VALIDATING ACTS AND CONSTITUTIONAL LIMITS: NAVIGATING PARLIAMENTARY SUPREMACY AND JUDICIAL INDEPENDENCE IN INDIA AND THE USA

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ABSTRACT

This paper discusses a similar issue of balance between the legislature and judiciary power in this country and its counterpart in the USA in the context of validation of laws (or legislative override). In both countries, the courts have the power to supersede or repeal laws or executive orders that violate the constitution or the legal rules. In response, legislatures have enacted laws in order to remedy legal problems or alter the law in a manner that enables the situation to be rendered moot by judicial decisions.

The paper looks at the constitutional limits of these legislative responses. It contrasts key cases in India, like the one involving Shri Prithvi Cotton Mills, Kesavananda Bharati and Indira Gandhi vs. Raj Narain, with US cases like Plaut v. Spendthrift Farm, United States v. Klein and Bank Markazi v. Peterson, thereby demonstrating the striking differences between how each nation attempts to reconcile democratic accountability and the preservation of judicial outcomes.

Introduction

One of the greatest problems of today's constitutional systems is in controlling the tug-of-war between the two branches of government, legislature and judiciary. The role of the judiciary in a constitutional democracy is to interpret the law and safeguard the constitution.[1] In contrast, the legislature receives power from the people, and can enact, amend, or repeal laws.

If a court finds a law or action by government to be unconstitutional or illegal, a large question arises: can the legislature pass a new law that restores or changes the court's ruling? A common way this is raised is the laws known as Validating Acts (or curative statutes). These are laws that were made to fix the court's problems and to legitimate the illegal actions or taxes in the past.[2]

Although it is normal for legislatures to pass laws that challenge previous decisions, such action is fraught with constitutional issues. For example:

- Is passing a validating act a proper way for the legislature to correct mistakes, or is it an illegal attempt to interfere with the court's role?

- What constitutional constraints are there on legislatures changing the basis of a court ruling?

This paper will examine these questions by analyzing the strategies adopted in India and USA. Both countries have a common law legal system, a constitution, and a robust system of judicial review. Their structures differ, however:

- India adopts a mixed constitutional supremacy theory, which relies on the Constitutional Balance between the power of Parliament and judicial scrutiny by the Basic Structure Doctrine.

- The United States is a government divided into three branches of power executive, legislative and judicial as established in the Constitution (Articles I, II and III), and

[1] Rishi Kumar, 'Beyond Landes Posner Model: Modelling Independent Judiciary Based On Social Choice Theory' [2025] Gnlu Journal Of Law And Economics 84.
[2] Clara Maier, 'Legal Counterrevolution: Property and Judicial Power in the Weimar Republic' (2024) 21 Modern Intellectual History 658, 673.

changes to the Constitution must be made through a formal process under Article V.

Theoretical Foundations: Separation of Powers and Judicial Finality

Professor Khayal's book Theoretical Foundations: Separation of Powers and Judicial Finality explores these constitutional dynamics.

The Philosophy of Judicial Review

Judicial review is based on the concept that the Constitution is the supreme law of the land and that it is the duty of the judiciary to interpret and enforce it (e.g., Marbury v. Madison, 1803; Indian Constitution, Articles 13, 32, 226). The exercise of these functions by a court when it strikes down a statute because it violates the Constitution or when it holds that an executive act is beyond the scope of the statute is a vital judicial role: to resolve a particular legal issue by interpreting the law as it applies to the facts of the case. [3]

If the legislature could directly overturn or cancel a court ruling between two private parties, it would diminish the role of the judiciary in a fair and final determination of a case. As Montesquieu said in The Spirit of the Laws (1748), there is no real freedom if the power to judge is not separated from the powers of making and enforcing laws.[4]

The Challenge of Public Financing and Legislative Overrides

Legislatures can modify laws in either prospective or retrospective ways. If the courts rule an executive action illegal due to statutory ambiguity or defect, the legislature could pass a new law to correct that ambiguity.

This process forms a constitutional conversation that happens in four steps:

- First, the legislature passes a Bill or passes a resolution for an administrative action.
- Second, the Judiciary revises the law/action and rules it unconstitutional or illegitimate.

[3] John Harrison, 'Rules of Decision, Judicial Power, and the Valid Rule Requirement' [2025] eYLS (Yale Law School).
[4] Sobandi Sobandi, 'THE JUDICIAL POWER LIMITATION OF COMMERCIAL COURTS COMPETENCY IN COMMERCIAL DISPUTES' (2021) 5 International Journal of Law Reconstruction 292, 300.

- Third, the legislature rewrites the law, possibly retroactively, to fix the identified problem.

- Finally, the judiciary examines the new Validating Act to make sure it meets constitutional requirements.

The primary difference in the law is between:

- **Direct Overruling:** The legislature overrules a court decision directly, but does not alter the underlying law on which the decision was made (unconstitutional).

- **Curing the Foundation:** Passing a new law to alter the legal foundation upon which a court decided, causing the old court decision to be rendered ineffective under the new legal framework (allowed).

Validation of Acts: Constitutional Limits in India

The Constitutional Architecture

India's Constitution does not have an absolute separation of powers. Rather, it sets up a system of checks and balances, under which Parliament has broad powers to make laws under Articles 245 and 246, including the power to enact laws with retrospective effect. But these legislations are restricted by fundamental rights given in Part III and the distribution of powers listed in Schedule VII.[5]

In the past, Indian courts have ruled that Parliament can enact validating acts, particularly in the field of taxation where administrative actions or rules for the collection of taxes are deemed unlawful due to legal concerns.[6]

The Test of Validation

The Test of Validation involves specific constitutional prerequisites established in the case of Shri Prithvi Cotton Mills Ltd. v. Broach Borough Municipality (1969). Chief Justice M. Hidayatullah authored the opinion, establishing three crucial requirements for a valid curative

[5] Amit Verma, 'Doctrine of Colourable Legislation' (2019) 21 Journal of the Gujarat Research Society 1885.
[6] JM Kennedy and C Rabbiraj, 'Role of Case Laws and Legality of Taxation in the Context of Tax on Services in India' (2023) 13 International Journal of Intellectual Property Management 350.

law:

- **Legislative Competence:** The legislature shall have power to make laws in relation to the subject as specified in Schedule VII of the Constitution.

- **Removal of the Defect:** The law must be corrected or the part of the law that caused the court's invalidation must be removed/rectified.

- **Non-Direct Interference:** The law should alter the underlying legal framework rather than merely stating that a ruling of a court is incorrect.

For instance, when a court invalidates a municipal tax collection on the grounds that the law does not define what is meant by 'assessment rate,' Parliament cannot simply enact a law stating that 'the court's decision is null and void.'[7] Rather, Parliament should amend the law to define 'assessment rate' retrospectively and clarify that the taxes collected under the new law are legitimate.

Judicial Limits on Legislative Overreach

When legislatures have passed acts that extend beyond their boundaries and encroach on judicial power, Indian courts have drawn strict limits:

- **Indira Nehru Gandhi v. Raj Narain (1975):** The 39th Constitutional Amendment was enacted after the Allahabad High Court declared the election of Prime Minister Indira Gandhi null and void. Under clause (4) of the amendment, the Prime Minister's elections could not be questioned in court and any order cancelling such elections was declared void.[8] The Supreme Court struck down Clause (4) as unconstitutional, holding that it was an illegitimate use of legislative authority invading the judicial domain, thus infringing on the separation of powers and the rule of law.

- **S.R. Bhagwat v. State of Karnataka (1995):** The State of Karnataka attempted to pass a law taking away monetary benefits awarded to civil servants by a final High Court decision. The Supreme Court invalidated the law, stating that rights adjudicated

[7] Max Velthoven, The General Anti-Abuse Rule of Article 6 of the EU Anti-Tax Avoidance Directive (IBFD 2025) 306.
[8] Granville Austin, 'The Forty-Second Amendment: Sacrificing Democracy to Power' in Oxford University Press eBooks (Oxford University Press 2003).

between parties by a court cannot be overturned by a subsequent law unless the underlying legal foundation is altered.[9]

- **Re Cauvery Water Disputes Tribunal (1993):** The State of Karnataka passed an Ordinance to override an interim decision from the Cauvery Water Disputes Tribunal. The Supreme Court ruled the Ordinance unconstitutional, affirming that the Legislature cannot function as a court or as an appellate tribunal over judicial decisions.

The Ultimate Check: The Basic Structure Doctrine

When Parliament has used constitutional amendments to sidestep judicial rulings, it has been met by the Basic Structure Doctrine, established in Kesavananda Bharati v. State of Kerala (1973).

Under this principle, when Parliament amends the Constitution using Article 368, the Supreme Court checks if the amendment alters an essential feature of the Constitution:

- If the amendment alters or compromises the basic structure (e.g., judicial review, separation of powers, federalism, judicial independence), it is declared unconstitutional. This was demonstrated in striking down provisions of the 39th Amendment and the 99th Amendment (establishing the National Judicial Appointments Commission - NJAC).[10]

- If the change does not affect the basic structure, then it is accepted as a valid constitutional amendment.

In Minerva Mills Ltd. v. Union of India (1980) and L. Chandra Kumar v. Union of India (1997), the Supreme Court emphasized that judicial review under Articles 32 and 226 is a basic feature of the Constitution. Parliament cannot pass an amendment that strips courts of the capacity to determine the constitutionality of laws.

[9] Edward S Stimson, 'Retroactive Application of Law: A Problem in Constitutional Law' (1939) 38 Michigan Law Review 30, 48.
[10] Charvi Mahajan, 'Doctrine of Basic Structure' (2025) 9 INTERANTIONAL JOURNAL OF SCIENTIFIC RESEARCH IN ENGINEERING AND MANAGEMENT 1.

United States Perspective: Separation of Powers and Article III Limits

Structural Wall (Article III)

The U.S. Constitution establishes a strict tripartite separation of powers. Article III, Section 1 vests 'The judicial Power of the United States' in one Supreme Court and lower federal courts established by Congress. The strict separation prevents Congress from encroaching directly upon judicial decisions.[11]

Statutory Overrides vs. Constitutional Invalidation

How Congress reacts to a Supreme Court decision depends on the nature of the ruling:

- **Statutory Interpretation Decisions:** When the Supreme Court interprets a federal statute, it determines what Congress intended. If Congress disagrees, it can pass a new statute to clarify or alter the law prospectively or retroactively (e.g., the Civil Rights Act of 1991 altered several 1989 rulings like Wards Cove Packing Co. v. Atonio).

- **Constitutional Decisions:** If the Supreme Court strikes down a law as unconstitutional, Congress cannot overturn the ruling by standard legislation. Congress must either propose a formal Constitutional Amendment under Article V (requiring 2/3 vote of both Houses and ratification by 3/4 of the States, as with the 16th Amendment overriding Pollock v. Farmers' Loan & Trust Co.) or await Judicial Reconsideration by the Court itself (e.g., Dobbs v. Jackson Women's Health Organization in 2022 overturning Roe v. Wade).[12]**5. Comparative Analysis: India and the United States**

Key Differences

- **Threshold for Constitutional Amendments:** Article 368 allows the Indian Parliament to amend the Constitution using regular amendment procedures (often a 2/3 majority), making constitutional amendments relatively common in response to judicial rulings. In contrast, the U.S. Article V process is intentionally difficult (2/3 of Congress and 3/4

[11] Ali Bhatti, 'The Legal Doctrine of Separation of Power in the Constitution' (2026) 4 International Journal of Law and Policy 35.
[12] Bethany Blackstone, 'An Analysis of Policy-Based Congressional Responses to the U.S. Supreme Court's Constitutional Decisions' (2013) 47 Law & Society Review 199.

of States), making constitutional overrides of judicial decisions extremely rare in U.S. history.

- **Scope of Judicial Review of Amendments:** In India, under the Basic Structure Doctrine, the Supreme Court can review the substantive validity of Constitutional Amendments to ensure they do not violate core constitutional principles. In the U.S., duly ratified Article V amendments become part of the supreme law of the land and are not subject to substantive judicial review by the Supreme Court.[13]

Constitutional Limits Framework

Whether a legislature may validly respond to a judicial ruling depends on two general branches:

Branch 1: Statutory Matters

- A bare legislative declaration setting aside a judicial decision without modifying the underlying law is unconstitutional and invalid (Prithvi Cotton in India; United States v. Klein / Plaut v. Spendthrift Farm in the U.S.).

- When the legislature alters the substantive legal basis or cures the underlying defect, the validating law is constitutionally permissible (Prithvi Cotton in India; Bank Markazi v. Peterson in the U.S.).[14]

Branch 2: Constitutional Matters

- Under Article 368, Parliament can amend the Constitution to alter the legal foundation of a ruling, provided the amendment respects the Basic Structure as determined by judicial review.

- Congress can overturn a constitutional ruling only via an Article V Amendment, which is not subject to substantive judicial invalidation once ratified.

[13] Tanveen Kaur and Dr Dev Prabhakar, 'Judicial Review of Legislative and Constitutional Amendment Acts: India vs USA' (2025) 6 International Journal of Research Publication and Reviews 10784.
[14] John Harrison, 'Rules of Decision, Judicial Power, and the Valid Rule Requirement' [2025] eYLS (Yale Law School).

Summary of Core Constitutional Constraints:

- **1. The Competence Constraint:** The legislature must possess the authority (under Schedule VII in India or Article I in the U.S.) to enact the subject law.
- **2. The Defect-Curing Constraint:** The validating act must alter the legal defect or circumstances that prompted the court's original decision, rather than simply mandating a different result on unchanged facts.
- **3. The Non-Adjudicatory Constraint:** The legislature cannot act as an appellate court, resolve specific pending disputes between private parties, or adjudicate guilt directly.
- **4. The Finality Constraint:** Once a court delivers a final judgment with no further rights of appeal, the legislature cannot reopen or annul vested rights created under that final judgment.[15]

Conclusion

Legislatures in both India and the United States are not permitted to simply defy courts by legislative decree. Judicial review remains a fundamental boundary on legislative power.

Both legal systems permit legislative leeway when addressing statutory rulings by amending the underlying statutes to address identified defects. However, when constitutional rulings are involved, the approaches diverge: the U.S. relies on a rigid Article V process, whereas India utilizes a flexible Article 368 mechanism constrained by the Supreme Court's Basic Structure Doctrine.

Ultimately, validating acts reflect an ongoing constitutional dialogue between elected representatives and the judiciary, ensuring that legal defects can be corrected without undermining judicial independence or finality.

[15] Paul C Weiler, 'Rights and Judges in a Democracy: A New Canadian Version' (2025) 18 University of Michigan Journal of Law Reform 51, 85.