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JUDICIAL REVIEW IN INDIA AND THE UNITED STATES: A COMPARATIVE STUDY

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ABSTRACT

Judicial review is a mechanism through which courts examine whether legislative and executive action conforms to constitutional requirements. It protects constitutional supremacy, limits arbitrary public power and supports the enforcement of rights. Yet its constitutional foundations and institutional operation differ across legal systems. This article compares judicial review in India and the United States, focusing on constitutional foundations, judicial doctrine, protection of rights and democratic accountability. In India, Articles 13, 32 and 226 of the Constitution provide important textual foundations for constitutional review. The Supreme Court has also developed the basic structure doctrine, limiting Parliament's power to amend the Constitution in ways that damage or destroy its essential features. In the United States, judicial review developed principally through constitutional interpretation, most famously in Marbury v Madison (1803). The article argues that both systems treat constitutional supremacy as a limit on ordinary governmental power, but India's express remedial provisions and basic structure doctrine create a distinctive framework. It further argues that judicial review is most legitimate when courts give reasoned judgments, apply constitutional standards consistently and remain attentive to institutional competence. The comparison demonstrates that judicial review is neither simply an anti-democratic intervention nor an unlimited judicial mandate; it is a constitutional responsibility that must be exercised with independence and restraint.

KEYWORDS: Judicial review; constitutional supremacy; basic structure doctrine; fundamental rights; comparative constitutional law.

I. INTRODUCTION

A written constitution establishes the legal framework within which public power is exercised. It distributes authority among institutions, protects individual rights and places substantive and procedural limits on government. Those limits would be ineffective, however, if the very institutions subject to them were the final judges of their own compliance. Judicial review
addresses this problem by authorising courts to determine whether legislation and executive action are constitutionally valid.

Judicial review is closely connected with constitutional supremacy and the rule of law. Where a constitution is superior to ordinary law, a statute or executive measure inconsistent with it cannot claim validity merely because it has been adopted by a political majority. Courts therefore perform a checking function: they interpret constitutional provisions, identify the boundaries of public power and provide remedies where constitutional requirements have been breached. The Supreme Court of India describes the Constitution as the supreme legal authority and recognises the judiciary's power to invalidate unconstitutional legislation and government action.

The United States offers a foundational comparative example. In Marbury v Madison, the Supreme Court held that a court must apply the Constitution when an ordinary law conflicts with it. Although the US Constitution does not expressly set out a general judicial-review clause in the manner of some later constitutions, the doctrine developed through constitutional interpretation and became central to the American system of checks and balances.

India's constitutional framework contains express provisions relevant to judicial review. Article 13 addresses laws inconsistent with fundamental rights; Article 32 guarantees access to the Supreme Court for enforcement of fundamental rights; and Article 226 empowers High Courts to issue writs for enforcement of fundamental rights and 'for any other purpose'. In addition, the Supreme Court's decision in Kesavananda Bharati v State of Kerala established that Parliament's power to amend the Constitution does not extend to damaging or destroying its basic structure. Minerva Mills Ltd v Union of India subsequently reaffirmed the constitutional significance of judicial review and the limited nature of the amending power.

A comparison of India and the United States is useful because both systems seek to restrain arbitrary government power while preserving democratic institutions. Yet judicial review also creates a tension: courts are generally composed of unelected judges, and their decisions may invalidate choices made by elected representatives. The challenge is to explain when judicial

intervention is constitutionally necessary and how it can be exercised without turning judicial preference into an unrestricted source of law.

A. Research Question and Objectives

The central research question is: how do India and the United States differ in the constitutional foundations, scope and exercise of judicial review, and what do those differences reveal about the relationship between constitutional supremacy and democratic governance?

The article has four objectives: first, to identify the constitutional and judicial foundations of review in each country; secondly, to analyse leading decisions shaping its scope; thirdly, to compare the role of courts in protecting rights and limiting governmental power; and fourthly, to evaluate concerns about judicial overreach, restraint and democratic accountability.

B. Methodology and Scope

The article uses doctrinal and comparative legal methods. It examines constitutional provisions and leading judicial decisions, supplemented by authoritative institutional and academic materials. The comparison is selective rather than exhaustive: it concentrates on constitutional review, fundamental rights, legislative limits and the institutional legitimacy of judicial power. Differences in constitutional text, federal arrangements and legal history are treated as relevant context rather than as variables that can be isolated entirely.

II.CONSTITUTIONAL FOUNDATIONS OF JUDICIAL REVIEW

A. India: Textual Foundations and Constitutional Remedies

The Indian Constitution provides several mutually reinforcing foundations for judicial review. Article 13(2) prohibits the State from making laws that take away or abridge fundamental rights and provides that a law contravening the prohibition is void to the extent of the contravention. This provision establishes a substantive standard against which legislation may be tested. Article 32 gives the Supreme Court power to issue directions, orders or writs for enforcement of the rights in Part III. Article 226 grants High Courts a wider writ jurisdiction, extending not only to fundamental rights but also to other legal purposes.

These provisions perform different functions. Article 13 concerns the constitutional validity of laws; Article 32 supplies a direct constitutional remedy before the Supreme Court for fundamental-rights violations; and Article 226 gives High Courts broad supervisory and

remedial authority. Judicial review also operates in challenges to executive action and in disputes concerning the distribution of legislative competence. The result is a system in which constitutional control is exercised by both the Supreme Court and the High Courts, subject to their respective jurisdictions.

The Indian framework should not be understood as a licence for courts to substitute their preferred policy for legislative judgment. The legal question is whether the challenged measure violates a constitutional requirement, exceeds the authority of the institution that adopted it, or is otherwise legally invalid. The intensity of review depends on the issue, the relevant constitutional standard and the applicable doctrine.

B. United States: Constitutional Interpretation and Marbury v Madison

The US Constitution distributes power among the legislative, executive and judicial branches and declares the Constitution and federal laws made pursuant to it to be the supreme law of the land. The text does not contain a single clause expressly announcing a general power to invalidate legislation through judicial review. Instead, the doctrine was articulated in Marbury v Madison, decided in 1803.

The case arose after William Marbury sought delivery of a judicial commission that had not been delivered before the presidential administration changed. Chief Justice John Marshall concluded that the statutory provision relied upon to confer original jurisdiction on the Supreme Court conflicted with the Constitution. The Court therefore declined to exercise jurisdiction under that provision. The decision established a foundational principle: when an ordinary law conflicts with the Constitution, courts must give effect to the Constitution.

The importance of Marbury lies not merely in the result of the dispute but in its account of the judicial role. If the Constitution is law, courts deciding cases must determine which rule governs when legal norms conflict. Judicial review thus became part of the system of checks and balances. Over time, US courts have reviewed federal and state measures for compliance with the federal Constitution, although the exercise of review remains shaped by jurisdictional rules, standing, justiciability and precedent.

C. Similar Constitutional Purpose, Different Legal Architecture

Both countries use judicial review to preserve constitutional supremacy, but the architecture differs. India's Constitution expressly establishes fundamental rights and provides specific write remedies, while American judicial review is conventionally traced to judicial interpretation of the constitutional structure. India's basic structure doctrine also places a judicially enforceable limit on constitutional amendments. The United States has no directly equivalent doctrine in the same form; constitutional amendments are governed by the

procedures and substantive framework of Article V, while courts interpret the Constitution's existing provisions.

The difference should not be overstated. In both countries, judicial review depends on interpretation rather than mechanical application. Constitutional text often contains general concepts—such as equality, liberty, due process or the limits of public authority—that require courts to reason from text, structure, history, precedent and constitutional principle. The comparative question is therefore not whether one system interprets and the other does not, but how each system structures and constrains interpretation.

III. DEVELOPMENT THROUGH LANDMARK JUDGMENTS

A. India: Kesavananda Bharati and the Basic Structure Doctrine

In Kesavananda Bharati v State of Kerala, a thirteen-judge bench considered the scope of Parliament's power to amend the Constitution under Article 368. By a narrow majority, the Court held that Parliament may amend the Constitution but cannot use that power to damage or destroy its basic structure. The doctrine did not make constitutional provisions wholly unamendable; rather, it distinguished between permissible constitutional change and an amendment that would alter the Constitution's essential identity.

The basic structure doctrine has significant implications for judicial review. It allows courts to examine not only ordinary legislation but also constitutional amendments. The doctrine is controversial because the Constitution does not provide an exhaustive list of basic features, and its application requires judicial judgment. Nevertheless, its proponents regard it as a safeguard against the possibility that a temporary parliamentary majority could use the amendment process to dismantle constitutional democracy, judicial independence or the rule of law.

The doctrine's legitimacy depends on disciplined application. Courts must identify the constitutional principle said to form part of the basic structure, explain how the challenged amendment affects it, and distinguish serious structural damage from ordinary political disagreement. Without transparent reasoning, the doctrine could become difficult to predict; with reasoned and restrained application, it can operate as a limit on the abuse of constituent power.

B. India: Minerva Mills and the Entrenchment of Judicial Review

In Minerva Mills Ltd v Union of India, the Supreme Court considered provisions of the Forty-second Amendment that sought to expand Parliament's amending power and restrict judicial scrutiny. The Court invalidated the provisions that attempted to remove limitations

on the amending power. It treated limited amending power and judicial review as features integral to the constitutional structure.

The decision is important for two related reasons. First, it confirms that Parliament cannot convert a limited power to amend the Constitution into an unlimited power. Secondly, it links judicial review to the practical effectiveness of constitutional limits: if the institution exercising power could conclusively prevent any judicial examination of that power, constitutional restrictions might become unenforceable. Minerva Mills also emphasised the need to maintain harmony between Fundamental Rights and the Directive Principles rather than treating either part of the Constitution as wholly dominant.

The case therefore illustrates judicial review as a structural safeguard rather than merely an individual remedy. It protects the institutional arrangements through which the Constitution controls public power. At the same time, the doctrine does not mean that every constitutional disagreement is resolved in favour of courts; the reviewing court must still explain the constitutional basis for intervention.

C. United States: Marbury v Madison and the Judicial Function

Marbury v Madison is the classic starting point for American judicial review. Its reasoning rests on the relationship between a written constitution and ordinary legislation. If the Constitution is superior law, a conflicting statute cannot govern the case before the court. The judiciary's responsibility to decide cases consequently includes a responsibility to interpret and apply the Constitution.

The doctrine's historical development is more complex than the proposition that one case created judicial review from nothing. Debate continues over earlier practices and the extent to which Marbury consolidated existing ideas. Nonetheless, the decision became the authoritative foundation for the Supreme Court's power to invalidate congressional legislation inconsistent with the Constitution. Judicial review later became important in disputes involving federalism, civil rights, equal protection, due process and the scope of governmental authority.

The American model is also shaped by doctrines that limit the circumstances in which federal courts hear disputes. Standing requirements, ripeness, mootness, political-question doctrine and the need for a live case or controversy can prevent courts from issuing abstract constitutional opinions. These doctrines demonstrate that judicial review is powerful but not institutionally unlimited.

D. Comparative Significance of the Cases

The selected cases reveal a key difference in emphasis. Marbury provides a foundational explanation of why courts must apply the Constitution over conflicting ordinary law. Kesavananda Bharati and Minerva Mills address an additional question: whether the amending authority itself is constitutionally limited and whether courts can enforce that limit. India's doctrine therefore extends constitutional review to the preservation of essential constitutional features, while American review is generally framed through the interpretation and application of the written Constitution and its amendment process.

Both systems nonetheless rely on judicial reasoning to maintain constitutional limits. Their judgments acquire authority not simply because judges pronounce them, but because courts explain how constitutional text, structure and precedent support the outcome. The quality of that explanation is central to public confidence and to the legitimacy of judicial review.

IV. COMPARATIVE ANALYSIS

A. Constitutional Text and Judicial Authority

India's written provisions make the availability of constitutional remedies particularly visible. Articles 32 and 226 identify judicial institutions and provide routes for challenging unlawful action. The United States' judicial-review doctrine is instead closely associated with constitutional interpretation, especially the interaction between Article III, the Supremacy Clause and the written Constitution as a whole. This difference affects how each system explains judicial authority, although neither system can be understood through text alone.

B. Protection of Rights

In India, judicial review is closely connected with the enforcement of Fundamental Rights in Part III. Article 32 is itself a fundamental right, and Article 226 enables High Courts to address a broader range of legal wrongs. The constitutional framework therefore provides multiple avenues for rights-based challenges. In the United States, rights review is shaped by the Bill of Rights and subsequent constitutional amendments, including the Fourteenth Amendment's Due Process and Equal Protection Clauses. The substantive standards differ, but in both countries courts may invalidate government action that violates constitutionally protected rights.

Rights protection is not automatic. Access to courts, procedural rules, the availability of remedies and the willingness of institutions to comply with judgments all affect the practical value of constitutional guarantees. Judicial review is therefore one component of a broader constitutional system, not a substitute for legislative accountability, administrative fairness or

democratic participation.

C. Constitutional Amendments and the Limits of Power

India's basic structure doctrine represents one of the most distinctive features of its constitutional law. It allows judicial review of amendments where the alleged consequence is damage to or destruction of the Constitution's basic structure. The doctrine protects constitutional continuity while permitting amendment, but it also raises difficult questions about the judicial identification of essential features.

The US Constitution sets out a formal amendment procedure in Article V. The Supreme Court interprets the Constitution and determines the validity of government action under it, but the Indian basic structure doctrine does not have a direct counterpart as a general judicial power to invalidate amendments merely because they damage an unwritten list of essential features. The difference reflects distinct constitutional histories and understandings of constituent power.

D. Federalism and Institutional Structure

Federalism provides another context for judicial review. In India, courts may determine whether legislative action falls within the constitutional distribution of powers between the Union and the States. In the United States, federal courts review disputes concerning the constitutional allocation of authority between federal and state governments. In both systems, judicial review can protect the constitutional division of powers, though the relevant text, doctrines and institutional arrangements differ.

India's Supreme Court and High Courts operate within a single integrated judicial system, while the United States has both federal and state court systems, with the US Supreme Court serving as the final authority on federal constitutional questions. These structures affect access to adjudication, the development of precedent and the path through which constitutional disputes reach the highest court.

E. Judicial Activism, Restraint and Democratic Accountability

Judicial review inevitably raises the counter-majoritarian concern: judges may invalidate decisions made by elected representatives, even though judges are not directly elected. The concern is especially acute where constitutional language is open-ended or where a case involves contested social policy. Critics argue that expansive judicial intervention can transfer policy choices from accountable institutions to courts.

The opposing view is that democracy is more than majority rule. Constitutional democracy also requires rights protection, fair procedures, limits on public power and the preservation of institutions that enable future democratic participation. Judicial review can protect these

conditions when political processes fail to do so. The central issue is therefore not whether courts should always intervene or always defer, but what constitutional justification supports the particular level of scrutiny.

A principled approach requires courts to distinguish constitutional interpretation from policy preference. They should identify the governing legal rule, engage with precedent, address counterarguments and tailor remedies to the constitutional violation. Judicial restraint does not require courts to tolerate clear constitutional breaches; judicial independence does not justify ignoring institutional limits. The legitimacy of review is strengthened when courts demonstrate why intervention is legally necessary and why the remedy is proportionate to the violation.

F. Lessons from the Comparison

The comparison suggests that no single institutional design eliminates the tension between constitutional protection and democratic self-government. India's express remedial provisions offer clear constitutional routes for rights enforcement, while the basic structure doctrine seeks to preserve foundational commitments against destructive amendments. The United States illustrates how judicial review can be derived from constitutional structure and developed through precedent, while procedural doctrines limit courts to appropriate disputes.

Each system can learn from the other only with caution. Constitutional doctrines cannot be transplanted without considering text, history, federal arrangements and judicial structure. Comparative law is most useful when it clarifies the reasons behind institutional choices rather than assuming that a rule successful in one country will produce the same results in another.

V. CHALLENGES AND RECOMMENDATIONS

A. Ensuring Consistent and Transparent Reasoning

Courts should explain the constitutional standard applied, the evidence and legal materials relied upon, and the relationship between the violation and the remedy. This is especially important when applying broad principles such as proportionality, equality, due process or the basic structure doctrine. Transparent reasoning helps litigants understand outcomes, enables academic scrutiny and reduces the perception that judicial review depends on personal preference.

B. Preserving Access to Constitutional Remedies

A right is less effective if access to adjudication is prohibitively slow or expensive. Procedural efficiency, clear filing requirements, accessible judgments and appropriate interim

relief can strengthen constitutional protection. At the same time, courts must manage their dockets and respect procedural rules so that urgent constitutional cases receive attention without converting judicial review into a general forum for every policy disagreement.

C. Respecting Institutional Competence

Courts should assess whether the issue is judicially manageable and whether the Constitution assigns relevant choices to another branch. Deference may be appropriate where a lawful policy choice falls within the legislature's authority and no constitutional violation is established. Conversely, deference should not become abdication where a measure violates an express constitutional guarantee or exceeds institutional competence. The task is to calibrate review to the constitutional issue, not to adopt a universal presumption either for or against intervention.

D. Strengthening Constitutional Culture

Judicial review cannot alone sustain constitutional democracy. Legislatures should scrutinise proposed laws for constitutional compatibility; executive bodies should give reasons for decisions and comply with court orders; legal education should encourage constitutional literacy; and civil society should be able to debate judgments critically. A culture of constitutionalism makes judicial review more effective while reducing excessive reliance on courts to resolve every political dispute.

VI. CONCLUSION

Judicial review is a central mechanism for maintaining constitutional supremacy in India and the United States. Both systems empower courts to examine government action against constitutional requirements, protect rights and restrain the misuse of public authority. Their legal foundations, however, differ. India's Constitution expressly provides important grounds and remedies through Articles 13, 32 and 226, while American judicial review is conventionally traced to constitutional interpretation in Marbury v Madison. India's basic structure doctrine, developed in Kesavananda Bharati and reinforced in Minerva Mills, additionally limits Parliament's power to amend the Constitution in ways that damage or destroy its essential features.

The comparison demonstrates that judicial review is best understood as a constitutional responsibility bounded by legal reasoning and institutional legitimacy. Courts must be sufficiently independent to enforce constitutional limits, but their authority is strongest when judgments are reasoned, consistent and attentive to the proper role of elected institutions. Judicial restraint cannot justify the abandonment of constitutional duties, just as judicial

independence cannot justify unprincipled intervention. A balanced approach recognises that constitutional democracy requires both effective judicial protection and accountable political government.

Ultimately, the experience of India and the United States shows that judicial review is neither an unlimited judicial mandate nor inherently opposed to democracy. Its legitimacy depends on its ability to preserve the conditions of constitutional government while respecting the institutional boundaries through which democratic power is exercised.

FOOTNOTES

1. Constitution of India 1950, arts 13, 32 and 226.
2. Marbury v Madison 5 US (1 Cranch) 137 (1803).
3. His Holiness Kesavananda Bharati Sripadagalvaru v State of Kerala (1973) 4 SCC 225.
4. Minerva Mills Ltd v Union of India (1980) 3 SCC 625.
5. US Constitution art VI, cl 2.
6. US Constitution art III.
7. Constitution of India 1950, art 368.
8. Constitution of India 1950, pt III.
9. US Constitution amend XIV.
10. US Constitution art V.
11. Kesavananda Bharati (n 3).
12. Minerva Mills (n 4).
13. Marbury (n 2).
14. Constitution of India 1950, arts 32 and 226.
15. US Constitution art VI, cl 2.