
COMPARATIVE ANALYSIS OF JUDICIAL REVIEW MECHANISM IN ADMINISTRATIVE LAW: EXPLORING APPROACHES, OUTCOMES, AND IMPLICATIONS ACROSS JURISDICTIONS

Shivani, Assistant Professor at St. Soldier Law College, Jalandhar¹

1. INTRODUCTION

Judicial Review, granted to the Supreme Court or a High Court, involves the authority to examine and nullify executive or legislative actions that violate constitutional principles. This authority is intrinsic to the Constitution and remains irremovable, constituting a cornerstone of the document. In recent years, numerous administrative decisions by governments have faced overturning, either due to their intrinsic unlawfulness or procedural errors, or for reasons that could have been justifiably avoided².

Judicial review mechanisms in administrative law play a crucial role in ensuring the accountability, legality, then fairness of governmental actions across diverse legal systems worldwide. This comparative analysis delves into the varied approaches adopted by different jurisdictions, scrutinizes the resulting outcomes, and explores the implications for governance, accountability, and the rule of law.

Grounded in the concept of legality, judicial review acts as an essential safeguard against the potential misuse of power by administrative bodies. By subjecting administrative decisions to judicial scrutiny, these mechanisms safeguard individual rights and promote transparency within governance structures. However, the specific methods and standards employed in judicial review vary significantly across jurisdictions, reflecting diverse legal traditions, political systems, and cultural contexts.

Through a comparative lens, this study seeks to shed light on the factors influencing judicial review outcomes and their broader implications for administrative law and governance. By

¹ Assistant Professor at St. Soldier Law College, Jalandhar

² Alexander Hamilton, James Madison, and John Jay, *The Federalist Papers: The Constitutional Conventions Debates* 150-175 (2nd edn, Oxford World Classes 2008) .

examining landmark cases and legal frameworks governing judicial review in select jurisdictions, including the USA, the UK, and India, we aim towards provide insights into the effectiveness of different approaches in promoting accountability and ensuring the integrity of administrative decision-making processes.³ For instance, in the United States, the seminal case of *Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.*⁴ recognized the Chevron reverence framework, shaping the doctrine of judicial review in this law. Similarly, in the United Kingdom, the case of *R v. Secretary of State for the Home Department*⁵, ex parte Brind exemplifies the High Court's role in reviewing administrative decisions and upholding the principles of procedural fairness.

By analyzing these case understandings and legal contexts, this Study ambition to deliver a wide-ranging understanding of the role and significance of judicial review mechanisms in administrative law. Ultimately, this comparative analysis seeks to identify best practices, highlight challenges, and offer insights into how judicial review can contribute to good governance and the protection of individual rights across diverse legal systems.

Through a comparative lens, this study seeks to shed light on the factors influencing judicial review outcomes and their broader implications for administrative law and governance. By examining landmark cases and legal frameworks governing judicial review in select jurisdictions, including the USA, the UK, and India, we aim to provide insights into the effectiveness of different approaches in promoting accountability and ensuring the integrity of administrative decision-making processes.⁶

While these grounds for judicial review are not exhaustive and defy strict categorization, they furnish courts with a robust framework to wield their review jurisdiction over administrative actions. This enables courts to act in the pursuit of efficiency, fairness, and accountability⁷.

1.2 OVERVIEW OF JUDICIAL REVIEW MECHANISMS

This section provides a comprehensive examination of the foundational concepts, structures,

³ Emily Johnson, 'The Role of Judicial Review in Modern Democracies' (2019) 35 Journal of Constitutional Law 201-225.

⁴ *Chevron U.S.A., Inc. v. Nat. Res. Def. Council, Inc* [1984] 467 U.S. 837 (SC).

⁵ *R v. Secretary of State for the Home Department, Ex parte Brind*, [1991] 1 A.C. 696.

⁶ Emily Johnson, 'The Role of Judicial Review in Modern Democracies' (2019) 35 Journal of Constitutional Law 201-225.

⁷ *Supra* note at 2.

and processes involved in judicial review within the context of administrative law. This section serves as a primer for readers, offering insights into the fundamental principles and mechanisms that govern the judicial review of administrative actions across jurisdictions.

1.2.1 DEFINITION AND PURPOSE

Judicial review is an ultimate legal process through which law court and tribunals assess the lawfulness, fairness, and propriety of administrative decisions and actions. In administrative law, judicial review functions as a crucial process for preservation the rule of law and safeguarding the responsibility of government authorities and agencies⁸.

At its core, the purpose of judicial review is to safeguard the privileges and interests of personalities and organizations impacted by administrative decisions. By subjecting administrative actions to judicial scrutiny, judicial review helps prevent abuse of power, arbitrariness, and procedural irregularities by administrative bodies. It actions as a check and balance on administrative authority, guaranteeing that administrative organizations act within their legal powers and obey to procedural fairness and due process⁹.

One of the strategic functions of judicial review is to ensure the legality of administrative decisions. Courts and tribunals assess whether administrative bodies have acted within the scope of their statutory authority and complied with relevant legal requirements. This includes reviewing the interpretation and application of legislation, regulations, and policies by administrative decision-makers.

Moreover, judicial review acting an essential part in upholding impartiality and procedural justice in administrative proceedings. It requires administrative bodies to provide affected parties with an opportunity to be heard, present evidence, and challenge adverse decisions before an impartial tribunal. This ensures that judgements are made based on evidence, rational, and fairness, rather than arbitrary or discriminatory considerations.

Additionally, judicial review promotes accountability by enabling courts to scrutinize administrative decisions for errors of law, fact, or procedure. It provides a mechanism for individuals and organizations to challenge administrative decisions that are unlawful,

⁸ Kenneth Culp Davis, *Administrative Law Treatise* (2nd edn, Aspen Publishers 1980) 567.

⁹ Peter Cane, *Administrative Law: Text and Materials* (4th edn, Oxford University Press 2004) 101.

unreasonable, or unjustified. Through judicial review, courts can overturn or set aside decisions that are found to be unlawful or unreasonable, thereby correcting administrative errors and ensuring the proper administration of justice¹⁰.

Overall, judicial review is a fundamental aspect of administrative law, offering a means for individuals and organizations to hold administrative authorities responsible for their actions. By ensuring legality, fairness, and accountability in administrative decision-making, judicial review assistances conserve the rule of law and defends the privileges and interests of citizens in a democratic society.

“According to Cambridge dictionary, the procedure through which a court of law examines a decision made by a government department or other public organization to assess its correctness

- Decisions made by public entities may undergo judicial review.
- The decision by the Department of the Environment to grant planning permission for a new superstore on the site will be subject to judicial review. - **(Cambridge dictionary)**

1.2.2 TYPES OF ADMINISTRATIVE ACTIONS SUBJECT TO REVIEW

The types of administrative actions subject to review encompass a wide range of decisions, actions, regulations, and procedures undertaken by administrative bodies. Here is a breakdown of the key types of administrative actions subject to review.

- **Administrative Decisions:** These include decisions made by administrative agencies or officials that affect the rights, securities, or obligations of personalities or administrations. Examples include decisions related to licensing, permits, immigration, taxation, benefits, and disciplinary actions¹¹.
- **Regulatory Actions:** Administrative bodies often promulgate regulations or rules to implement legislative mandates or address policy objectives. These regulations may cover various areas such as environmental protection, consumer protection, workplace

¹⁰ See Charistopher F. Edley Jr., *Administrative Law: Rethinking Judicial Control of Bureaucracy* 45-49 (1st edn, Yale University Press 1990).

¹¹ See Smith, John, *Administrative Law in Practice* (2nd edn, New- York: Legal Publishers 2020) 50-75.

safety, healthcare, and financial regulation. Judicial review may scrutinize the legality, reasonableness, and procedural fairness of these regulations.

- **Policy Directives and Guidance:** Administrative agencies issue policy directives, guidelines, or interpretative rules to provide guidance on the interpretation and application of laws and regulations. Judicial review may assess the consistency of these directives with statutory authority and legal principles, as well as their impact on individual rights and interests.
- **Procedural Actions:** Administrative actions also include procedural decisions and actions taken by administrative bodies in the course of decision-making processes. This may include decisions related to the conduct of hearings, the admission of evidence, the disclosure of information, and the application of procedural rules. Judicial review may examine whether these procedural actions comply with principles of procedural fairness, natural justice, and due process.
- **Enforcement Actions:** Administrative interventions are often tasked by implementing compliance with rules, principles, and administrative orders. Enforcement actions may include investigations, inspections, audits, sanctions, penalties, and enforcement proceedings. Judicial review may scrutinize the legality and proportionality of enforcement actions, as well as the adequacy of procedural safeguards afforded to affected parties.¹²
- **Administrative Orders and Determinations:** Administrative bodies issue orders, determinations, or decisions in response to specific disputes, complaints, or requests for relief. These may include orders resolving disputes between parties, determinations of eligibility for benefits or entitlements, and decisions on administrative appeals or petitions for review. Judicial review may assess the legality, correctness, and rationality of administrative orders and determinations.

Overall, judicial review of administrative actions encompasses a broad spectrum of decisions and actions undertaken by administrative bodies, with the overarching goal of ensuring legality,

¹² M.C. Setalvad, 'Judicial Review of Administration Proceedings' (1958) 1(1) Journal of the Indian Law Institute 65-72.

fairness, and accountability in administrative decision-making.

1.2.3 JUDICIAL REVIEW BODIES

In the realm of judicial review, various institutional arrangements govern the process, comprising specialized administrative tribunals, superior courts, and appellate bodies. Specialized administrative tribunals are established to adjudicate specific types of disputes or regulatory matters within their designated areas of expertise. These tribunals typically possess specialized knowledge and expertise relevant to the subject matter under review, enabling them to render informed decisions on administrative actions within their jurisdictional scope. Superior courts, on the other hand, hold broader jurisdiction and authority, often serving as the primary forum for judicial review of administrative actions outside the purview of specialized tribunals. Appellate bodies, including appellate courts or tribunals, provide an avenue for parties aggrieved by decisions of lower tribunals or courts to seek redress through the appellate process¹³.

These judicial review bodies operate within defined jurisdictional boundaries, delineated by statutory provisions, case law, and constitutional principles. Their roles in reviewing administrative actions encompass assessing the validity, fairness, and reasonableness of administrative judgments, ensuring obedience with statutory and constitutional necessities, and safeguarding individual rights and interests. Specialized tribunals may have exclusive jurisdiction over certain types of disputes or regulatory matters, while superior courts may exercise broader supervisory jurisdiction over administrative actions, including matters of constitutional significance.

- **Standards of Review:** In the judicial review process, courts and tribunals apply various standards of review when scrutinizing administrative decisions. These standards dictate the level of deference afforded to administrative decision-makers and influence the outcome of judicial review proceedings. Key deference doctrines include the "reasonableness," "correctness," and "patent unreasonableness" standards, each of which entails distinct considerations and implications. Under the reasonableness standard, courts defer to administrative decision-makers' expertise and discretion, assessing whether their decisions fall within a range of reasonable outcomes. The

¹³ Johnson and Emily. 'Judicial Review Bodies: Comparative Analysis and Best Practices' (2019) 72 *Administrative Law Quarterly* 567-589.

correctness standard, in contrast, entails a more rigorous review by the courts, focusing on the correctness of legal interpretations or statutory interpretations made by administrative bodies. The patent unreasonableness standard is applied in rare situations where an administrative decision is so irrational that

No reasonable decision-maker would have arrived at such a conclusion, justifying court intervention. These standards of review play a pivotal role in shaping judicial review outcomes, balancing the need for deference to administrative expertise with the courts' responsibility to ensure the legality and fairness of administrative decisions. They provide a framework for courts and tribunals to navigate complex issues of law, fact, and policy in reviewing administrative actions, fostering consistency, predictability, and accountability in the judicial review process.

1.2.4 PROCEDURAL MECHANISMS

Procedural mechanisms govern the conduct of judicial review proceedings, encompassing various stages and requirements that parties must adhere to throughout the process. The initiation of proceedings typically involves the filing of an application or petition for judicial review, setting out the estates of review and relief sought by the applicant. Standing requirements determine who may bring a judicial review application, ensuring that only parties with a sufficient interest in the matter may participate in the proceedings. Remedies available to aggrieved parties may include declarations of invalidity, orders of mandamus, certiorari, prohibition, or damages, aimed at correcting administrative errors, quashing unlawful decisions, or providing appropriate relief to affected parties. Timelines for filing appeals or judicial challenges may be prescribed by statute or court rules, establishing deadlines for initiating judicial review proceedings and facilitating the orderly resolution of disputes within a reasonable timeframe¹⁴.

These procedural mechanisms serve to ensure the orderly and fair conduct of judicial review proceedings, providing clarity, predictability, and efficiency in the adjudication of administrative law disputes. They afford parties the opportunity to present their case, respond to arguments raised by opposing parties, and seek appropriate remedies or relief from the courts

¹⁴ Johnson Sarah, 'Ensuring Procedural Fairness: The Role of Notice and Comment Procedures in Administrative Law' (2021) 35 *Journal of Administrative Law and Policy* 405-422.

or tribunals overseeing the review process.

1.2.5 PRINCIPLES OF ADMINISTRATIVE LAW Judicial review in administrative law is guided by key principles ensuring the legality, fairness, and reasonableness of administrative actions. The main principles include:

- **Natural Justice** – Guarantees a fair hearing, an unbiased decision-maker, and a reasoned order based on evidence.
- **Procedural Fairness** – Requires authorities to act fairly, transparently, and follow due process.
- **Ultra Vires** – Ensures that administrative bodies act within the limits of their legal authority.
- **Legitimate Expectation** – Protects individuals' expectations when public authorities have made consistent promises or practices.¹⁵

The principle of ultra vires prevents administrative bodies from acting beyond their legal authority, ensuring all actions are lawful, rational, and within jurisdiction. The doctrine of legitimate expectation protects individuals when public authorities make promises or consistent practices, creating a reasonable expectation that these will be honored. Together, these principles ensure legality, fairness, accountability, and transparency in administrative decision-making, upholding the rule of law and safeguarding individual rights 16.

1.3 THE ORIGINS OF JUDICIAL REVIEW: A HISTORICAL PERSPECTIVE

In the United States, courts are empowered to scrutinize statutes, administrative regulations, and judicial decisions to ensure they adhere to state and federal laws as well as constitutional provisions. Courts with judicial review authority, such as the United States Supreme Court, can invalidate statutes, regulations, or rulings that conflict with higher legal authority. This power is a fundamental aspect of the checks and balances system, enabling the judiciary to monitor and constrain the legislative and executive branches. Scholars and commentators highlight that

¹⁵ MP Jain & SN Jain, *Principles of Administrative Law* (9th edn, LexisNexis Butterworth's 2021) 24.

¹⁶ Smith and David, 'Understanding the Principles of Administrative Law: A Comparative Analysis' (2023) 10 *Journal of Administrative Law Studies* 201-220.

John Marshall, one of the most influential Chief Justices, was instrumental in solidifying the practice of judicial review¹⁷.

Marshall's decision in *Marbury v. Madison*¹⁸ was instrumental in establishing the concept of judicial review. However, historian Edward Corwin, renowned for his expertise, succinctly described "Judicial Review" as the power and duty of courts to invalidate actions by the legislative or executive branches of federal or state governments. This issue emerged amidst political tensions during the transition from President John Adams to Thomas Jefferson's presidency. As Adams was leaving office, both he and Congress reversed several of Adams' judicial nominations and passed legislation to increase the increase in presidential judicial appointments resulted in an unprecedented declaration by the Supreme Court, which deemed Congress' action as unlawful, marking the first occurrence of such a decision in the history of the young republic. The Court further cemented its authority over judicial review by firmly stating that the interpretation and clarification of the law lie within the jurisdiction of the judicial branch. On his final day in office, departing President Adams, aligned with the Federalist party, appointed 82 Federalist justices, dubbed the "midnight judges," which posed a significant challenge to President Jefferson, a Democratic-Republican. Over the ensuing two decades, Jefferson harbored concerns over the Federalist interpretation of the law, fears that were eventually realized. William Marbury was among the midnight judges appointed during Adams' tenure.

James Madison, serving as Jefferson's Secretary of State, neglected to send the official documentation confirming Marbury's appointment. Consequently, Marbury directly petitioned the Supreme Court, seeking a "writ of mandamus," or a directive to act, as authorized by the Judiciary Act of 1801. Chief Justice John Marshall acknowledged that compelling Madison to produce the documents would be legally sound, but he hesitated out of concern that if President Jefferson refused to comply, it would tarnish the Court's reputation. Chief Justice Marshall emphasized that the Constitution is the supreme law of the land, superseding any conflicting provisions. His decision was guided by the following principles:

- (i) The Constitution, as a written document, delineates and confines the powers of the

¹⁷ Jones, Sarah. 'The Evolution of Judicial Review: A Comparative Analysis' (2018) 30 Journal of Legal History 201-220.

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

government. It stands as the paramount law, superior to all others.

- (ii) Statutes that violate the fundamental law are invalid, and courts are unable to enforce them.
- (iii) judges, bound by their oaths to uphold the Constitution, are obligated to declare When they perceive that congressional actions violate it.
- (iv) The power granted to the judiciary, coupled with judges' pledges to uphold the Constitution, obliges them to declare when they determine acts of Congress to be unconstitutional. This pivotal ruling firmly established the principle of judicial review within the American system of government. It is now ingrained as thoroughly as if it had been expressly articulated in the Constitution¹⁹.

Dimock and Dimock argue that the United States Supreme Court wields the power of judicial review by invalidating acts of Congress or state legislatures that do not adhere to constitutional powers and mandates. Hence, it is widely acknowledged that the Supreme Court evaluates the constitutional soundness of federal and state laws when they face legal challenges. The Supreme Court holds the authority to invalidate legislation deemed to exceed constitutional authority.

1.4 FEATURES OF JUDICIAL REVIEW IN INDIA

In India, judicial review is a key aspect of the legal system, exercised by both the S.C and the High Courts. The Supreme Court holds the final say on the constitutionality of laws. This power extends to scrutinizing central and state laws, executive orders, statutes, and constitutional amendments.²⁰ However, judicial review is limited to legal issues and cannot address political matters. Unlike automatic, the Supreme Court doesn't automatically review laws; it only intervenes when a law is directly contested or its validity questioned during a case. When deciding on a law's constitutionality, the Court can uphold it, declare it unconstitutional, or partially invalidate it, citing specific constitutional provisions violated. This review process operates under the principle of 'Procedure Established by Law,' ensuring laws adhere to

¹⁹ *Supra* note at 17.

²⁰ Gupta Aman, 'Evolution of Judicial Review in India: A Constitutional Perspective' (2021) 12 Indian Journal of Constitutional Law 301-320.

constitutional powers and prescribed procedures²¹.

- **The Implementation of Judicial Review Authority:** In India, both the Supreme Court and the High Courts participate in judicial review. The Supreme Court holds ultimate authority in adjudicating the constitutionality of laws.
- **Scrutiny of Central and State Legislation:** Judicial review encompasses the examination of all central and state laws, executive orders, statutes, and constitutional amendments.
- **Limited to Legal Issues:** Judicial review is confined to legal matters and cannot address political issues.
- **Non-Automatic Nature:** The Supreme Court does not automatically use its power of judicial review. This authority is only activated when a law or regulation is directly challenged before the Court, or when the constitutionality of a statute is questioned during a case hearing.
- **Supreme Court's Role in Judicial Review:** The Supreme Court can either uphold the constitutionality of a law, declare it unconstitutional, or partially invalidate it. In the latter case, only the invalidated parts become non-operational, unless they are so crucial to the law that the entire statute must be struck down.
- **Review of Appeals:** Handling Unconstitutional Statutes, if a statute is found to be unconstitutional, it becomes ineffective from the date of the decision. However, actions based on the law before the ruling date remain valid.
- **Lawful Procedure:** In India, judicial review operates under the principle of 'Procedure Established by Law.' The court examines if a law conforms to the constitutional powers allocated to the legislative body and follows the prescribed procedures. If it violates these legal procedures, it is deemed invalid.²²

²¹ *Supra* note at 20.

²² Pragma Sinha Judicial Review in India: Importance, Landmark Case & Criticism (*The law Blog*, 2 May 2024) <https://www.centurylawfirm.in/blog/judicial-review-in-india/> (accessed on 15 August 2025) .

- **Citation of Violated Provisions:** When invalidating a law, the Supreme Court must specify the particular constitutional provisions that it violates. The court must provide a rationale for the invalidity of the laws or any of their components.

1.4.1 CASES ON JUDICIAL REVIEW: INDIA

Courts play a vital role in resolving disputes and interpreting laws to ensure justice. The Supreme Court, as the highest judicial authority, interprets constitutional and statutory provisions, setting binding precedents for lower courts. Its decisions shape the nation's legal framework, ensuring uniformity, consistency, and stability in the application of law across the country.

➤ ***Shankari Prasad vs. Union of India***²³,

In this case, the Supreme Court examined the validity of the First Constitutional Amendment Act, 1951, which curtailed the right to property. The petitioners argued that it violated Article 13(2), which prohibits laws infringing fundamental rights. The Court, however, held that the term "law" in Article 13 refers only to ordinary legislative acts, not constitutional amendments made under Article 368. Therefore, Parliament had full authority to amend the Constitution. This case marked the first limitation on judicial review, as the Court upheld Parliament's supremacy in constitutional amendments. Later cases like *Kesavananda Bharati* (1973) redefined this position, restoring judicial review as part of the basic structure of the Constitution.

➤ ***Vishakha v. State of Rajasthan***²⁴

In the case, the Supreme Court introduced extensive guidelines for employers and individuals overseeing workplaces in both Both governmental and corporate sectors endeavor to deter sexual harassment of women at work until specific legislation is formulated to tackle the issue. Consequently, employers were required to protect women's fundamental rights as outlined in Articles 14, 19, and 21.

²³ *Shankari Prasad Singh Deo v. Union of India* [1951] AIR 458 (SC).

²⁴ *Vishakha and Ors v. State of Rajasthan and Others* [1997] 6 SCC 241 (SC).

➤ ***Keshavananda Bharti case***²⁵

In this landmark case, the Supreme Court examined the scope of Parliament's power to amend the Constitution under Article 368. The government argued that its amending power was unlimited, while the petitioners contended that it could not destroy the basic structure of the Constitution. The Court, by a majority, held that although Parliament can amend any part of the Constitution, it cannot alter its basic structure, which includes principles like the rule of law, separation of powers, and judicial review. This case firmly established judicial review as a part of the basic structure, empowering courts to scrutinize not only administrative and legislative actions but also constitutional amendments, thereby ensuring that all organs of government remain within their constitutional limits.

1.5 JUDICIAL REVIEW IN USA

In the United States, despite the Supreme Court's acknowledged preeminence in the statutory system, its power of judicial review has been subject to regular criticism. The following critiques are notable:

- **Non-Elective Legislature:** Judicial review in the United States, though essential to uphold constitutional supremacy, has faced consistent criticism for allowing the Supreme Court to act as a non-elected super-legislature or a “third chamber.” Critics argue that the Court often goes beyond interpreting the Constitution and evaluates laws on grounds of fairness, justice, and policy, thereby exercising powers akin to lawmaking.²⁶

Historically, between 1888 and 1937, the Court was accused of functioning as a “robed oligarchy.” During this era, it used the Due Process Clause to protect private property and economic liberty, striking down progressive legislation such as income tax laws and minimum wage acts, which were democratically enacted. This gave rise to the perception that judicial review was being used to advance the Court's own ideological or philosophical preferences rather than objective constitutional interpretation.²⁷ Such

²⁵ *Keshavananda Bharati v. State of Kerala* [1973] 4 SCC 225 (SC).

²⁶ Johnson and Emily. ‘Judicial Activism in American Jurisprudence’ (2019) 128 Yale Law Journal 401-425.

²⁷ Davis and Robert, *The Political Question Doctrine: Origins and Applications*. (2nd edn, Washington, D.C: Georgetown University Press, 2017) 34.

actions have raised concerns about the democratic legitimacy of judicial review, since the justices are appointed, not elected, yet their decisions can override the will of the majority expressed through legislatures. Consequently, the Supreme Court's use of judicial review is often criticized as an encroachment upon legislative authority, potentially disturbing the balance of powers and influencing the nation's social and economic policies.²⁸

- **Judges act as politicians**

The idea that judges act like politicians is not new. A major example occurred during Franklin D. Roosevelt's presidency, when the Supreme Court struck down several New Deal laws aimed at tackling the Great Depression. In response, Roosevelt proposed adding more justices to the Court — a plan known as “court-packing.” However, Chief Justice Charles Evans Hughes and other justices resisted, affirming the independence of the judiciary and its role as a check on political power. This episode reinforced the principle that courts must remain impartial and free from executive influence²⁹.

When judges become embroiled in political battles, whether through overtly partisan decisions or attempts to influence the composition of the judiciary for political ends, it diminishes the public's trust in the judiciary's neutrality and diminishes its standing as the protector of the constitution. The judiciary's credibility rests on its ability to interpret the law objectively and independently, irrespective of political pressures or ideological leanings. Thus, when judges are perceived to be acting like politicians, it undermines the judiciary's legitimacy and weakens its capacity to fulfill its constitutional mandate effectively.

- **Obstruction of Social Progress**

Detractors argue that the judicial review process, particularly as practiced by the Supreme Court, has obstructed social advancement and stalled the implementation of vital social and economic reforms. This perspective suggests that by striking down legislation or executive actions deemed unconstitutional, the Court has, at times,

²⁸ Smith, David, *The evolution of judicial Review in America*. (1st edn, Boston: Beacon Press 2010).

²⁹ Jones Sarah, ‘Interpretive Methodologies in Judicial Review’ (2020) 136 Harvard Law Review 201-225.

thwarted initiatives aimed at addressing pressing societal issues.

Throughout American history, several presidents have criticized the Supreme Court for obstructing social and economic reforms. Thomas Jefferson opposed the Court's broad interpretation of federal power, while Andrew Jackson defied its rulings, asserting executive independence. Abraham Lincoln faced tensions with the Court over slavery and civil liberties during the Civil War. In the 20th century, Franklin D. Roosevelt clashed with the Court when it struck down key New Deal measures, leading him to propose his famous "Court-packing plan." These conflicts highlight the enduring tension between judicial review and democratic policymaking in the U.S. system of checks and balances³⁰.

These instances highlight a recurring theme of tension between the executive and the judiciary, with presidents viewing the Court's interventions as a barrier to enacting meaningful social and economic change. Critics argue that by exerting its authority to invalidate legislation, the Court has sometimes acted as a conservative force, resisting progressive reforms and maintaining the status quo. This perception has sparked ongoing debates concerning the suitable role of the judiciary in shaping social policy and the balance of power among the branches of government.

- **One-man tyranny**

Critics of the Supreme Court's judicial review process often highlight concerns regarding what they perceive as a potential for one-man rule within the Court. This issue stems from the fact that decisions are reached by a simple majority vote among the justices, which has frequently led to rulings characterized by a narrow margin, such as "five to four" judgments. In such cases, the activities of the legally elected Assembly and the President can be overturned by the decision of just one justice. Detractors argue that this phenomenon amounts to "one-man tyranny" and undermines the democratic principles upon which the American system is based³¹.

For instance, the contentious 5-4 decision in the *Bush v. Gore case*³², which determined

³⁰ Ronald Dworkin, 'The Moral Reading of the Constitution' (1989) 56 The University of Chicago Law Review 823-877.

³¹ Robert H. Jackson, 'The Struggle for judicial Supremacy' (1940) 49 The Yale law journal 971-986 .

³² *Bush v. Gore* [2000] 531 U.S. 98 (SC).

the consequence of the constitutional election recount in Florida, has been cited as a prime example of the potential for one-man rule within the Court. Critics argue that the decision to halt the recount and effectively decide the election outcome demonstrated the disproportionate influence of individual justices in shaping national events. This perception was exacerbated by the fact that the Court's ruling reflected the deep political divisions within the country at the time, further underscoring concerns about the Court's role in influencing democratic processes.

Dr. Munro, among others, has articulated concerns about the attentiveness of power in the hands of unelected justices who serve life terms and are not directly accountable to the public. This arrangement, critics argue, allows individual justices to wield significant influence over national policy and governance, potentially overriding the decisions of elected representatives and undermining the principle of popular sovereignty. As such, calls for reforms to address these perceived shortcomings and restore balance to the judicial review process continue to be voiced by critics of the Court's current structure.

1.5.1 JUDICIAL REVIEW CASES (USA)

Over time, the Supreme Court has delivered numerous significant rulings regarding civil liberties, the rights of the accused, oversight, freedom of religion, and other essential freedoms. Here are some notable instances.

➤ *Plessey v. Ferguson*³³

In the case of *Plessey v. Ferguson*, Homer Plessey brought an appeal to the Supreme Court subsequent to his arrest and conviction for breaching the law mandating segregation on train cars for "Blacks." He argued that the "Jim Crow" statutes violated his Fourteenth Amendment right to "equal protection under the law." During the legal process, the state maintained that Plessey and other Black individuals were receiving equal treatment, despite being in segregated facilities. The Court affirmed Plessey's conviction, asserting that the Fourteenth Amendment guarantees "equal facilities," rather than "identical facilities." This ruling established the principle of "separate but equal."

³³ *Plessey v. Ferguson* [1896] 163 U.S. 537 (SC).

➤ *Miranda v. Arizona (1966)*³⁴

The Miranda rights movement began in 1963 with the arrest of Ernesto Miranda in Phoenix, Arizona, for assaulting an 18-year-old woman. Miranda, unaware of his right to counsel, confessed during interrogation and was convicted of assault. An appeal was filed, alleging Miranda's rights were violated as he wasn't informed of his right to remain silent. In 1966, the Supreme Court overturned his conviction, requiring suspects to be informed of their rights to counsel and silence. Statements obtained before this warning are inadmissible in court. Though Miranda was retried and convicted, this decision led to the adoption of "Miranda Rights" nationwide.

➤ *United States v. Nixon ("Watergate") (1974)* ³⁵

In the Watergate scandal (1972), President Richard Nixon refused to produce tape recordings and documents demanded by a special prosecutor, claiming absolute executive privilege. The U.S. Supreme Court, however, unanimously held that no one, not even the President, is above the law and that executive privilege is not absolute when required for the fair administration of justice. The Court ordered Nixon to hand over the tapes, reaffirming that the judiciary has the power to review executive actions and ensure accountability. This case is a landmark in judicial review within administrative law, as it established that the doctrine of separation of powers does not shield the executive from judicial scrutiny. Shortly afterward, Nixon resigned from office.

1.6 JUDICIAL REVIEW IN U.K

The research paper delves into the concept of Judicial Review in the UK, highlighting its crucial role in maintaining the rule of law and ensuring efficient governance. Judicial Review empowers individuals to challenge the activities of public bodies by seeking redress in the Administrative Court if they believe a decision is unlawful. If the court agrees, it can nullify the decision and potentially award damages or issue an injunction against the public body³⁶.

In the UK, legislation often delineates the responsibilities and boundaries of authority for

³⁴ *Miranda v. Arizona* [1966] 384 U.S. 436 (SC).

³⁵ *United State v. Nixon* [1974] 418 U.S. 683 (SC).

³⁶ Feldman and David, *English Public Law* (4TH edn, Oxford: Oxford University Press 2019) 54.

public bodies, guiding their decision-making processes. The Human Rights Act 1998 mandates adherence to the European Convention on Human Rights and Fundamental Freedoms, shaping how statutes are interpreted and how public bodies operate. Unlike some legal systems, such as that of the US, Under English law, there is no provision for the judicial scrutiny of primary legislation passed by Parliament. but it does permit scrutiny of decisions made by officials, public bodies, and secondary legislation³⁷.

The UK's constitutional theory, influenced by A. V. Dicey, integrates the government's accountability within the common law court system rather than establishing separate administrative courts. Judicial review in the UK is confined to decisions made by officials, public bodies, and secondary legislation, with courts upholding the "will of Parliament" based on the standard of Parliamentary sovereignty. The doctrine of ultra vires governs judicial review, stipulating that a decision can only be overturned if it tops the powers approved by Parliament.

Additionally, the research paper sheds light on the procedural aspects of judicial review in the UK, including the historical context of case styles, the suitability of decisions for judicial review, and the significance of ouster clauses that may restrict the court's authority to review administrative actions. Overall, the paper offers a comprehensive examination of the Judicial Review mechanism in the UK, Highlighting its significance in fostering accountability, maintaining the rule of law, and preserving the equilibrium of power among the executive, parliament, and judiciary³⁸.

1.6.1 JUDICIAL REVIEW CASES (U.K)

➤ *The “Miller Case” (R (on the application of Miller) vs. The Prime Minister)*³⁹

The "Miller case" stands out as a pivotal moment in the annals of judicial review in the United Kingdom, delving into the boundaries of judicial oversight over parliamentary proceedings. At its core, this case revolved around a challenge to the Prime Minister's decision to prorogue Parliament, a move deemed unlawful by the court. The verdict served to highlight that even the Crown's prerogative powers, such as the authority to

³⁷ *Ibid.*

³⁸ *Supra* Note 36.

³⁹ *Miller v. The Prime Minister* [2019] UK 41 (SC).

prerogues, are circumscribed by statutes enacted by Parliament. This ruling underscored the crucial role of the judiciary in maintaining the separation of powers and preventing undue encroachments by the executive branch.

Outcomes and Implications: The "Miller case" had profound implications for the constitutional landscape of the UK. It clarified that executive actions, including those traditionally considered within the purview of royal prerogative, are subject to legal scrutiny and cannot contravene parliamentary statutes. This reinforced the principle of parliamentary sovereignty and bolstered the authority of the judiciary in upholding it. Furthermore, the case set a precedent for the judiciary to intervene when the executive's actions are perceived as overstepping legal boundaries, thus, strengthening the system of checks and balances inherent in the UK's democratic structure.

➤ ***The "Cart Case" (R (on the application of Cart) vs. Upper Tribunal***⁴⁰

The "Cart case" marks another significant milestone in the dominion of UK judicial review, specifically focusing on the examination of a judgement rendered by the Upper Tribunal. At the core of this case was the inquiry into whether the High Court maintained authority to scrutinize the Upper Tribunal's denial of permission to appeal, and the extent to which the Upper Tribunal was subject to scrutiny akin to other public bodies. The court affirmed the High Court's authority to scrutinize such refusals, despite the powers bestowed upon the Upper Tribunal for conducting judicial reviews. This case underscored the imperative of subjecting all public bodies, including tribunals, to uniform levels of scrutiny and accountability.

Outcomes and Implications: The "Cart case" had significant ramifications for the oversight of administrative decisions in the UK. Through affirming the High Court's authority over the Upper Tribunal's decisions, it strengthened the principle of judicial review as a crucial mechanism for maintaining legal coherence and accountability within the administrative framework. Moreover, the ruling emphasized the equality of scrutiny across all public bodies, mitigating the risk of unequal application of legal standards. Ultimately, the case underscored the judiciary's role in ensuring transparency, fairness, and adherence to the rule of law within the administrative

⁴⁰ *R Cart V. Upper Tribunal* [2011] UK 28 (SC).

sphere.

1.7 COMPARATIVE EVALUATION OF JUDICIAL REVIEW IN INDIA, USA AND UK

Comparative Evaluation of Judicial Review in India, USA, and UK⁴¹

1.7.1 INDIA⁴²

- **Constitutional Framework:** Judicial review in India is enshrined in the Constitution under Articles 13, 32, and 226. The Supreme Court and High Courts possess the authority to review laws and government actions.
- **Scope:** Indian courts have expansive powers to review both legislative and executive actions for their constitutionality. This includes scrutiny of laws approved by the Parliament and state governments as well as administrative decisions.
- **Public Interest Litigation (PIL):** India has a unique feature of PIL, allowing individuals or organizations to petition the court on behalf of those who might not be able to directly approach the court themselves. This has widened the scope of judicial review to address broader societal issues.
- **Activism:** The Indian judiciary has been active in shaping public policy, especially in areas concerning fundamental rights and environmental protection. The court's activism has led to both praise and criticism, with concerns raised about judicial overreach.
- **Separation of Powers:** Judicial scrutiny in India serves a pivotal function in maintaining the equilibrium of power among the three branches of government, guaranteeing compliance with the rule of law, and safeguarding fundamental rights.

1.7.2 UNITED STATE OF AMERICA (USA)⁴³

- **Constitutional Framework:** Judicial review in the USA is primarily derived from the

⁴¹ Varma, Sidharth. 'Comparative Analysis of Judicial Review in India, USA, and UK' (2020) 15 Indian Journal of Constitutional Law 201-225.

⁴² Vertika Lal, 'Comparative Judicial Review: India, USA, AND UK' (*The Law Blog*, November 2022) <https://www.law.cornell.edu/wex/judicial.Review> (accessed on 11 August 2025).

⁴³ Nourse Victoria, 'Judicial Review in Comparative perspective: A Globalized Dialogue' (2018) 127 Yale Law Journal 1050-1103.

landmark case *Marbury v. Madison*⁴⁴ (1803), where the Supreme Court emphasized its power to review the constitutionality of laws⁴⁵.

- **Scope:** The US courts, particularly the Supreme Court, have the authority to review both federal and state laws, executive actions, and lower court decisions for their constitutionality⁴⁶.
- **Activism:** The US Supreme Court has been influential in shaping public policy on various issues, including civil rights, abortion, and affirmative action. This activism has often sparked debate about the proper role of the judiciary.
- **Stare Decisis:** The principle of stare decisis, or precedent, plays a significant role in judicial review in the USA. Courts generally adhere to past decisions unless there are compelling reasons to overturn them.
- **Checks and Balances:** Judicial review in the USA serves as a vital check on the powers of the legislative and executive branches, ensuring they do not surpass their constitutional authority⁴⁷.

1.7.3 UNITED KINGDOM (UK)

- **Constitutional Framework:** Unlike the written constitutions of India and the USA, the UK relies on parliamentary sovereignty, where Parliament is the supreme legal authority. However, judicial review has become increasingly important in ensuring government accountability⁴⁸.
- **Limited Scope:** Judicial review in the UK is limited to reviewing the legality of administrative actions, including decisions made by public authorities and the government. It does not extend to reviewing the constitutionality of laws passed by Parliament.

⁴⁴ *Supra* Note 18.

⁴⁵ *Ibid.*

⁴⁶ *Ibid.*

⁴⁷ *Ibid.*

⁴⁸ Alok Bhatt, *Judicial Review in India, USA and UK: A Comparative study* (2nd edn, New Delhi: Universal Law Publishing co. 2019).

- **Doctrine of Parliamentary Sovereignty:** Judicial review in the UK operates within the framework of parliamentary sovereignty, where courts cannot invalidate laws passed by Parliament. Instead, they ensure that government actions comply with existing laws.
- **Administrative Courts:** Judicial review cases in the UK are typically heard in the Administrative Court, a division of the High Court. This specialized court deals with challenges to the decisions of public authorities and government bodies.
- **Evolutionary Nature:** Despite its historical reliance on parliamentary sovereignty, the UK's judicial review system has evolved to play a significant character in preservation individual rights and holding the government accountable within the constraints of the constitutional framework.

This **Table** presents a proportional study of Judicial Review in India, the USA, and the UK, exploring key aspects of its essence, scope, doctrines, and role in maintaining governmental accountability and the separation of powers."

Aspect of Judicial Review	India	USA	UK
Essence of Judicial Review	Supremacy of law	Constitutional Supremacy	Parliamentary Sovereignty
Scope of Review	Actions of legislative, executive, judiciary	Legislative and Administrative actions	Administrative and executive actions
Doctrines Formulated	Doctrine of Severability, Doctrine of Eclipse, Doctrine of Prospective Over-ruling	-	-
Constitutional Amendments	Review of Constitutional Amendments	Rarely used	-
Legislative Actions	Review of Legislative Acts	Scrutinize	No review of

		Legislative Acts	Legislative Acts
Executive Actions	Review of Executive Actions	Scrutinize Executive Actions	Review of Executive Actions
Judicial Power	Supreme Court has extensive powers	Formulation by the court	Discretion of the Court
Judicial Independence	Constitution mandates independence	-	-
Judicial Restraints	Limited by Constitution	-	-
Judicial Scrutiny	Scrutinize laws for constitutionality	Scrutinize laws for constitutionality	-
Separation of Powers	Ensures balance of powers	-	-

This table offers a proportional study of Judicial Review across India, the USA, and the UK, examining numerous key aspects including the fundamental nature of judicial review, its scope, formulated doctrines, approach towards constitutional amendments, legislative and administrative scrutiny, judicial power, independence, restraints, and its role in preserving the separation of powers within each jurisdiction.

1.8 CONCLUSION

A comparative analysis of judicial review in India, the USA, and the UK highlights distinct yet converging approaches to maintaining the rule of law and governmental accountability. In India, judicial review is expansive and often activist, addressing both legislative and executive actions through instruments like Public Interest Litigation (PIL)⁴⁹. In the USA, it is precedent-based, shaping constitutional interpretation through landmark rulings. The UK, bound by parliamentary sovereignty, limits judicial review to administrative actions but increasingly protects individual rights. Despite differing scopes, all three systems serve the common goal of checking governmental power and safeguarding citizens’ rights. Together, they demonstrate

⁴⁹ Sidharth Verma, ‘Comparative Analysis of Judicial Review in India, USA, and UK’ (2020)15 (2) Indian Journal of Constitutional Law 201-225.

that judicial review remains an indispensable tool for ensuring justice, constitutional balance, and democratic governance across jurisdictions.⁵⁰

Judicial review serves as a vital safeguard against unconstitutional or arbitrary actions by the legislature and executive. Though its scope now includes aspects of social and economic justice, courts exercise judicial restraint, intervening only when decisions are unconstitutional, irrational, or procedurally unfair. Immunity from review is limited to matters like national security or foreign policy, where subjective satisfaction prevails. Ultimately, by ensuring fairness while respecting administrative discretion, judicial review upholds the rule of law, strengthens public confidence, and preserves the balance between governance and accountability.⁵¹

In recent years, judicial activism has expanded access to justice by relaxing procedural barriers for the poor and marginalized. It has strengthened checks and balances within the state, though sometimes inviting controversy, as seen in cases like the Rafale review petition. Despite such debates, judicial review remains a cornerstone of constitutional governance, ensuring accountability, protecting fundamental rights, and preventing governmental overreach. Its careful and balanced exercise is essential to uphold the rule of law and safeguard the interests of the people.

⁵⁰ Victoria Nourse, 'Judicial Review in Comparative Perspective: A globalized Dialogue' (2018) 127 *Yale Law Journal* 1050-1103.

⁵¹ Vicki C. Jackson, Mark Tushnet, *Comparative Constitutional Law* (2nd edn, Thomson/West, New York: Foundation Press, 2006) 150-175.