value judicial precedents in guiding judicial review decisions by following the doctrine of stare decisis
Role in Protecting Fundamental Rights	Judicial review is critical for safeguarding fundamental rights, particularly under Articles 32 and 226 of the Indian Constitution. Judicial review is the tool to protect civil liberties in the United States, under the Bill of Rights.
Role of Courts in Democracy	In both India and the United States, judicial review is used to maintain democratic values and the rule of law. The Indian & The US Supreme court plays an active role in deciding the case in relation to judicial review.

Judicial Activism	Both judicial systems use judicial activism, but the extent of use is different. In the United States, major decisions such as <i>Brown v. Board of Education</i> (1954) ⁴⁸ elevated civil rights through judicial activism. Similarly, the Indian judiciary established the Basic Structure doctrine in decisions such as <i>Kesavananda Bharati v. State of Kerala</i> , which limited Parliament's amending power while maintaining constitutional values.
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Differences in Judicial Review in India & USA:

Aspect	India	USA
Source of Judicial Review	Judicial review in India is based on the Constitution and is a power vested in the courts, it is constitutionally guaranteed	Judicial review in the USA is not mentioned in the Constitution but was established through judicial interpretation.
Scope of Judicial Review	Indian courts can review both constitutional and non-constitutional matters, such as administrative actions and executive decisions, it is broader in nature.	US courts primarily focus on constitutional matters, though they may review laws and executive actions, it is narrow in nature
Judicial Activism and Restraint	Indian courts are more active in safeguarding citizens' rights and interpreting the Constitution liberally. However, judicial activism could negatively lay	Courts in the United States tend to use judicial review with more limitations, especially in issues relating to the separation of powers. There is a greater emphasis on sticking to the

⁴⁸ *Brown v. Board of Education of Topeka*, 347 U.S. 483 (1954)

	an impact on the democratic process.	original meaning of the Constitution.
Role of Political Questions	In India, the judiciary often engages with political questions, particularly in matters relating to the executive and legislature.	In the US, the judiciary avoids political questions and defers to the political branches on certain issues e.g., foreign policy.
Impact of Judicial Review on Legislation	Indian courts can strike down entire pieces of legislation if they violate the Constitution.	US courts can only invalidate specific provisions of laws, not entire statutes, unless the law is entirely unconstitutional.
Methodology of Review	Indian courts often apply a broad interpretative approach, considering the spirit of the Constitution in their review, the approach is more value based and flexible.	US courts follow a strict textualist or originalist approach in interpreting the Constitution, especially in landmark cases, the approach is more literal and based on historical interpretations.
Power of Judicial Review in Relation to Parliament/Congress	In India, judicial review is seen as a way to protect citizens from the excesses of the legislature	In the USA, judicial review is seen as a check on the executive and legislature but is more restrained due to political checks.
Role of the President	The President of India has limited powers regarding judicial review.	In the USA, the President's role is more involved in appointing judges, which influences judicial decisions.

Judicial Hierarchy and Accessibility	The Indian judicial review system gives power to the High Courts to examine state laws and actions under Article 226. This decentralized structure facilitates citizens' access to constitutional remedies.	The United States system does not involve state courts in federal constitutional review to the same level, because only the federal judiciary has the authority to declare federal laws unconstitutional.
Standing to Challenge	In India, standing to file a writ petition is relatively flexible. Public interest litigations (PILs) have allowed wider access to the courts.	In the U.S., standing is more restricted. A person must show they have suffered a direct injury or harm to challenge a law or executive action.
Judicial Review of Administrative Decisions	Indian courts review administrative decisions that are arbitrary, unreasonable, or violate natural justice principles.	U.S. courts also review administrative decisions, particularly under the Administrative Procedure Act (APA), to ensure they are not arbitrary or capricious.

(F) Conclusion:

A comparative study of judicial review in India and the United States reveals an interesting interplay of constitutional frameworks, jurisprudential principles, and practical application. Both countries share an identical foundation based on the idea of separation of powers and the judiciary's duty as constitutional guardians. In the United States, judicial review has been characterized by a lengthy history of constitutional supremacy and a strong emphasis on preserving individual liberty from government overreach. Over time, the United States Supreme Court has used its power to address key issues ranging from civil rights to federalism. India, on the other hand, has recognized judicial review as a critical tool for balancing parliamentary power and constitutional supremacy. India's judicial review system serves not only to monitor legislative and executive operations, but also to protect social justice and fundamental rights. The Indian judiciary's dynamic interpretation of constitutional provisions, particularly through the Basic Structure doctrine and judicial activism, illustrates its ability to adapt to the country's changing socio-political issues. Despite differences in application and emphasis, the judiciary in both countries emphasizes the vital role of judicial review in upholding the rule of law and constitutional values. Concerns about judicial overreach, delays, and inconsistent rulings underline the need for a fine line between judicial independence and accountability.

The similarity in judicial review between India and the United States show a common commitment to constitutional democracy and individual rights. However, difference in constitutional design and the use of judicial review demonstrate how each country has tailored this principle to its utmost capacity. In short, judicial review in both India and the United States shows the judiciary's vital role in balancing power across organs of the government and safeguarding citizens' rights. While they achieve similar goals, their distinct approaches highlight the impact of cultural, historical, and institutional factors on judicial practices. Both systems remain dynamic while maintaining their constitutional ethos. In a rapidly changing global world, the judiciary must be both conscious and restricted ensuring that judicial review serves as a cornerstone of constitutional democracy while respecting the other institutions of government. By learning from one another's experiences and adjusting to current difficulties, India and the United States may deepen their commitment to justice, equity, and constitutional governance. Thus, Judicial review is a great weapon and should be used and utilized whenever there is infringement of legal rights of the people and act like a guardian to them.