
“THE SUPREMACY OF INDIAN CONSTITUTION”: ANALYSIS OF IT’S INFLUENCE ON NATIONAL LEGISLATION AND JUDICIAL DECISION-MAKING

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ABSTRACT

The Supremacy of the Constitution serves as the cornerstone of any constitutional democracy, ensuring that all laws and state actions remain subordinate to the fundamental law of the land. This Research Paper undertakes an analytical study of the influence of Constitutional supremacy on national legislation and Judicial decision making with a primary focus on Indian legal framework. Indian Constitution, embodying the principles of Justice, liberty, equality, and fraternity, serves as a safeguard against the arbitrary governance. The analysis begins with a historical overview of constitutional supremacy in India, tracing its evolution through famous landmark Judgements and Amendments that have shaped legal landscape.

Through the landmark cases such as *Keshvananda Bharti V. Union of India* (1973) and *Minerva Mills V. Union of India* (1980), the paper explores how the Judiciary reinforced constitutional supremacy by asserting its authority to review and nullify legislation that contravenes constitutional provisions. These cases reaffirmed the Doctrine of Basic structure, Judicial review, and constitutional morality as key tools for upholding constitutional supremacy. Furthermore, this investigates the dynamic relationship between legislatures and Judiciary by highlighting instances where judicial pronouncement has influenced the legislative forum. It also makes a contrast of India’s approach with those of the United States and United Kingdom, providing additional insight into the theoretical and practical dimensions of constitutional supremacy. Ultimately, this study emphasizes how constitutional supremacy remains a robust and essential principle and how its effective implementation faces challenges in the modern context.

Background and Significance of this study:

The Constitution of India, adopted on January 26, 1950¹, establishes itself as the supreme law of the land, laying the foundation for the country's political and legal frameworks. The principle of constitutional supremacy ensures that all the laws and governmental actions are in accordance with the Constitution, reflecting its values and principles. This research paper aims to explore the concept of the supremacy of constitution in India, its impact on national legislation and the judiciary. By analyzing the landmark cases and legislative challenges, the paper seeks to explain how the Indian legal system navigates the complexities of holistically maintaining constitutional supremacy and integrity.

Doctrine of Constitutional Supremacy:

The concept of constitutional supremacy is a cornerstone of modern democratic governance, establishing the constitution as the highest legal authority within a political system². A constitution is essentially a set of fundamental principles and legal norms that define the structure and functioning of a state³. It outlines the powers and responsibilities of different branches of government, guarantees the rights and freedoms of citizens, and serves as the ultimate reference point for the legality of governmental actions and legislation⁴. Constitutional supremacy ensures that the constitution remains as the highest source of law and that all other laws, policies, and governmental decisions are subject to its authority. This principle establishes the framework for a balanced and accountable system of governance where no individual or institution can act beyond the limits prescribed by the constitution⁵. The idea of constitutional supremacy stems from the broader concept of the rule of law, which asserts that the law should govern a nation rather than arbitrary decisions of individual leaders⁶. Constitutional supremacy takes this idea further by ensuring that the constitution itself is the supreme legal authority. Under this framework, any law or action that contradicts the constitution is considered null and void⁷. This principle strengthens the judiciary, especially the constitutional courts, to review and strike down legislation or executive actions that are found to be inconsistent with the constitutional framework. The supremacy of the constitution

¹ The Constitution of India, 1950

² (Ackerman, 1991)

³ (Dicey, 1885)

⁴ (Loughlin, 2010)

⁵ (Barber, 2001)

⁶ Raz, 1977).

⁷ Marbury v. Madison, 1803)

thus reinforces the principle of legality and ensures that the powers of the state are exercised within defined constitutional boundaries⁸. In many democratic countries, constitutional supremacy is reflected in the practice of judicial review. Judicial review allows courts to interpret the constitution and assess whether laws and governmental actions align with constitutional principles⁹. This practice was first established in the United States through the landmark case of *Marbury v. Madison* (1803), where the Supreme Court asserted its authority to invalidate laws that conflict with the constitution¹⁰. Since then, judicial review has become a defining feature of constitutional governance in many countries, including India, Canada, Germany, and South Africa¹¹. In India, the doctrine of constitutional supremacy is enshrined in Article 13 of the Constitution, which states that any law inconsistent with the fundamental rights guaranteed by the Constitution shall be void¹². This reinforces the idea that the constitution holds the highest authority and that any deviation from its principles and rules can be challenged in a court of law.

The supremacy of the constitution also ensures the separation of powers among the legislative, executive, and judicial branches of government¹³. By clearly defining the roles and responsibilities of each of the branches, the constitution prevents the concentration of power in any of the single entities. This system of checks and balances is essential for maintaining political stability and ensuring that power is exercised fairly and responsibly¹⁴. The legislative branch is tasked with making laws, the executive branch is responsible for implementing them, and the judiciary ensures that laws are interpreted and applied according to constitutional principles¹⁵. Constitutional supremacy ensures that each branch operates within its constitutional limits and that any encroachment on the powers of another branch can be legally challenged. Constitutional supremacy serves as a safeguard for the protection of fundamental rights and civil liberties¹⁶. By establishing the constitution as the highest legal authority, individuals are guaranteed protection against the arbitrary exercise of power by the state. The constitution defines the scope of government authority and sets limits on how that authority

⁸ Ibid, 5

⁹ (Stone Sweet, 2000)

¹⁰ Fisher, 2006

¹¹ Choudhry, 2008

¹² Jackson, V. C. (2013). *Constitutional engagement in a transnational era*. Oxford University Press.

¹³ Barendt, 1998

¹⁴ Vile, 1967

¹⁵ Loughlin, 2010

¹⁶ Ibid 5

can be exercised, ensuring that the rights and freedoms of citizens are not violated¹⁷. For instance, in India, the fundamental rights enshrined in Part III of the Constitution provide citizens with essential protections, including the right to equality, freedom of speech, and protection from discrimination¹⁸. Any attempt by the government to infringe upon these rights can be challenged in court, and the judiciary has the power to strike down such laws or actions if they are found to be unconstitutional. The principle of constitutional supremacy also reinforces the democratic nature of governance¹⁹. Since the constitution is often the product of a democratic process involving the collective will of the people, its supremacy ensures that the government remains accountable to the people²⁰. Democratic legitimacy stems from the idea that the constitution reflects the fundamental values and aspirations of society. Therefore, any deviation from constitutional principles is not only a legal issue but also a violation of the democratic mandate. This connection between constitutional supremacy and democracy ensures that governmental authority is exercised in accordance with the consent of the governed. In addition to defining the structure of government and protecting individual rights, constitutional supremacy also provides a mechanism for constitutional amendment and evolution²¹. While the constitution is considered the highest legal authority, most constitutional frameworks include provisions for amendment to allow the constitution to adapt to changing social, political, and economic circumstances. This ensures that the constitution remains relevant and responsive to the needs of society²². However, the process of constitutional amendment is often carefully regulated to prevent arbitrary or politically motivated changes. In India, for example, Article 368 of the Constitution outlines the procedure for constitutional amendments, requiring a special majority in Parliament and, in some cases, ratification by state legislatures. This process ensures that constitutional changes reflect broad political and social consensus. Despite the clear advantages of constitutional supremacy, challenges to its implementation and enforcement persist in many political systems²³. Political instability, authoritarian tendencies, and judicial weakness can undermine the supremacy of the constitution. In some cases, governments have attempted to bypass constitutional limits through emergency powers or executive orders²⁴. In other cases, political interference in the

¹⁷ Stone Sweet, 2000

¹⁸ Austin, 1999

¹⁹ Choudhry, 2008

²⁰ (Ackerman, 1991).

²¹ Barber, 2001

²² Loughlin, 2010

²³ (Stone Sweet, 2000)

²⁴ Barber, 2001

judiciary has weakened the ability of courts to uphold constitutional principles. However, the resilience of constitutional supremacy depends on the strength of democratic institutions, public awareness, and the commitment of political leaders and the judiciary to uphold constitutional values. Moreover, constitutional supremacy also plays a crucial role in international law and relations²⁵. In some cases, constitutional principles influence how states engage with international treaties and agreements. For example, some countries require that international treaties be consistent with their constitutional framework before they can be ratified or enforced domestically. This ensures that constitutional values and national sovereignty are preserved even in the context of global governance. In India, for instance, the Supreme Court has held that international treaties and conventions cannot override the fundamental rights guaranteed by the Constitution. This reinforces the idea that constitutional supremacy extends to the international sphere, ensuring that national legal principles are not compromised by external pressures. The importance of constitutional supremacy is further highlighted in times of political crisis or constitutional conflict²⁶. When political leaders or institutions attempt to exceed their constitutional authority, the judiciary and civil society often play a crucial role in defending constitutional principles. Peaceful protests, public interest litigation, and media scrutiny have all contributed to preserving constitutional supremacy in various democracies²⁷. The role of independent institutions, such as election commissions and human rights bodies, also helps ensure that constitutional norms are respected and upheld²⁸.

Historical Background of Constitutional Supremacy

The concept of constitutional supremacy has its roots in the development of constitutional governance and the rule of law. It reflects the idea that a constitution is the highest legal authority in a political system, providing a framework for the functioning of government and the protection of individual rights. The evolution of constitutional supremacy is closely tied to the historical development of political systems, the rise of democratic ideals, and the need to limit the powers of rulers and government institutions. Over centuries, the principle of constitutional supremacy has emerged as a defining feature of modern democratic governance, influencing legal systems and political structures across the world. The foundation of constitutional supremacy can be traced back to ancient legal and political traditions. In ancient

²⁵ Choudhry, 2008

²⁶ Loughlin, 2010

²⁷ (Stone Sweet, 2000)

²⁸ Ackerman, B. (1991). *We the People: Foundations*

Greece, philosophers such as Plato and Aristotle discussed the importance of laws in regulating political authority and ensuring justice. Aristotle argued that the rule of law was essential for maintaining political stability and preventing the concentration of power in the hands of a single ruler. He advocated for a constitutional framework where laws, rather than the will of individuals, would govern society (Aristotle, *Politics*). This early recognition of the importance of legal structures laid the groundwork for the development of constitutional governance in later centuries. In ancient Rome, the concept of constitutional order took a more formal shape through the Roman Republic. The Roman legal system was based on a complex set of laws known as the Twelve Tables, which established the rights and responsibilities of citizens and the limits of governmental authority. The Roman Republic operated under a mixed constitution that combined elements of democracy, aristocracy, and monarchy, creating a system of checks and balances. Although the Roman system eventually collapsed, its legal and constitutional principles influenced the development of constitutional thought in medieval and modern Europe (Crawford, 1996).

During the medieval period, the idea of constitutional governance resurfaced in the context of conflicts between monarchs and emerging political institutions. The signing of the Magna Carta in 1215 is widely regarded as a pivotal moment in the history of constitutional supremacy. The Magna Carta was a charter of rights agreed to by King John of England under pressure from rebellious barons. It established the principle that the king was subject to the law and that certain rights and liberties of subjects were protected from arbitrary royal authority (Holt, 1965). The Magna Carta laid the foundation for the development of constitutional law in England and introduced the idea that governmental power should be limited by a higher legal authority. The rise of constitutional supremacy gained momentum during the English Civil War (1642–1651) and the Glorious Revolution of 1688. The conflict between the monarchy and Parliament over the limits of royal authority resulted in the establishment of constitutional principles that restricted the powers of the king and enhanced the role of Parliament. The Bill of Rights of 1689 formally established the supremacy of Parliament and codified key constitutional principles, including the right to a fair trial, the prohibition of cruel and unusual punishment, and the requirement for parliamentary consent for taxation and military action²⁹. These developments marked the emergence of constitutional supremacy in the British political system, where parliamentary authority became the highest source of legal power. The American

²⁹ (Blackstone, 1765)

Revolution (1775–1783) and the drafting of the United States Constitution in 1787 further advanced the concept of constitutional supremacy. The American colonists rejected British rule and sought to establish a system of government based on the principles of popular sovereignty, the separation of powers, and the protection of individual rights. The

United States Constitution became the first written constitution to establish a clear framework for constitutional supremacy. Article VI of the Constitution explicitly states that the Constitution, along with federal laws and treaties, shall be the "supreme Law of the Land." This principle ensured that state laws and governmental actions would be subject to constitutional review, and any law found to be inconsistent with the Constitution would be declared invalid³⁰. The principle of constitutional supremacy was reinforced through the establishment of judicial review in the landmark case of *Marbury v. Madison* (1803). In this case, Chief Justice John Marshall of the United States Supreme Court asserted the authority of the judiciary to interpret the Constitution and invalidate laws that violated constitutional principles. This decision established the foundation for the modern practice of constitutional review and reinforced the idea that the Constitution holds the highest legal authority in the American legal system³¹. The concept of constitutional supremacy in the United States influenced the development of constitutional governance in other democratic nations. In France, the concept of constitutional supremacy emerged during the French Revolution (1789–1799) and the subsequent establishment of the French Republic. The Declaration of the Rights of Man and of the Citizen (1789) proclaimed the principles of equality, liberty, and the rule of law, forming the basis for a constitutional framework that limited the powers of the state and protected individual rights. The adoption of written constitutions in France and other European countries in the 19th century reflected the growing recognition of constitutional supremacy as a means of limiting governmental power and ensuring the protection of fundamental rights³². The development of constitutional supremacy in the 20th century was shaped by the rise of constitutional democracies and the establishment of international human rights norms. After World War II, many countries adopted new constitutions that incorporated principles of constitutional supremacy and the protection of human rights. The German Basic Law (1949) established a constitutional framework based on the rule of law, the separation of powers, and the protection of fundamental rights. The German Constitutional Court was granted the authority to review

³⁰ (U.S. Constitution, Article VI)

³¹ (*Marbury v. Madison*, 1803)

³² (Declaration of the Rights of Man, 1789).

laws and governmental actions for consistency with the Basic Law, reinforcing the principle of constitutional supremacy³³. In India, the principle of constitutional supremacy was enshrined in the Constitution of 1950. The Indian Constitution, drafted by the Constituent Assembly under the leadership of Dr. B.R. Ambedkar, established the framework for a parliamentary democracy based on the principles of equality, justice, and the protection of fundamental rights. Article 13 of the Indian Constitution explicitly states that any law inconsistent with the fundamental rights guaranteed by the Constitution shall be void³⁴. The Supreme Court of India was granted the authority to review laws and governmental actions for consistency with constitutional principles, reinforcing the idea that the Constitution is the highest source of legal authority in the country. The concept of constitutional supremacy has also influenced the development of constitutional governance in Africa, Latin America, and Asia. Many post-colonial nations adopted constitutions that established the framework for constitutional supremacy and the protection of human rights. The South African Constitution of 1996, for example, established a constitutional framework based on the principles of equality, non-discrimination, and the protection of individual rights. The South African Constitutional Court was granted the authority to review laws and governmental actions for consistency with constitutional principles, reinforcing the idea of constitutional supremacy in the post-apartheid era³⁵. Constitutional supremacy has also played a significant role in the development of international law and global governance. The United Nations Charter (1945) and the Universal Declaration of Human Rights (1948) established international legal norms based on the principles of constitutional governance, human rights, and the rule of law. Many national constitutions have incorporated these principles, reinforcing the idea that constitutional supremacy is consistent with international legal standards³⁶.

Role of the Judiciary

The judiciary's role in upholding constitutional supremacy is paramount. The Indian Supreme Court, through its power of judicial review, ensures that all laws and executive actions conform to the Constitution. This function is vital in maintaining the balance of power among the legislative, executive, and judicial branches of government.

³³ (German Basic Law, 1949).

³⁴ (Indian Constitution, Article 13)

³⁵ (South African Constitution, 1996)

³⁶ United Nations Charter, 1945; Universal Dicey, A.V. (1885). *Introduction to the Study of the Law of the Constitution*.

Doctrine of Basic Structure

The Basic Structure Doctrine is a cornerstone of judicial interpretation in India. Originating from the **Kesavananda Bharati** case, this doctrine posits that certain fundamental aspects of the Constitution, such as the rule of law, separation of powers, and judicial review, are inviolable.

This doctrine has been pivotal in numerous cases, safeguarding the Constitution from amendments that could alter its essential character.

Judicial Activism vs. Judicial Restraint

The Indian judiciary's approach to constitutional supremacy has often oscillated between activism and restraint. Judicial activism, characterized by a proactive stance in interpreting and applying constitutional principles, has led to significant social and political changes. Cases like

1. I.R. Coelho v. State of Tamil Nadu (2007).³⁷

2. Vishaka v. State of Rajasthan (1997)³⁸

Vishaka v. State of Rajasthan (1997), which laid down guidelines for preventing sexual harassment in the workplace, exemplify judicial activism's positive impact. Conversely, judicial restraint emphasizes the judiciary's limited role, urging deference to the legislative and executive branches unless there is a clear violation of constitutional principles.

The balance between activism and restraint is crucial in maintaining the judiciary's credibility and upholding constitutional supremacy.

Role of Judiciary in Ensuring Constitutional Supremacy

The judiciary plays a fundamental role in upholding the supremacy of the constitution by ensuring that all laws, policies, and governmental actions conform to the constitutional framework. Constitutional supremacy means that the constitution is the highest legal authority

³⁷ 411. I.R. Coelho v. State of Tamil Nadu (2007) 2 SCC 1.

³⁸ Vishaka v. State of Rajasthan (1997) 6 SCC 241

in a state, and all institutions, including the legislature and the executive, are bound by its provisions. The judiciary acts as the guardian and interpreter of the constitution, ensuring that the principles enshrined in the constitution are respected and protected. Through its power of judicial review, the judiciary prevents the misuse of power, protects fundamental rights, and maintains the balance of power among different branches of government. One of the most significant functions of the judiciary in maintaining constitutional supremacy is the power of judicial review. Judicial review allows the courts to examine the constitutionality of laws and governmental actions. If a law or action is found to be inconsistent with the constitution, the judiciary has the authority to declare it null and void. This principle was firmly established in the United States through the landmark case *Marbury v. Madison* (1803), where Chief Justice John Marshall affirmed the power of the Supreme Court to review and invalidate laws that conflict with the constitution. This decision set a precedent for other democratic nations, reinforcing the judiciary's role in safeguarding constitutional principles. In democratic systems, the judiciary serves as a check on the powers of the legislature and the executive. Constitutional supremacy requires that governmental authority be exercised within the limits defined by the constitution. The judiciary ensures that the legislature does not pass laws that violate constitutional principles, such as the protection of fundamental rights or the separation of powers. Similarly, the judiciary monitors the actions of the executive branch to prevent abuse of power and ensure that executive decisions comply with constitutional norms. By acting as a check on legislative and executive actions, the judiciary prevents the concentration of power and preserves the balance of power within the political system. The protection of fundamental rights is another crucial aspect of the judiciary's role in ensuring constitutional supremacy. Modern constitution's guarantee a range of fundamental rights, including the right to equality, freedom of speech, and protection against discrimination. The judiciary plays a central role in interpreting and enforcing these rights. In cases where individuals or groups claim that their constitutional rights have been violated, the judiciary has the authority to provide remedies and ensure that justice is served. Courts have often expanded the scope of fundamental rights through progressive interpretations, adapting constitutional principles to changing social and political realities. For example, the Indian Supreme Court has upheld the right to privacy and the right to dignity as essential components of the right to life and personal liberty under Article 21 of the Indian Constitution.

Judicial independence is essential for the effective functioning of the judiciary in upholding

constitutional supremacy. Independence ensures that judges are free from political pressure, influence, and interference from other branches of government. An independent judiciary can impartially interpret the constitution, protect individual rights, and hold the government accountable. Judicial appointments, tenure security, and protection from external influence are key factors that contribute to judicial independence. In countries with a strong tradition of judicial independence, courts have been able to challenge and overturn unconstitutional actions without fear of political retribution. The doctrine of the separation of powers reinforces the judiciary's role in maintaining constitutional supremacy. According to this principle, the legislative, executive, and judicial branches of government have distinct and independent functions. The judiciary's role is to interpret the law and resolve disputes, while the legislature enacts laws and the executive implements them. The judiciary ensures that each branch operates within its constitutional limits and does not encroach upon the functions of other branches. In cases of constitutional conflict, the judiciary acts as the final arbiter, ensuring that constitutional boundaries are respected and maintained.

In parliamentary systems, where the legislature often holds dominant authority, the judiciary plays a crucial role in protecting constitutional principles from legislative overreach. In the United Kingdom, where parliamentary sovereignty is a key feature of the political system, the judiciary ensures that parliamentary actions are consistent with human rights and constitutional conventions. The establishment of the UK Supreme Court in 2009 further strengthened the judiciary's ability to review legislative and executive actions and uphold constitutional principles. Similarly, in India, the judiciary has developed the doctrine of the basic structure, which holds that certain fundamental features of the constitution—such as democracy, secularism, and judicial independence—cannot be altered or destroyed through constitutional amendments. This doctrine reinforces the idea that constitutional supremacy is not subject to political manipulation. The judiciary also plays a key role in resolving constitutional disputes and interpreting constitutional provisions. Constitutional language is often broad and open to interpretation, requiring the judiciary to provide clarity and guidance. Through landmark decisions, courts have shaped the understanding of constitutional principles and established legal precedents that guide future governance. In the United States, cases such as *Brown v. Board of Education* (1954) redefined the understanding of equality and racial segregation, while in India, cases like *Kesavananda Bharati v. State of Kerala* (1973) reinforced the doctrine of the basic structure. These decisions demonstrate the judiciary's power to shape constitutional governance and ensure that constitutional principles are upheld in practice.

The judiciary's role in constitutional interpretation extends to the protection of minority rights and vulnerable groups. Democratic governance often involves majoritarian rule, which can lead to the marginalization of minority interests. The judiciary acts as a safeguard against the tyranny of the majority by ensuring that constitutional protections for minority rights are respected. Courts have played a significant role in advancing the rights of women, religious minorities, LGBTQ+ communities, and marginalized social groups. By interpreting constitutional provisions in favor of equality and justice, the judiciary reinforces the principles of constitutional supremacy and democratic governance. In addition to domestic constitutional issues, the judiciary also plays a role in integrating international legal principles with constitutional law. In an increasingly interconnected world, constitutional principles often intersect with international treaties, human rights norms, and global governance structures.

Courts have been called upon to interpret the compatibility of domestic laws with international legal standards and ensure that constitutional supremacy is maintained in the face of global legal obligations. For example, the European Court of Justice and the European Court of Human Rights have influenced the interpretation of constitutional law in European nations, creating a complex relationship between domestic constitutional authority and international legal norms.

Judicial activism has emerged as a significant factor in reinforcing constitutional supremacy in some legal systems. Judicial activism refers to the judiciary's proactive approach in addressing social, political, and economic issues through constitutional interpretation. Courts have expanded the scope of constitutional rights, mandated government action, and directed policy changes to ensure the protection of constitutional principles. While judicial activism has been praised for advancing social justice and accountability, it has also been criticized for overstepping the judiciary's constitutional role and interfering with legislative and executive functions. The balance between judicial activism and judicial restraint remains a key issue in constitutional governance. The role of the judiciary in ensuring constitutional supremacy is not without challenges. Political interference, corruption, lack of resources, and executive overreach can undermine the independence and effectiveness of the judiciary. In some countries, authoritarian governments have sought to weaken judicial independence and limit the judiciary's power of constitutional review. Ensuring judicial integrity, transparency, and public trust is essential for maintaining constitutional supremacy and the rule of law. Strong legal frameworks, independent judicial appointments, and accountability mechanisms are

necessary to protect the judiciary's role as the guardian of the constitution. The judiciary plays a pivotal role in upholding constitutional supremacy by ensuring that laws and governmental actions conform to constitutional principles. Through judicial review, protection of fundamental rights, and interpretation of constitutional provisions, the judiciary acts as a check on legislative and executive power. An independent and impartial judiciary is essential for maintaining the balance of power, protecting individual rights, and ensuring democratic governance. The judiciary's role in reinforcing constitutional supremacy reflects the broader commitment to the rule of law, justice, and accountability in modern political systems.³⁹

Judiciary as the Guardian of the Constitutional Supremacy

According to Dicey, "This system (American Constitution), which makes the judge the guardian of the Constitution, provides the only adequate safeguard which has hitherto been invented against unconstitutional legislation." Judiciary in India is considered as the Guardian of the constitution and accordingly, it also attains the role of protector of Constitutional Supremacy. The judiciary becomes the Constitution's protector when a Constitution is justified, that is, when it can be enforced in a court of law. When the constitution provides for the separation of powers not only between the three parts of government, but also between the union/national level and the state, the control of the judiciary becomes more paramount. (Justice Beg M.H., *Indira Nehru Gandhi v. Shri Raj Narain & Anr.*⁴⁰)

*"A closer examination of the institutional roles of constitutional courts in India suggests that we need to broaden our understanding of supremacy and constitutional guardianship to include a broader range of roles that courts play in enshrining constitutional norms, principles, and rights as core or basic features that the government cannot change."*⁴¹ *"The United States judicial supremacy paradigm is founded on the Court's interpretive supremacy as the exclusive and final interpreter of the Constitution. Other constitutional systems, such as India, Germany, and Turkey, have constitutional courts that have a much greater role in judicial review of constitutional modifications and the creation of constitutional norms and principles."*⁴²

While the United States Supreme Court lacks the authority to declare amendments unlawful, it has arguably limited the scope of constitutional amendments through its narrow

³⁹ 3 Barber, N. (2001). *Constitutional Supremacy and the Rule of Law*.

⁴⁰ *Indira Nehru Gandhi v. Shri Raj Narain & Anr.*, AIR 1975 SC 2299

⁴¹ Mate M., *Judicial Supremacy in Comparative Constitutional Law*, Tulane Law Review (Vol. 93:392)

⁴² 3 Barber, N. (2001). *Constitutional Supremacy and the Rule of Law*.

interpretations.⁴³

In a federal system, the judiciary acts as an Empire or arbiter and exercises the power known as judicial review. Judicial review is a mechanism in the hands of the court for upholding the Constitution's supremacy.⁴⁴ Whenever there is a written Constitution imposing legal limitations upon the organs of the government, there must be an interpreter of the Constitution and that function must be entrusted to the judiciary which alone is competent to interpret legal instruments.

In India, there are explicit Constitutional provisions, namely *Articles 141 and 144*, which empower the Supreme Court as the final interpretation of the Constitution, and such interpretation is binding on all organs of the government. It may be said that “the concept of limited government and judicial review constitutes the essence of Indian constitutional system and it involves three main elements: a written constitution setting up and limiting the various organs of government, the Constitution functioning as a superior law by any organ of government may be prevented or restrained and, if necessary, annulled”. This sanction, in the modern constitutional world, is known as “Judicial review”, which means that, all government agencies, including the legislature, can have their acts declared invalid by a court of competent jurisdiction, on the ground that it is repugnant to the Constitution.⁴⁵ The Israeli Supreme Court in *United Mizrahi Bank Ltd. v. Migdal Village*,¹⁶ aptly observed that “Judicial Review is the soul of the Constitution itself” and “Judicial review” is available in the vast number of modern democratic nations.

Since *William Marbury v. James Madison*,¹⁹ it has been considered the duty of every judge in the United States to treat any legislation void which violates the Constitution. In India also the judiciary follows the same functions as in the USA.

RESEARCH QUESTIONS:

- How does the Supremacy of the Indian Constitution influence National legislation and Judicial decision making.

⁴³ *Slaughterhouse Cases*, 83 U.S. (16 Wall.) 36 (1873), and *Boerne*, 521 U.S. 507 14 *Pai V.S.*, *Working of the Constitution Check and Balances*, Eastern Book Company Ed. 2014. Pg 12

⁴⁵ *Pai V.S. Constitutional Supremacy A Revisit*, Oak Bridge Publishing Ed. 2019 pg. 149 16 H CJ, 6821/93

RESEARCH HYPOTHESIS:

The concept of 'Constitutional Supremacy' entails the fact whichever acts or provisions take place should abide by the constitution, while the understanding between judiciary and the legislation and the supremacy of the constitution ultimately leads to the former of following up the later, it is thus deduced to the point that all the modifications and the mention are legally binding on the constitution itself and so it procures up to the process of the validity (Article-368(1)) of the constitution of India. The concept significantly influences the farming national legislation, and it consistently is upheld and reinforced by the judicial decisions.

RESEARCH METHODOLOGY:

Both the primary data and the secondary data provide the foundation of the research. The information had been gathered from a variety of books. Compilation, organization, and systematization of the information from the materials for this study coheres to the doctrinal research methodology.

Nature and Type of research:

This research would be Qualitative and Analytical in nature, which elements of Doctrinal research.

- Qualitative: It would involve in-depth examination and interpretation of legal texts, historical documents, and judicial pronouncements rather than numerical data.
- Analytical: The core of the research would be to break down the concept of constitutional supremacy, analyze its implications, and assess its practical impact on the legislative and judicial branches. This would involve critical evaluation and drawing reasoned conclusions.
- Doctrinal(legal) research: A significant portion would involve studying existing legal principles, statutes, case law, and scholarly article related to constitutional law. It aims to understand "what the law is" and 'how it operates" in public concerning constitutional supremacy.

Source of Data:

This research would primarily be a primary and secondary legal source, along with historical and theoretical texts.

- Primary source of data: the Indian constitution, case law, supreme court judgment, high court judgment, legislative acts and statute, constitutional assembly debates.
- Secondary source of data: Book of constitutional law, law journals, article, constitutional law literature.

EVOLUTION OF INDIAN CONSTITUTION.

The process of drafting India's Constitution had its inception with the decision taken by all Parties conference in 1928, which led to the formation of Nehru's Report. Since most of the parts of the Indian territory was under direct British rule from 1857 to 1947. Even after the declaration of Independence, it becomes the very goal for all to create a new constitution. Therefore, there was a need for the creation of a Union. This led to the thought the Princely states were to be convinced to come within the Union. The usage of Diplomacy by Sardar Vallabhbhai Patel and V.P Menon was quite successful in this work. The Constitution of India was thus, enacted on January 26, 1950, which ultimately repealed the Indian Independence Act of 1935. This marked India's transition from a British Dominion to a sovereign democratic republic.

Meaning and Nature of Constitutional Supremacy:

The Indian Constitution adopted the middle course between the "American system of Judicial Supremacy" and the "British Principle of Parliamentary Sovereignty" by empowering the Judiciary with the power of judicial review and the parliament with the sovereign power of amending the constitution with certain restrictions. Constitutional Supremacy requires all constitutional entities to follow the Constitution's provisions.⁴⁶ They must act within the constraints imposed by the Constitution, and their every action must be justified by the Constitution. Whereas, Parliamentary supremacy in India is governed by the Indian constitution, which require judicial review. The parliament has the authority to amend the

⁴⁶ I.R Coelho v. State of Tamil Nadu (2007) 2 SCC 1

constitution (Article 368) of the Indian constitution. However, in India parliament sovereignty is not there rather there is constitutional sovereignty. Judiciary, legislative and Executive are three pillars of India. Were the legislature being the law-making body tasked with drafting, amending, and repealing the laws for the governance of the country. The legislature also represents the will of the people, ensuring that public concerns are addressed in national policies. The legislature is the Parliament of India that is Lok Sabha and Rajya Sabha.

- The Lok Sabha is the House of the People, consists of representatives directly elected by the citizens of India through general elections held under Universal Adult Suffrage (Article 81).
- The Rajya Sabha, or the Council of States, comprises members elected by the Legislative Assemblies of the States and Union territories (Article 80).

This ensures that the Federal Structure of India is preserved by providing states a voice at the national level. Parliament's functioning is governed by (Article 79-123), which outlines its powers, privileges, and responsibilities, ensuring it operates within constitutional boundaries.

The Executive branch is responsible for implementing laws, formulating policies, and administering the daily affairs of the government. It plays a crucial role maintaining law and order, executing welfare schemes, and enforcing legislative directives. The Appointment of President of India, the constitutional head of the Executive, is elected by an electoral college comprising elected members of Parliament and State legislatures (Article 52-54). Judiciary upholds the Constitution as the Supreme law of land by interpreting laws, resolving disputes, and safeguarding fundamental rights.

It also acts as a check on the Legislature and Executive by declaring their actions unconstitutional if they violate constitutional provisions. The Indian Judiciary is hierarchical, with the Supreme court at the top, followed by High courts at the state level, and lower court subordinate courts like District court and Session court handling local matters. Judges of the Supreme Court and High Court are appointed by the President of India based on the recommendations of the Collegium System, as established in Second Judges Case (1993). This process ensures judicial independence while maintaining accountability. The Judiciary's independence is safeguard by (Article 124-147), which provide security of tenure and bar

judges from discussing their conduct in Parliament except under special procedures for impeachment.

Constituent Assembly and its Historical Evolution:

The Constituent Assembly, formed in 1946, is an institution specifically conceived to design or amend a constitution, with the authority to establish the norms that govern the political and social framework of a territory. It reflects the nation's diverse cultural, social and political fabrics. Led by prominent figures like Jawaharlal Nehru, Dr. B.R. Ambedkar, and Sardar Vallabhbhai Patel, the Assembly engaged in comprehensive debates on federalism, fundamental rights, and governance, shaping the documents core principles. This constituent Assembly was formed in November 1946 under the Cabinet Mission Plan (1946) as a partly elected and partly nominated body. It convened for the first time on December 9, 1946, to draft and formulate the Constitution of India seen as essential for implementing self-determination. After its final session on January 24, 1950, the Constituent Assembly served as the Provisional Parliament from January 26, 1950, until the first general elections in 1951-52 established the new parliament.

Historical evolution of the Constituent Assembly of India arose from the nation's aspiration to frame its Constitution as a step towards self-determination and the end of British Colonial rule. This need was driven by the inadequacy of British-imposed constitutional frameworks, like the Government of India Acts of 1919 and 1935, which limited self-governance while retaining British control over critical areas like defense, finance, and foreign affairs, leaving Indians with little real power. As a result, this disparity fueled dissatisfaction and strengthened the resolve for a sovereign independent governance system.

This timeline below highlights the evolution of this idea, culminating in the constituent assembly's role in framing India's Constitution and paving the way for complete independence.

- 1934- The idea of a Constituent Assembly for India was put forward for the first time by M.N. Roy, a pioneer for the communist movement in India.
- 1935- Indian National Congress first demanded a Constituent Assembly to frame the Constitution of India.
- 1938- J.L. Nehru declared that the Constitution of free India be framed, without outside

interference, by the Constituent Assembly elected based on Adult Franchise.

- 1940- First time in principle, the demand for the Constituent Assembly was accepted by the British in the August offer of 1940.
- 1942- Sir Stafford Cripps came to India with a draft proposal to frame an independent Constitution, which was rejected by the Muslim League.
- 1946- Cabinet mission was sent to India, which rejected the Idea of two Constituent assemblies. Hence, Elections were held as per the Cabinet Mission plan of 1946 to establish the Constituent Assembly.

The Constituent Assembly Debates

The Constituent Assembly debates were crucial in shaping the Constitution of India. These discussions primarily revolved around several key issues, ensuring a robust framework for the newly independent nation.

Main debate and discussions the Assembly engaged in extensive deliberations on the following critical aspects

- Federal vs. Unitary structure: A significant point of discussion was the balance of power between the central government and the states. The assembly ultimately opted for a quasi-federal structure, meaning it leans towards a federal system but grants the central government more power, especially during emergencies.
- Fundamental Rights and directive Principle of State Policy (DPSP): Debates focused on defining the scope of individual liberties (Fundamental Right) and their relationship with the guiding principles for state governance (DPSPs). While fundamental Rights are enforceable, DPSPs are not, but serve as crucial guidelines for policymaking. Key figures like Dr. B.R. Ambedkar, K.T. Shah, and Hansa Mehta were prominent voices in these discussions, including the controversy surrounding preventive detention versus the right to freedom. The DPSPs themselves were inspired by the Irish constitution, aiming to establish socio-economic democracy.
- Language Question: The choice of an Official language was a contentious issue, with

debates centering on Hindi, and various regional language. The compromise reached designated Hindi as the official language, with English continuing for 15 years. The Eight schedule of the Constitution officially lists regional languages.

- **Citizenship and minority rights:** The Assembly extensively discussed protections for religious and caste-based minorities. The decision was to forego separate electorates (which had been a feature under British rule) but to provide reservations in legislatures and government jobs for Scheduled Castes (SCs) and Scheduled Tribes (STs).
- **Preamble (objective Resolution):** Introduced by Jawaharlal Nehru on December 13, 1946, the Preamble set the fundamental goals of the Constitution- sovereignty, Democracy, Justice, liberty, and equality. It embodies the Philosophical vision of the constitution.
- **Parliamentary vs. Presidential system:** The Assembly debated between these two forms of government and ultimately chose the parliamentary system, largely modeled after the British system. This choice was based on factors like familiarity, accountability, and the principle of collective responsibility.
- **Purpose and impact of the Debates**
- **Deliberation on Constitutional values:** They provide a platform to thoroughly discuss and enshrine core values such as liberty, equality, and justice into the constitutional framework.
- **Establishing a Democratic Model:** The Debates ensured that a wide array of view from different regions, religions, and social classes were heard and considered, contributing to a truly inclusive document.
- **Providing legislative Intent:** The records of these debates are invaluable for future reference, serving as a guide for courts to understand the original intent behind constitutional provisions when interpreting the law. The enduring impact of these deliberations is evident in how they shaped India's democratic tradition, emphasizing debate and dissent, and in establishing the nation's moral and political foundation as a republic committed to justice and inclusion.

Constitutional Supremacy VS Parliamentary Sovereignty in India:

In India, the principle of constitutional supremacy is recognized as the bedrock of the constitutional system. Some believe it is the duty of the judiciary while others believe it to be the obligation of the parliament through political process.⁴⁷ The Constitution of India is the supreme law of the land, and all laws, including the government's action, must conform to its provisions. This means the courts can strike down any law or action violating the Constitution. In contrast, the concept of parliamentary supremacy is not explicitly recognized in the Indian Constitution. Parliamentary supremacy refers to the idea that parliament, as the representative body of the people, has the power to make any law and that no other body, including judiciary, can question the validity of the laws made by parliament.

However, in India, the parliament's power to make laws is not absolute and is subject to the limitations imposed by the constitution. The Constitution provides an independent judiciary with power of Judicial review, allowing it to strike down any law violating it. Thus, the principle of constitutional supremacy takes precedence over the principle of parliamentary sovereignty. In various cases, the Supreme court of India has upheld the principle of constitutional supremacy and the importance of Judicial review as a check on the powers of the government. For instance, the Kesavananda Bharti case, the Supreme Court held that the constitution had a basic structure that the parliament could not amend. Similarly, the Minerva Mills case, the Supreme Court held that Parliament could not curtail the Judiciary's power to review laws for their Constitutional validity.

Judicial Supremacy v. Constitutional Supremacy

During its inception, the Indian Constitution established a political structure based on parliamentary sovereignty, with many similarities to the British system. This included giving Parliament the right to modify the constitution. By having world largest written constitution providing judicial review power in the hands of independent judiciary with wide jurisdiction including original, appellate and especially writ jurisdiction, the constitution have presented a system with characteristic of "legitimate constitutionalist system" and the possibility of an "activist judiciary" that could broaden the role of the Indian constitutional courts in Indian politics. The issue of constitutional interpretation boils down to the question of original intent.

⁴⁷ Monsoor T., Supremacy of the Constitution. (1991) 2 DULJ 123

The Constitution operates as a limitation on all organs which includes the judiciary, otherwise the judiciary would become supreme outside the constitution. In *State of Rajasthan v. Union of India*⁴⁸ (Assembly Dissolution Case) P. Bhagwanti J. observed:

*“... the Constitution is suprema lex, the paramount law of the land, and there is no department or branch of government above or beyond it. Every organ of government, be it the executive or the legislature or the judiciary, derives its authority from the Constitution and it has to act within the limits of that authority...It is for the Court to uphold the constitutional values and enforce the constitutional limitations.”*⁴⁹ 24 Supra at 11

In *Minerva Mills Ltd. & Ors v. Union Of India*,⁵⁰ Supreme Court observed,

*“The Constitution is supreme lex, the paramount law of the land and there is no authority, no department or branch of the State, which is above or beyond the Constitution or has powers unfettered and unrestricted by the Constitution. The Constitution has devised a structure of power relationship with checks and balances and limits are placed on the powers of every authority or instrumentality under the Constitution. Every organ of the State, be it the executive or the legislature or the judiciary, derives its authority from the Constitution and it has to act within the limits of such authority. Parliament too, is a creature of the Constitution and it can only have such powers as are given to it under the Constitution.”*⁵¹ Judicial Review power of judiciary, therefore, does not mean “supremacy of the judiciary” but that of the Constitution.

IMPACT OF CONSTITUTIONAL SUPREMACY ON NATIONAL LEGISLATION.

Judicial Review of legislative Action:

Judicial Review is an essential Features of the Indian democracy. By upholding of law, protecting individual rights, and maintaining the balance of power. Judicial review serves as cornerstone of democracy. Judicial review refers to the power of Judiciary to examine the constitutionality of the legislative enactment and executive order of both the central and state government. If on examination, the judiciary finds that any of the laws, act, statutes that

⁴⁸ (1977) 3 SCC 592

⁴⁹ Ibid

⁵⁰ (1980) 3 SCC 625

⁵¹ Ibid.

violation of the constitution declares them unconstitutional and invalid (null and void).

Case Studies of unconstitutional Provisions:

Unconstitutional legislative provisions struck down by Supreme Court of India.

- In “Nikesh Tarachand Shah V. Union of India”, the Supreme Court struck down the 2012 Amendment to the prevention of money laundering act-2002.
- In “Maharashtra Forest Guards and Forest Union V. State of Maharashtra”, The Supreme Court struck down the Rule 7(1)(a) of the Forester (Recruitment) rule, 1987, inserted in 2013.
- In Independent Thought V. Union of India, The Supreme Court read down the exception of Section 375 of the Indian Penal code, holding the exception as unconstitutional to that extent. The exception, which creates an exception to the offence of rape in cases of forced sexual intercourse by a man with his own wife is she is of 15 years of age or above, has not been amended since 1978.
- In Bimolangshu Roy V. State of Assam, the Supreme Court struck down the Assam Parliamentary Secretaries (Appointment, Salaries, Allowances and Miscellaneous Provisions) act, 2004, holding that the Legislature of Assam was not competent to pass it.
- In Maharishi Markandeshwar Medical College and Hospital V. State of Himachal Pradesh, the Supreme Court struck down Section 3(6), 3(6a) and 3(6b) of Himachal Pradesh Private Medical Educational Institutions (Regulation of Admission and Fixation of Fee) Act 22006, inserted in 2015.

Role of Basic Structure Doctrine in legislative Framework:

The Basic Structure Doctrine plays a crucial role in the legislative framework by acting as a safeguard against the abuse of legislative power. It ensures that while having the power to amend the constitution, it can't alter or destroy the fundamental features, like democracy, secularism, and federalism. Basic Structure Doctrine limits parliament's ability to amend the constitution in ways that undermine basic structure. It prevents legislature arbitrarily changing the fundamental principles. Basic Structure Doctrine helps to maintain democratic framework

by preventing the legislature from acting arbitrarily and ensuring the fundamental principles remain in place.

Constitutional Amendment and their Judicial scrutiny:

- The First Amendment (1951)

The first Amendment introduced restrictions on freedom of speech to protect the rights of the state. It also added provision for the protection of scheduled castes and scheduled tribes.

- Seventh Amendment (1956)

Following the recommendation of the state's reorganization commission, this amendment reorganized Indian states on a linguistic basis.

- 42nd Amendment (1976):

42nd Amendment 1976 known as "Mini Constitution". It significantly altered the constitution by centralizing power, reducing judicial oversight, and incorporating new provisions to make key changes in preamble. "Socialist", "Secular", and "integrity" to the preamble.

- Fundamental Duties introduced article 51A, outlining ten fundamental Duties for citizens.
- Directive Principle of State policy (DPSP) added new articles (Article: 39A, 43A, 48A) to DPSP, expanding its scope.
- 44th Amendment (1978):

This amending aimed to restore democratic values and undo many of the changes enacted under the 42nd amendment 1976.

- 52nd Amendment (1985):

This Amendment introduced the anti-defection law to curb-political defections.

- 61st Amendment (1989):

This Amendment reduced the voting age from 21 to 18 years.

- 73rd and 74th Amendment (1992):

These amendments focused on Panchayati Raj (local self-government) and municipalities.

- 86th amendment (2018):

This Amendment made education a fundamental Right for children between 6 to 14 years of age.

- 102nd Amendment (2018):

This Amendment gave constitutional status to the national commission for backward classes.

- 103rd Amendment (2019):

This Amendment provided for 10% reservation for economically weaker section (EWS) in educationally institution and government Job.

- 104th Amendment (2020):

This Amendment extended the reservation of seats for Scheduled Caste and Scheduled Tribes in Lok Sabha and State legislative Assemblies until 2030 and ended the reservation for Anglo-Indian Community.

- 105th Amendment (2021):

This Amendment aimed to restore the power the state to make their own list of Other Backward Classes (OBCs).

- 106th Amendment (2023):

This Amendment reserves One-third of all seats for women in Lok Sabha, State legislative Assemblies, and the Legislative Assembly Delhi, including those reserved for SC's and ST's.

INFLUENCE ON JUDICIAL DECISION MAKING.

- **Interpretation of statutes considering Constitutional Morality:**

The word ‘Statute’ means is a written law passed by a legislative body. It is a formal act enacted by a govt authority. Now interpretation refers to the procedure by which one determines the meaning of law by examining the intention of the legislature to formulate the law. The principles enshrined in the Constitution guide the courts in understanding and applying the true essence of the constitution. They ensure that the constitution remains intact and relevant. They key principles include.

- **Literal Interpretation:** Focusing on the plain meaning of text.
- **Harmonious Construction:** When two or more clauses of the same statute contradict each other, the court follows the harmonious construction while interpreting these clauses to make both the clauses effective. The basic principle of harmonious construction is that legislature cannot try to contradict itself as the legislature clarifies its intention through the wording in the written provisions.
- **Doctrine of Pith and Substances:** Determine of the actual nature of legislation to ensure its constitutional validity.
- **Doctrine of Colorable Legislation:** Preventing the legislature from directly what they are directly prohibited to do under the constitution.
- **Doctrine of severability:** Allowing parts of a law which are unconstitutional to be served, keeping the other intact.
- **Landmark Judgements Upholding Constitutional Supremacy:**
 - **Kesavananda Bharti V state of Kerala.**

Case fact:

Kesavananda Bharti, the head of the Edneer Mutt, a religious sect in Kerala, owned certain land belonging to the Mutt. The State of Kerala enacted the Land reforms

(Amendment) Act 1969, which allowed the government to acquire portions of such land, leading to dispute over ownership. Claiming violation of his fundamental rights under Article 25 (Freedom of Religious Affairs), Article 26 (Management of religious affairs) Article 14

(Equality before law), Article 31 (Freedom to acquire and hold property). Kesvananda Bharti approached the Supreme Court under Article 32 of the Indian Constitution. While the case was pending, Kerala passed the land reform (Amendment) Act 1971, and the central government enacted constitutional changes most notably.

The 24th Constitutional amendment act 1971, which explicitly gave Parliament the power to amend to amend any part of the constitution. The 25th Constitutional amendment Act, which limited the requirement for the government to compensate fairly for private property taken for public use.

Issues Raised:

- Whether 24th and 25th Constitutional Amendment were constitutionally valid.
- Whether Parliament had unlimited power to amend the constitution.

Judgment:

The Supreme Court of India ruled that Parliament has the authority to amend the constitution, including fundamental Rights, but it can't alter the "Basic Structure" of the Indian constitution. The Majority opinion upheld the 24th Amendment, while certain parts of the 25th Amendment were struck down as unconstitutional.

- Doctrine of Basic Structure:

This case introduced the "Basic Structure Doctrine", which states that while parliament has wide powers under Article 368 to amend the Constitution, it cannot amend or destroy its basic structure. Though the court did not define "basic structure" explicitly, it was left to future interpretations. Doctrine ensures that the Constitution's core principles-such as democracy, secularism, separation of powers, and rule of law-remain inviolable.

- **Indira Gandhi V Raj Narain:**

In Indira Gandhi V Raj Narain Stemmed from accusations against the former prime Minister, Indira Gandhi regarding misconduct during the election process. The whole situation began with allegations against Indira Gandhi, who was the Prime Minister of India, for engaging in

fair practices during the electoral process. The complaint was the starting point for the legal case.

In the 1971 Lok Sabha Elections, Indira Gandhi ran as a candidate in the Rae Bareilly constituency of Uttar Pradesh. She was representing the congress party, while her opponent, Raj Narain, was running from Ram Manohar Lohia's SSP ticket. Indira Gandhi won the election with 352 out of 518 seats, securing her re-election as Prime Minister. However, Raj Narain was dissatisfied with the outcome and decided to challenge her victory. Raj Narain filed a petition in the Allahabad High Court, claiming that Indira Gandhi had violated election rules outlined in the Representation of People's Act, 1951. He accused her of misusing government resources to gain an unfair advantage during the campaign. The Allahabad High Court found her guilty of these allegations under Section 123(7) of the Representation of People's Act, 1971 and declared her election void. Consequently, the High Court ruled that Mrs. Gandhi could not hold the position of Prime Minister and was disqualified from contesting elections for six years. The court granted the Congress party twenty days to appoint a new Prime Minister to replace Indira Gandhi.

Mrs. Indira Gandhi was not satisfied with the High Court's decision and chose to appeal it in a supreme court. During the appeal process, the supreme court, which was in recess at the time, issued a stay order, temporarily preventing the implementation of the High court's decision until further hearings took place. This order, issued by Justice Krishna Iyer, allowed Mrs. Indira Gandhi to attend parliamentary sessions but prohibited her from participating in debates and voting in the Lok Sabha. While the Supreme Court proceedings were ongoing, President Fakhruddin Ali Ahmed declared a National Emergency on the grounds of internal disturbance. During this time, the 39th Constitutional Amendment introduced Article 329A, which stated that the election of the Prime Minister and Speaker could not be legally challenged in any Indian court. This Amendment effectively stripped the Supreme court of its authority over the Indira Gandhi case, and its validity was later challenged.

Issues Raised: The issues raised in Indira Gandhi V Raj Narain were-

- Whether Article 329A clauses (4) of the constitution of India is valid?
- Whether representation of People (Amendment) Act, 1974 and election laws (Amendment) Act, 1975 are constitutionally valid?

- Whether Indira Gandhi's election is valid or void?

Judgements of Indira Gandhi V Raj Narain

Whether Article 329A clause (4) of the Constitution of India valid?

In the landmark *Kesvananda Bharti V state of Kerala* case, the supreme court of India ruled that Article 329A, clause (4) of the Constitution of India was not valid. The court held that this provision violated the fundamental structure of the constitution and, therefore, declared the Thirty-ninth (amendment) act, which introduced article 329A, clause (4), as illegal. This Key principle established by this ruling is that the amending power of parliament, under Article 368 of the constitution, is not unlimited. Parliament cannot amend the constitution in a way that alters or undermines its basic structure. In *Indira Gandhi V Raj Narain*, the Court emphasized that holding free and fair elections is an integral part of the Constitution's Basic Structure, and the inclusion of Article 329A, clause (4) was contrary to this fundamental principle, making it violative of the constitution. The Judges identified several elements as part of the basic Structure of the Indian constitution, including.

- Supremacy of the Constitution.
- Republication and democratic form of Government.
- Secular Character of the Constitution.
- Federal Character of the Constitution.
- Separation of Powers.
- Unity and Sovereignty of India.
- Freedom of Individual Judicial Review.

The Court also highlighted that Article 329A violated the principle of "Audi alterem partem", which principle of natural justice that ensures that no one should be condemned without a fair hearing. The right to fair hearing is essential when challenging an election result. The amendment created an unjustifiable distinction between "person holding office" and "other person elected to parliament", which undermined the principle of equality. Furthermore, the

court emphasized in *Indira Gandhi V Raj Narain* that the rule of law is the foundation of democracy, and judicial review is a fundamental part of the constitution that cannot be removed. Any classification that cannot be based on intelligible differences and must not lead to top arbitrary actions by the government. In summary, the *Keshvananda Bharti V state of Kerala* established that certain principles, including the basic structure of the constitution and the right to a fair hearing, cannot be altered or removed by constitutional amendments, as they are essential to the democratic and legal framework of India.

- Whether The Representation of People's (Amendment) Act, 1974 and election laws (Amendment) Act, 1975 are constitutionally valid?

In the context of the Thirty-ninth Amendment Act, Raj Narain challenged the constitutionality of the representation of People's (Amendment) Act, 1974, and the Election Laws (Amendment) Act, 1975. The Core arguments and the court's decision are summarized as follows:

Absence of Parliamentarians: Raj Narain argues that many parliamentarians were detained under the Preventive Detention Act when the Thirty-Ninth Amendment Act was passed. This resulted in their absence during parliamentary proceedings, and they were unable to provide their opinions or vote on these amendments. He contended that this absence rendered the amendments constitutionally invalid.

Court's Decision: The court in *Indira Gandhi V raj Narain* declined to intervene in this matter, stating that it was an issue between the two houses of parliament. The court held that the constitutional validity of a law depends on the existence of legislative power, and except for the limitation outlined in Article 13 of the constitution, no other prohibitions existed in the legislature. The court affirmed that parliament had the authority, under Article 368 of the Constitution, to frame laws pertaining to elections.

Validity of Amendments: The court ultimately held that the arguments challenging the validity of the Representation of People (Amendment) Act, 1974, and the election Laws (Amendment) Act, 1975, lacked substance. In other words, it upheld the constitutionality of these amendments.

- Whether the Indira Gandhi election is Valid or Void?
- The Court in *Indira Gandhi V Raj Narain* determined that Indira Gandhi's election was

valid, and she could continue to serve as the Prime Minister. The Court did not find substantial evidence of election malpractice on her part. Additionally, the court clarified that the personal election expenses of a candidate should not be counted as part of the party's election expenses, refuting Raj Narain's claim that Indira Gandhi had exceeded the election expenditure limit in violation of election rules.

- Regarding the allegation involving Yashpal Kapur, a government officer the court found that Yashpal had submitted his resignation letter on January 13, 1971, to the President of India. The letter was acknowledged on January 25, 1971, and it took effect from January 14, 1971. Indira Gandhi had appointed Yashpal as her election agent starting from February 1. Since Yashpal had ceased to be a government officer from January 13, 1971, his assistance to Mrs. Gandhi did not constitute corrupt practice. Furthermore, the court in *Indira Gandhi V raj Narain* did not find clear evidence that Yashpal had delivered speeches in support of Mrs. Gandhi between January 7 and January 25, 1971. As result, the Allahabad High Court's ruling, which had barred Indira Gandhi from contesting elections for six years and required her to resign as prime Minister, was overturned by the Supreme Court.

- **Supreme court Upholds Constitutional Morality:**

Supreme Court under Article 13, 32, 131-136, and 226, has power to strike down executive actions or status that conflict with the constitution- including constitutional amendments that impair the basic structure.

In *Kesvananda Bharti* (1973), the court established that parliament cannot alter the Constitution's fundamental features.

In *I.R. Coelho* (2007), it reaffirmed that even Ninth Schedule protection cannot override constitutional supremacy. Through cases like *Nandini Sundar*, *State of Bihar V. Sonawati*, and *SG Jaisinghani*, the court enforces that government agencies and officials cannot violate fundamental rights or act arbitrarily.

Judgments of the Supreme Court bind all other courts under Article 141, and the Court enforces its own orders via Article 142.

- **High Courts Uphold Constitutional Supremacy.**

High Courts under Article 226, can issue writs (habeas corpus, mandamus, certiorari, prohibition, quo warranto) to protect Fundamental rights and correct administrative excess.

High courts exercise superintendence over all lower courts and tribunals to correct jurisdictional overreach or procedural unfairness. They can invalidate state statutes, executive orders, or regulations that violate the constitution, ensuring state-level actions respect constitutional limits. As Courts of record, they hold the power to punish for contempt, protecting the authority and dignity of the judiciary. The Supreme Court ensures that no law-even amendments-can violate the Constitution's basic structure. It robustly protects civil liberties and enforces constitutional norms.

High Court act as vigilant guardians by empowering individuals to enforce fundamental rights, supervising lower courts for legal correctness, and reviewing state authority for constitutional compliance. Together, these courts serve as a bulwark against arbitrary power, ensuring that constitutional supremacy and the rule of law remain at the core of India's legal system.

Development of Constitutional Morality in Jurisprudence.

Constitutional Morality, as envisioned by Dr. B.R. Ambedkar, is about fostering effective coordination between conflicting interests and facilitating administrative cooperation to resolve disputes amicably.⁵² It represents a profound respect for the constitution, guiding governance by providing principled understanding and setting norms for institutions to function and be accountable.⁵³

The concept isn't new; it's embedded in the constitution itself, particularly in the Preamble, Fundamental Rights (Articles 12-35), Directive Principles of State Policy (Articles 36-51), and Fundamental Duties.⁵⁴ The Supreme Court's judgments highlight that constitutional morality goes beyond literal adherence to the Constitution's text. It embraces core values like individual

⁵² B. Shiva Rao (ed), *The Framing of India's Constitution: Select Documents* (Indian Institute of Public Administration, 1967) vol 1.

(for Ambedkar's idea of constitutional morality in the Constituent Assembly debates)

⁵³ Granville Austin, *The Indian Constitution: Cornerstone of a Nation* (Oxford University Press 1966).

(for the idea of constitutional morality ensuring accountable institutions)

⁵⁴ H.M. Seervai, *Constitutional Law of India* (4th edn, Universal Law Publishing 1991)

autonomy, liberty, equality, dignity, and privacy.⁵⁵

For example, in the *Sabarimala Verdict*, the court upheld religious freedom and gender equality, striking down discriminatory ban on women's entry, thus prioritizing constitutional morality over social morality. Similarly, in the *Navtej Singh Johar* case, it reaffirmed the rights and dignity of the LGBTQ+ community, demonstrating its commitment to plurality and diversity.

Constitutional morality is crucial for establishing the rule of law, integrating societal aspirations, and preserving public trust in democratic institutions. It allows for collective action towards social morality through legislation, as seen with the abolition of Sati.⁵⁶ Upholding constitutional morality requires freedom and self-restraint, emphasizing the use of constitutional methods to achieve social and economic objectives. It also necessitates a commitment to the Constitution's ideals, public awareness of rights, and the performance of fundamental duties alongside the exercise of fundamental rights.⁵⁷

COMPARATIVE PERSPECTIVE

Supremacy of the Constitution in the United States.

The Supremacy Clause refers to the foundational principle that, in general, federal laws take precedence over any conflicting state law. Established under Article VI, paragraph 2 of the U.S. Constitution, the Supremacy Clause enables the federal government to enforce treaties, create a central bank, and enact legislation without interference from the state.⁵⁸ It does not, however, allow the federal government to review or veto state law before they take effect. The Supremacy Clause underpins the broader Doctrine of Preemption, whereby if laws are in conflict, the law of higher authority can preempt the lower authority if the superiority of the former is stated expressly or implied.⁵⁹

Traditionally, when it is not indicated, federal law does not preempt state law in areas

⁵⁵ Gautam Bhatia, *The Transformative Constitution: A Radical Biography in Nine Acts* (HarperCollins India 2019).

⁵⁶ Granville Austin, *Working a Democratic Constitution: The Indian Experience* (Oxford University Press 1999).

⁵⁷ M.P. Jain, *Indian Constitutional Law* (8th edn, LexisNexis 2018).

⁵⁸ Edward S Corwin, *The Constitution and What It Means Today* (14th edn, Princeton University Press 1978).

⁵⁹ Laurence H Tribe, *American Constitutional Law* (3rd edn, Foundation Press 2000).
(for Doctrine of Preemption and hierarchy of laws)

traditionally regulated by states, unless Congress's intent to preempt is clear.⁶⁰ In areas where the federal government has historically significant regulatory involvement, preemption is more likely to be applied.

Concept of Judicial Review

The foundation of constitutional government, judicial review is a crucial tool for preserving democratic and rule of law principles and ensuring the supremacy of the Constitution. It grants the authority to examine the actions of the executive and legislative branches of government to make sure they comply with the Constitution. Judicial review dates to the foundational case of *Marbury v Madison* (1803) in the United States. Prior to this case, the concept was based on philosophical and legal traditions, including classical thought and the British legal system.⁶¹ The U.S. has long been regarded as a global leader in constitutional government thanks to its robust judicial review system. In the landmark *Marbury v Madison* (1803) ruling, the Supreme Court established its authority to invalidate laws that contravene the Constitution. Through constitutional interpretation, the U.S. courts defend the separation of powers, safeguard individual rights, and guarantee the supremacy of the Constitution.⁶²

Parliamentary Supremacy in the United Kingdom: Comparative Analysis with Indian Constitution

Parliamentary sovereignty means the UK Parliament has ultimate legal authority and can make or abolish any law, without judicial review or constitutional limitations.⁶³ In India, while Parliament holds significant power, it is constrained by a codified Constitution and operates within a federal framework, where the Supreme Court can review laws for constitutional validity.⁶⁴

Lesson that India learns from other Constitutional democracy.

India, as the world's largest constitutional democracy, has much to be proud of in terms of

⁶⁰ Erwin Chemerinsky, *Constitutional Law: Principles and Policies* (6th edn, Wolters Kluwer 2019).
(for federal preemption and limits in U.S. law)

⁶¹ Alexander M Bickel, *The Least Dangerous Branch: The Supreme Court at the Bar of Politics* (2nd edn, Yale University Press 1986).

⁶² Louis Fisher, *Constitutional Dialogues: Interpretation as Political Process* (Princeton University Press 1988).

⁶³ A.V. Dicey, *Introduction to the Study of the Law of the Constitution* (10th edn, Macmillan 1959).

⁶⁴ M.P. Jain, *Indian Constitutional Law* (8th edn, LexisNexis 2018).

institutional resilience and legal evolution. However, by drawing lessons from other constitutional democracies, India can further enrich its democratic process and governance framework.

A key lesson comes from the United States, which maintains a strict separation of powers among the three organs of government. Unlike India, where there is some overlap and scope for executive dominance, the U.S. system ensures robust checks and balances.⁶⁵ India can strengthen the independence of its judiciary and prevent executive overreach by reinforcing institutional autonomy, especially in appointments and policy-making.

Another valuable insight is offered by Germany and Canada, both of which practice strong federalism. In these countries, states or provinces enjoy significant autonomy over legislation, taxation, and resource distribution.⁶⁶ In contrast, Indian states are often dependent on the Centre for financial support. India can benefit from deeper decentralization and fiscal federalism, allowing more responsive governance at the state and local level.

Electoral reform is another critical area. Nations like New Zealand use a mixed-member proportional system that combines direct constituency representation with proportional party lists.⁶⁷ This ensures more equitable representation and reflects diverse political opinions. India's current first-past-the-post (FPTP) system can lead to disproportionate majorities. Introducing proportional elements or alternative voting methods could better align vote share with seat share.

In terms of judicial access, countries such as South Africa and the UK have made strides in making their courts more accessible and citizen-friendly. South Africa's Constitutional Court has been a powerful advocate for socio-economic rights.⁶⁸ India can take cues here by simplifying legal procedures, expanding access to legal aid, and exploring a National Court of Appeal to reduce the burden on the Supreme Court.

⁶⁵ Laurence H Tribe, *American Constitutional Law* (3rd edn, Foundation Press 2000).

⁶⁶ Vernon Bogdanor, *Federalism and the Constitution: The Theory and Practice of Federal Systems* (Oxford University Press 2001).

⁶⁷ Andrew Geddis, *Electoral Law in New Zealand: Practice and Policy* (2nd edn, LexisNexis 2014).
(on New Zealand's mixed-member proportional system)

⁶⁸ Cora Hoexter and Morné Olivier, *The Judiciary in South Africa* (Juta 2014).
(on South African Constitutional Court and access to justice)

The anti-defection framework in Germany provides another significant lesson. It discourages unprincipled party-switching while preserving the rights of dissent within parties.⁶⁹ India's anti-defection law, in contrast, curtails intra-party debate and has led to political instability. Reforming the Tenth Schedule to balance loyalty with accountability could enhance democratic ethics.

The South African Constitution is notable for recognizing enforceable socio-economic rights such as healthcare, education, and housing. While India's Directive Principles of State Policy promote similar goals, they are non-justiciable.⁷⁰ By giving greater legal force to socio-economic rights, India can ensure more inclusive development and better governance accountability.

Countries like Sweden and Norway demonstrate exemplary commitment to press freedom and civil liberties. Their legal frameworks ensure that freedom of expression and access to information are protected even in sensitive political climates.⁷¹ India, which has seen growing concerns over press freedom and digital surveillance, must work to safeguard civil liberties and media independence, especially through clearer legislation.

Finally, constitutional culture and civic education in the United States and Germany serve as powerful examples. These nations emphasize teaching constitutional values, duties, and rights from an early age.⁷² In India, promoting constitutional literacy among citizens, especially the youth, can help cultivate a more informed, participatory, and vigilant democracy.

In conclusion, India's constitutional democracy remains vibrant and adaptable, yet by learning from best practices of other nations—particularly in areas like federalism—it can further strengthen its governance and democratic ethos.

⁶⁹ Donald P Kommers and Russell A Miller, *The Constitutional Jurisprudence of the Federal Republic of Germany* (3rd edn, Duke University Press 2012).

(on Germany's anti-defection and parliamentary frameworks)

⁷⁰ Heinz Klug, *The Constitution of South Africa: A Contextual Analysis* (Hart Publishing 2010).

(on socio-economic rights and constitutional enforcement in South Africa)

⁷¹ Monroe E Price, *Media and Sovereignty: The Global Information Revolution and Its Challenge to State Power* (MIT Press 2002).

(on Scandinavian press freedom and civil liberties)

⁷² Bruce Ackerman, *We the People: Foundations* (Harvard University Press 1991).

(on constitutional culture and civic education in US and comparative democracies)

CHALLENGES TO CONSTITUTIONAL SUPREMACY IN INDIA:

- **Political & Institutional Pressure:**

The relationship between politics and the judicial system is quite interesting as the former often interferes in the matters of the latter for different reasons. Theoretically, the Judiciary is expected to function independently, i.e. without any sort of interference. However, political and institutional interferences do impact its functioning in upholding the supremacy of the constitution in many ways. Due to biasness and favor towards the powerful ones, the supremacy of the constitution is not always enshrined as the benefits of certain people are thought, not law, which is not holistic in nature. The strategic control over the budgets, campaigns and the narratives of the people are also considered which act the principles and provisions of the constitution as the superior one.

- **Judicial Overreach V. Accountability.**

While the concept of judicial Review is quite important, examples of Judicial Overreach are there, where courts have deliberately interpreted excessively on executive or legislative functions, which can pose major challenges to the balance of power. The Judiciary is meant to interpret what the exact law is. It is not entitled to create policies for any government programs. When courts make guidelines in policy areas, they tend to overstep their constitutional role, therefore violating this principle of constitution itself.

- **Conflict between Fundamental Rights and Directive Principles of State Policy.**

In the Case of *Kameshwar Singh V. State of Bihar* (1952), the land reform laws (Directive Principles of State Policies) conflicted with the Right to Property, which was considered as a fundamental Rights under article 31.

This led to many of the Land reforms breaking down until the 42nd amendment dismantled Article 31.

Sometimes the reservation policies (abiding by article 46) for Scheduled Caste (SCs), scheduled Tribes (STs) or other Backward Castes (OBCs) clash with article 14 which ensures equality before the law.

FINDING AND ANALYSIS:

Synthesis of Case Law and legislative trends.

The Doctrine of Constitutional supremacy in India is a fundamental Principles established through landmark Supreme Court judgments that affirm the constitution as the ultimate legal authority, superior to the legislature and other state organs. Initially, in ‘Shankari Prasad V. Union India’ (1951), the Court upheld Parliament’s broad power to amend the constitution, including fundamental rights, reflecting a notion of parliamentary supremacy. However, this stance shifted with ‘Golak Nath V. State of Punjab’ (1967), where the subject to judicial review under article 13(2), thereby protecting fundamental rights from parliamentary encroachment. The seminal case of ‘Kesavananda Bharti V. Union of India’ (1973) crystallized the Doctrine of constitutional supremacy by introducing the “Basic structure” doctrine, which restricts Parliament from altering the Constitution’s essential framework, including democracy, secularism, and separation of powers. This principle was reaffirmed in ‘Minerva Mills Ltd V. Union of India’ (1980), which struck down parts of the 42nd amendment that sought to curtail Judicial review, emphasizing the Judiciary’s role as guardian of the Constitution. Subsequent rulings, such as ‘I.R. Coelho V. state of Tamil Nadu’ (2007), extended this doctrine to laws placed in the ninth schedule post-1973, ensuring continued judicial oversight. The legislative trend in India reflects a dynamic but constitutionally constrained Parliament that frequently amends the Constitution to address evolving governance needs yet remains subject to judicial scrutiny to preserve constitutional integrity. Judiciary’s proactive protection of fundamental Rights, as seen in cases like ‘Shah Bano’ and ‘Navtej Singh Johar’, sometimes prompts legislative responses, illustrating an ongoing dialogue between the legislature and judiciary within constitutional limits. Despite occasional tensions, especially during politically sensitive periods such as the Emergency, the basic structure doctrine serves as a vital safeguard against legislative overreach, maintain a balance of power and reinforcing constitutional supremacy as the cornerstone of India’s democratic legal order.

Role of Judiciary as the Guardian of the Constitution.

According to Dicey, “This System (American Constitution), which makes the Judge the Guardian of the Constitution, provides the only adequate safeguard which has hitherto been invented against Unconstitutional Legislation.” Judiciary in India is considered as the Guardian of the Constitution and accordingly, it also attains the role of protector of Constitutional

Supremacy. The Judiciary becomes the Constitution's protector when the Constitution is justified, that is, when it can be enforced in a court of law. When the constitution provides for the separation of powers not only between the three parts of government, but also between the union level and the state, the control of the judiciary becomes more paramount.

“A Closer examination of the institutional roles of constitutional courts in India suggests that we need to broaden our understanding of supremacy and constitutional guardianship in include a broader range of roles that courts play in enshrining constitutional norms, principles, and rights as core or basic feature that the government cannot charge.” “The United state judicial supremacy paradigm is founded on the Court's interpretive supremacy as the exclusive and final interpreter of the constitution, Other constitutional system, such as India, Germany, and Turkey, have constitutional courts that have a much greater role in judicial review of constitutional modification and the creation of constitutional norms and principles.”

While the United States Supreme Court lacks the authority to declare amendments unlawful, it Has arguably limited the scope of constitutional amendments through its narrow interpretations.

In a federal system, the judiciary acts as an Empire or arbiter and exercises the power known as Judicial review. Judicial review is a mechanism in the hands of the court for upholding the constitution's supremacy. Whenever there is a written Constitution imposing legal limitations upon the organs of the government, there must be an interpreter of the Constitution and that function must be entrusted to the judiciary which alone is competent to interpret legal instruments.

In India, there are explicit constitutional provisions, namely Article 141 and 144, which empowers the Supreme Court of India as the final interpretation is binding on all organs of the government. It may be said that “the concept of limited government and Judicial review constitutes the essence of Indian constitutional system, and it involves three main elements: a written constitution setting up and limiting the various organs of government, the constitution functioning as a superior law by any organ of government may be prevented or restrained and, if necessary, annulled.” This sanction in the modern constitutional world, is known as ‘Judicial Review’, which means that, all government agencies, including the legislature, can have their acts declared invalid by a court of competent Jurisdiction, on the ground that it is repugnant to the constitution. The Israeli Supreme Court in the *United Mizrahi Bank Ltd V. Migdal Village*,

aptly observed that “Judicial Review” is available in the vast number of modern democratic nations”.

“No Features of the Government of the United States has awakened as much curiosity in the European mind, caused so much discussion, received so much admiration and been more frequently misunderstood than the duties assigned to the supreme court and the functions which it discharges in guarding the of the Constitution.”

Since *Willam Marbury V. James Madison*, it has been considered the duty of every judge in the United State to treat any legislation void which violates the Constitution. In India also the Judiciary follows the same function as the USA.

Conclusion:

The principle of Constitutional Supremacy remains the bedrock of India’s constitutional democracy ensuring that all laws and state actions conform to the fundamental values enshrined in the constitution. Through a detailed examination of landmark Supreme court Judgements such as ‘*Kesvananda Bharti V. Union of India*’ and ‘*Minerva Mills V. Union of India*’, this research has demonstrated how the judiciary has played a pivotal role in safeguarding the constitution by asserting its power of Judicial review and reinforcing the Doctrine of Basic Structure. This judicial intervention has been crucial in maintaining the balance of power between the legislature and the judiciary, thereby preventing arbitrary or Unconstiutional governance.

Moreover, the dynamic interplay between the legislature and judiciary highlights the evolving nature of constitutional supremacy, where judicial pronouncements often guide legislative reforms to align with constitutional mandates. The comparative analysis with constitutional systems of the United State and the United Kingdom further enriches the understanding of constitutional supremacy’s theoretical foundations and practical challenges.

However, disputes its robust framework, the effective implementation of constitutional supremacy in India faces significant challenges. Political interference, occasional judicial overreach, and limited public awareness pose threats to the full realization of constitutional ideals. Addressing these challenges requires continuous vigilance, judicial prudence, legislative responsibility, and enhanced civic education to uphold the sanctity of the constitution as the

supreme law of the land.

In conclusion, constitutional supremacy of India remains a resilient and indispensable principle, vital for the protection of democracy, rule of law, and fundamental rights. Its preservation and strengthening are essential for ensuring justice, liberty, equality, and fraternity for all citizens.

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