
JUDICIAL REVIEW AND AMENDMENT PROVISIONS UNDER THE FEDERAL CONSTITUTION

Prathamesh Santosh Kulkarni (B.A.LL.B., LL.M. pursuing), Savitribai Phule Pune
University, Pune

ABSTRACT

In the battle between protecting constitutional integrity and allowing for necessary legal evolution, judicial review stands as both a shield and a sword. Judicial review, rooted in early constitutional history, emerged as a critical mechanism in the protection of constitutional supremacy in federal systems like USA, India, etc. In the United States, judicial review was solidified in the landmark case of *Marbury v. Madison* (1803), establishing the courts' authority to invalidate unconstitutional laws. Similarly, in India, the Basic Structure Doctrine (1973) evolved to limit amendments to the Constitution. Despite differences in legal contexts, these countries have adopted judicial review to maintain constitutional order, ensuring legislative and executive actions align with the fundamental law. However, the power to amend the constitution creates a tension between judicial oversight and legislative authority. While amendments allow constitutions to adapt to changing realities, they raise questions about the limits of judicial intervention, especially when constitutional provisions are deemed "unamendable" or "eternal." This paper conducts a comparative study on the relationship between judicial review and amendment provisions under federal constitutions like USA, India, etc. analysing their historical development, current practices, and challenges across different countries. The research problem centers on whether courts should limit their intervention in constitutional amendments, especially when changes challenge established constitutional values. Specifically, it will examine how these systems balance judicial power with legislative authority, and whether judicial review should be applied differently in the context of amendments. The hypothesis suggests that, though judicial review preserves core values of the constitution, it poses constraints on amending process of constitutions, thereby restrains social dynamics. A proposed reform is to establish standardized judicial guidelines for evaluating the constitutionality of amendments. This would help courts decide when to intervene and when to allow amendments, ensuring changes align with the constitution's core values without hindering necessary reforms. The aim of this paper is to provide a comprehensive comparative analysis of judicial review and

constitutional amendments in federal systems. The objective is to propose a framework that protects constitutional values while allowing for constitutional adaptability, drawing insights from various legal systems.

Keywords: Judicial Review, Constitutional Amendments, Judicial Oversight, Basic Structure Doctrine, Federal Constitutions, Comparative Constitutional Law.

1. Introduction

Federal constitutions are designed to strike a balance between stability and adaptability, ensuring governance that respects both the unity of the nation and the autonomy of its constituent regions. Judicial review serves as a crucial mechanism for maintaining constitutional integrity by preventing any legislative or executive actions that violate fundamental constitutional principles. Simultaneously, amendment provisions enable the constitution to evolve, allowing it to adapt to societal, political, and economic changes. These two mechanisms, while complementary in theory, often find themselves in tension in federal systems where the distribution of powers across multiple layers of governance adds complexity.

Judicial review, which had mainly originated in USA from the notable landmark case of *Marbury vs. Madison*¹; was originally rooted in Lord Coke's decision in *Dr. Bonham vs. Cambridge University*², 1610, England. By allowing courts to invalidate laws or actions that contravene constitutional provisions, judicial review acts as a check against potential overreach by other branches of government. However, its application can sometimes result in rigidity, as courts may constrain the legislature's ability to amend the constitution to address contemporary challenges. This rigidity becomes especially significant in federal systems, where diverse socio-political contexts demand a certain degree of constitutional flexibility.

On the other hand, amendment provisions are designed to ensure that the constitution remains a living document, capable of responding to the evolving needs of society. However, unchecked legislative power in the amendment process poses its own risks, such as the potential erosion of fundamental principles or the concentration of authority

¹ *Marbury vs. Madison*, 5 U.S. 137 (1803).

² *Dr. Bonham vs. Cambridge University*, (1610) 8 Co Rep 114.

in a manner that undermines the federal structure. This creates a critical need to balance judicial oversight with legislative adaptability, ensuring that neither mechanism undermines the other.

This paper aims to analyze judicial review and amendment provisions across key federal systems, such as the USA, India, etc. Through a comparative legal analysis of constitutional frameworks, landmark cases, and judicial interpretations, the research seeks to identify common challenges and best practices. By doing so, it aims to propose a framework that balances the need for judicial oversight with the adaptability required for constitutional evolution.

2. Evolution of Judicial Review in Federal Systems

2.1. Origin of Judicial Review in United States

Judicial review is an essential and fundamental element within the Constitutional system of the U.S. The case of *Dr. Bonham*³ is widely recognised as a significant contribution to the American system of judicial review. However, the idea established in Coke's dicta was extensively acknowledged in the U.S. and thrived to the point which the Supreme Court in the U.S. embraced it in pertinent cases.⁴

In 1794, the Supreme Court, in *U.S. v. Todd*⁵, annulled an Act of Congress for the first time, thereby demonstrating the judiciary's emerging role in scrutinizing Congress actions. In 1796, Chief Justice Chase, in the case of *Hylton v. United States*⁶, discussed the necessity of determining whether the court possesses the constitutional power to nullify a statute enacted by Congress if it is discovered to be contradictory to and in breach of the Constitution. Chase expressed his willingness to utilise the court's powers if they do exist, namely in cases when the infringement is clearly apparent.⁷

The principle of judicial review was firmly established in U.S. by the landmark case of *Marbury v. Madison*⁸. This dispute arose during a presidential transition when outgoing

³ *Id.*

⁴ Pandey, T. N., *Administrative Discretion and Judicial Review: Concept and Ideologies*, 33(4) *Indian J. Pub. Admin.* 895 (1987).

⁵ *U.S. v. Todd*, (U.S. 1794)

⁶ *Hylton v. United States*, 3 U.S. 171 (1796)

⁷ P. H. A. Lehner, *Judicial Review of Administrative Inaction*, 83 *Colum. L. Rev.* 627 (1983).

⁸ *Supra* note 1.

President John Adams had made several political appointments in his final days. However, upon assuming office, President Thomas Jefferson directed his Secretary of State, James Madison, not to deliver these commissions. One appointee, William Marbury, subsequently petitioned the Supreme Court to compel the delivery of his commission. The case highlighted a fundamental conflict between ordinary laws and constitutional mandates, as well as raised the issue of whether the Supreme Court possesses the authority to annul acts of Congress. In his landmark ruling, Chief Justice Marshall declared that in any conflict between statutory law and the Constitution, the Constitution must prevail, and he affirmed that the Court indeed has the power to review and invalidate congressional actions that are inconsistent with constitutional principles.

Chief Justice Marshall said that the constitution is the Supreme Law of the Land and therefore must be paramount to any statute in conflict with it.

The U.S. Constitution does not explicitly grant judicial review, yet Article III defines the judicial power - including original, appellate, and equitable jurisdiction - while Article VI asserts that all government authority derives from the Constitution, which is the supreme law. Judicial review, though not expressly mentioned, was established by the Court, empowering the Supreme Court to check Congress and state legislatures, especially when essential legislative functions are improperly delegated. Moreover, the principle of "due process of law" helps maintain democratic balance by invalidating arbitrary and illegal laws.

2.2. Emergence of Judicial Review in India

The concept of judicial review, which originated in the United States, has notably influenced legal systems in other countries, including India. In India, the principle of Judicial Review is based on the Rule of Law, which is derived from the nation's diverse cultural and socioeconomic customs.⁹ Initially, judicial review was absent from India's legal framework because certain statutes limited the Governor General's power to subject laws to judicial scrutiny. However, in 1877, the case of *Emperor v. Burah*¹⁰ introduced judicial review in India, granting aggrieved parties the right to challenge the

⁹ J. N. Bhatt, *Separation of Powers: The Role of Judicial Review—Juristic or Forensic: Evolving or Elusive*, 86 A.I.R. (1999).

¹⁰ *Emperor vs. Burah*, 1877 (3) ILR 63 (Cal).

constitutionality of legislative acts. In this case the High court and Privy Council adopted the view that Indian courts had power of judicial review with some limitations.

Again in, *Secretary of State vs. Moment*¹¹, Lord Haldane noted that “the Government of India cannot by legislation take away the right of the Indian subject conferred by the Parliament Act i.e. Government of India Act of 1858”. Then, in *Annie Besant v. Government of Madras*¹², Madras high court observed relying on Privy council decision that, a clear distinction exists between the legislative powers of the Imperial Parliament and the authority of the subordinate Indian Legislature, and any enactment of the Indian Legislature that exceeds its delegated powers or violates the limitation imposed by the imperial Parliament will null and void.

Though there is no specific provision of the Judicial Review in Government of India Act, 1935 and the constitutional problems arising before the court necessitated the adoption of Judicial Review in a wider perspective. Now, Constitution of India, 1950 establishes the Doctrine of Judicial Review under various Articles 13, 32, 131-136, 143, 226, 227, 245, 246, 372.¹³

India adopted the concept of judicial review from the United States, incorporating it as a key component of the basic structure doctrine of its Constitution. Judicial review has evolved through judicial interpretation to become an essential element of India's legal system. Its broad scope includes the review of legislative and administrative actions as well as constitutional amendments, ensuring a system of checks and balances that prevents the misuse of governmental power and upholds citizens' rights.

2.3. Judicial Review in other Federal Countries

Beyond these jurisdictions, other federal systems have also shaped judicial review to suit their constitutional orders. In Canada, judicial review has evolved significantly with the advent of the *Canadian Charter of Rights and Freedoms*. The Supreme Court of Canada has used judicial review to invalidate or reinterpret legislation that conflicts

¹¹ Secretary of State vs. Moment. [1913] 40. ILR 391 (Cal).

¹² Annie Besant v. Government of Madras, 1918 AIR 1210 (Mad).

¹³ Rahul Raman, *A Comparative Study of Judicial Review in India, the United States and the United Kingdom*, 3 Law Mantra Quarterly Online Journal, (2016).

with constitutional rights, as exemplified in cases such as *R. v. Oakes*¹⁴, 1986. In Germany, judicial review is primarily executed by the Federal Constitutional Court, which rigorously protects the Basic Law. Landmark decisions, often referred to as the “*Solange*” rulings, have underscored the Court’s role in ensuring that all public power conforms with constitutional rights. In Australia, the High Court has been pivotal in advancing judicial review. Through decisions such as the *Engineers' Case*¹⁵, 1920, the Court has solidified its authority to assess both legislative and administrative actions, thereby preserving the balance of power within the federal system.

These diverse developments reveal that, while the core idea of judicial review remains consistent i.e. the protection of constitutional integrity; the manner and extent of its application differ according to each country's legal and political traditions.

3. Constitutional Amendment Provisions in Federal Systems

3.1. United States: Article V

The United States Constitution provides for constitutional amendments under Article V which encapsulates the dual commitment to popular sovereignty and institutional durability. Article V outlines a process whereby amendments may be proposed either by a two-thirds majority in both Houses of Congress or by a National Convention called for by two-thirds of State Legislatures. However, regardless of the method of proposal, any amendment must then be ratified by three-fourths of the states. This demanding process is deliberately rigorous so that only legitimate proposals with substantial, widespread backing can succeed.

As noted above, Article V of the U.S. Constitution provides two procedures to amend the nation’s fundamental charter -

The first, “Proposal by Congress,” authorizes proposal of amendments by Congress: The Congress, whenever two thirds of both Houses shall deem it necessary, shall propose Amendments to this Constitution, ... which ... shall be valid to all Intents and Purposes, as Part of this Constitution, when ratified by the Legislatures of three fourths

¹⁴ *R. v. Oakes*, [1986] 1 SCR 103

¹⁵ *Amalgamated Society of Engineers v. Adelaide Steamship Co Ltd*, (1920) 28 CLR 129

of the several States, or by Conventions in three fourths thereof, as the one or the other Mode of Ratification may be proposed by the Congress....

The second, the “Article V Convention” alternative, requires Congress, “on the Application of the Legislatures of two thirds of the several States” - 34 at present - to call “a Convention for Proposing Amendments....”

Amendments ratified by the states under either procedure are indistinguishable and have equal force; they are both “valid to all Intents and Purposes, as Part of this Constitution....”¹⁶

Congressional Proposal Method is the *most used* method for amendment; while Constitutional Convention Method is *never used*. Thirty-three amendments have been proposed to the states by Congress to date, beginning with 12 amendments proposed in 1789, 10 of which were ratified as the Bill of Rights. Twenty-seven of the 33 were approved by the states; 26 of them are currently in effect, while one, the 18th Amendment that prohibited the “manufacture, sale, or transportation of intoxicating liquors,” was ultimately repealed by the 21st Amendment.¹⁷

Over time, the rigorous standards established under Article V have not only paved the way for transformative milestones such as the abolition of slavery and the broadening of voting rights; but also filtered out proposals that ultimately proved unworkable, like the Equal Rights Amendment and prohibition measures that were later rescinded. The elaborate framework of Article V, therefore, serves as a crucial safeguard by ensuring that even the most controversial proposals are subjected to rigorous scrutiny and debate prior to adoption.

3.2. India: Article 368

Article 368¹⁸, as originally stood was titled as "Procedure for amendment of the Constitution" It conferred power on the Union Parliament to amend the Constitution. The Constitution (24th Amendment) Act, 1971 substituted the original Article 368 in

¹⁶ U.S. Constitution, Article V.

¹⁷ Thomas H. Neale, *The Article V Convention to Propose Constitutional Amendments: Contemporary Issues for Congress*, CRS Report R42589, (Mar. 29, 2016), available at <<https://www.congress.gov/crs-product/R42589>>.

¹⁸ INDIA CONST. art. 368

the following respects: -

- a) The title is replaced by new title "Power to amend the Constitution and procedure therefor";
- b) The new Clause (1) confers on Parliament "the constituent power to amend the Constitution by way of addition, variance or repeal any provision of the Constitution";
- c) The new Clause (2) makes it obligatory for the President to give his assent to a Bill for amendment, presented to him, after being passed by both Houses of Parliament.

The Constitution (42nd Amendment) Act, 1976 further amended Article 368 to the effect declaring "the Constituent Power of Parliament as unlimited and absolute" and excluding interference by the Courts in the exercise of the power, on any ground.¹⁹

The Indian Constitution provides three methods to amend its provisions:

1. Amendment by Simple Majority:

Provisions outside Article 368 can be changed by a simple majority. i.e., 50% of members present and voting. Examples include: The admission or establishment of new states, Formation of new states and alteration of boundaries or names of existing states, Creating or abolishing state Legislative Councils.

2. Amendment by Special Majority of Parliament:

Most constitutional provisions require a special majority for amendment. This means more than 50% of the total House membership and two-thirds of the members present and voting must approve. This method applies to: Fundamental Rights, Directive Principles of State Policy, Other matters not covered under the simple majority or state-only categories.

3. Amendment by Special Majority of Parliament and Consent of Half the States:

For provisions related to the federal structure, an amendment must secure both a special

¹⁹ Narender Kumar, *Constitutional Law of India*, 2nd ed. (Allahabad Law Agency 2000)

majority in Parliament and the approval of at least half of the state legislatures by a simple majority. There is no prescribed deadline for obtaining state consent. Examples include: The election procedure for the President, The distribution of executive power between the Union and the States, Provisions related to the Supreme Court and High Courts.

The biggest limitation is that Parliament cannot amend the constitution's basic structure. This safeguard emerged from conflicts between the legislature and the judiciary, culminating in the *Kesavananda Bharati case*²⁰, which established the "basic structure doctrine." This doctrine maintains that certain fundamental parts of the constitution, cannot be altered.

3.3. Other Federal Systems:

In Canada, constitutional amendments are governed by the Constitution Act, 1982. This process requires extensive negotiation between the federal government and the provinces, often needing consent from all provinces or, at minimum, a strong supermajority. It provides different methods like, *7/50 Rule* (Parliament + 7 provinces with 50% population), unanimous consent, provincial amendment, federal parliament alone or bilateral amendments²¹. This not only honours the diverse interests of different regions but also ensures that constitutional change is a collective, consensus-based effort rather than a unilateral decision. It effectively balances federal-provincial relations while adapting to contemporary needs.

Germany's Basic Law, especially Article 79,²² provides another example. Amending the German constitution requires a two-thirds majority in both the Bundestag (Federal Parliament) and the Bundesrat (Legislative Representation of States). This high threshold protects the democratic principles established after past vulnerabilities. Additionally, German courts play an active role in reviewing amendments to ensure they do not undermine the nation's core democratic order, thereby preserving a balance between reform flexibility and maintaining essential constitutional values.

²⁰ *Kesavananda Bharati v. State of Kerala*, AIR 1973 SC 1461.

²¹ Steven de Munnik, "Amending Canada's Constitution," *Federalism-E* Vol. 5 (June 2004)

²² Basic Law for the Federal Republic of Germany, Art. 79

4. Judicial Review of *Constitutional Amendments* in Federations

4.1. Judicial Review of constitutional amendments in U.S.

According to *Justice Frankfurter in Gobitis case*²³ “Judicial review is a limitation on popular government and is a part of the Constitutional scheme of America.” Supreme Court of United States in *Marbury vs. Madison*²⁴ formulated concept of Judicial Review.

After *Marbury*, the scope of judicial review expanded significantly. In *McCulloch v. Maryland*²⁵, the Court ruled that states could not tax federally chartered institutions, establishing the “Immunity of Instrumentalities” doctrine. Similarly, in *Youngstown Sheet & Tube Co. v. Sawyer*²⁶, the Court invalidated President Truman's seizure of steel, asserting that the Constitution does not confer lawmaking powers to the Executive.

However, in *Plessy v. Ferguson*²⁷, the Court maintained that the Fourteenth Amendment did not abolish social inequality, emphasizing that only a clear constitutional violation justifies overturning a law. More recently, in *Reed v. Town of Gilbert, Arizona*²⁸, Justice Thomas and the majority held that content-based speech regulations must withstand strict scrutiny; presumed unconstitutional unless narrowly tailored to serve a compelling state interest.

Therefore, in the U.S., judicial review reinforces constitutional supremacy by ensuring that all laws align with constitutional principles. Courts have the authority to invalidate laws that conflict with the Constitution, thereby protecting valid legislation, upholding Congress's authority, and preventing the improper delegation of legislative power.

4.2. Judicial Review of constitutional amendments in India

In India, although Parliament holds the power to amend the Constitution, it cannot alter its basic structure. The Supreme Court has consistently used judicial review to ensure

²³ *Minersville School District v. Gobitis*. 310 U.S. 586.

²⁴ *Supra* note 1.

²⁵ *McCulloch v. Maryland*. 17 U.S. 316.

²⁶ *Youngstown Sheet & Tube Co. v. Sawyer*. 343 U.S. 579.

²⁷ *Plessy v. Ferguson*. 163 U.S. 537.

²⁸ *Reed v. Town of Gilbert*. 135 S. Ct. 2218.

that amendments do not infringe upon the Constitution's core principles.

In *Shankari Prasad v. Union of India*²⁹, the Court upheld the First Amendment which curtailed the “Right to Property” by holding that amendments made under Article 368 are not subject to the review applicable to ordinary laws under Article 13. This view was reinforced in *Sajjan Singh v. State of Rajasthan*³⁰, where the validity of the Constitution (Seventeenth Amendment) Act was upheld.

However, in *Golak Nath v. State of Punjab (1967)*³¹, when challenges to the inclusion of legislations affecting fundamental rights were raised, the Court overruling its earlier positions suggested that if an amendment violates the fundamental rights, it could be subject to scrutiny. A majority later resolved this conflict in favour of limiting the scope of judicial review over amendments.

The landmark decision in *Kesavananda Bharati v. State of Kerala*³² finally established that while Parliament may amend fundamental rights, it cannot alter the Constitution's basic structure. This “Basic Structure Doctrine” has since shaped subsequent jurisprudence. For instance, in *Indira Nehru Gandhi v. Raj Narayan*³³, a clause retrospectively validating an election of Prime Minister was struck down for violating essential democratic principles, and in *Minerva Mills v. Union of India*³⁴, provisions that granted unlimited amending power by removing constitutional limits were invalidated. It was held that, limited amending power is a basic feature of Constitution and these clauses removed all limitations on the amending power and thereby conferred an unlimited amending power, and it was destructive of the basic feature of the Constitution.

Through these cases, the Supreme Court has affirmed that while constitutional amendments are within Parliament’s legislative domain, they must respect the inviolable framework, “the basic structure,” of the Indian Constitution. The Supreme Court of India time to time scrutinizes the validity of law through the Doctrine of

²⁹ *Shankari Prasad v. Union of India*, 1951 AIR 548.

³⁰ *Sajjan Singh v. State of Rajasthan*, 1964 AIR 845.

³¹ *Golak Nath v. State of Punjab*, 1967 AIR 1643.

³² *Supra* note 17.

³³ *Indira Nehru Gandhi v. Raj Narayan*, 1980 AIR 1789.

³⁴ *Minerva Mills Ltd. v. Union of India*, 1975 AIR 2299.

Judicial Review. It is the foundation to ensure the Supremacy of Constitution of India.

4.3. Other Federal Systems: Models of Constitutional Safeguards

Examining other federal systems offers valuable insight into how nations secure their constitutional foundations. Many countries with codified constitutions incorporate "eternal clauses" or similar mechanisms that set strict limits on both judicial review and legislative authority, ensuring that key principles remain unalterable.

For instance, *Germany's Basic Law* contains specific safeguards that protect core values such as human dignity, democratic structure, and the rule of law from amendment. These constitutional safeguards operate as built-in checks that prevent any legislative or judicial action from infringing on the nation's fundamental identity. While Germany's institutional arrangements are unique, they reflect a broader trend observed in various federal systems: the deliberate design to ensure constitutional permanence by embedding non-negotiable provisions within their legal texts.

Such models underscore the balance between allowing necessary political evolution and preserving the immutable core of the constitutional framework, thereby providing stability in the face of shifting political currents.

5. Current Practices and Emerging Challenges

As discussed above, in an era marked by rapid societal changes and evolving democratic norms, judicial interpretations of constitutional amendments face unprecedented challenges across federal systems:

a) Judicial Activism vs. Judicial Restraint

Courts worldwide face a critical balancing act: determining the extent of their engagement in reviewing constitutional amendments. On one hand, judicial review serves as an essential safeguard, preserving democratic norms and protecting fundamental rights. On the other, excessive judicial intervention risks undermining the democratic mandate by encroaching on the legislative domain. This ongoing debate centers on whether courts should actively shape constitutional change or exercise restraint and defer to the political process.

b) Global Trends in Judicial Review

Across different jurisdictions, there is a noticeable trend toward leveraging judicial review to maintain democratic norms and uphold essential rights. As new social, economic, and political challenges emerge, courts increasingly play an active role in ensuring that constitutional amendments do not erode the foundational principles of governance. This global shift underscores the judiciary's evolving function as both an interpreter and guardian of constitutional identity.

c) Concerns Over Judicial Overreach

A significant challenge is the risk of judicial overreach. When courts exceed their mandate by invalidating constitutional amendments that reflect the democratic will, a tension arises between preserving constitutional purity and respecting legislative authority. Critics argue that excessive judicial interference not only disrupts the balance among branches of government but may also stifle politically legitimate reforms. This debate over the proper scope of judicial power remains central to discussions on constitutional evolution.³⁵

d) Impact on Federal Systems

Federal systems introduce additional complexity. The need to balance national unity with regional autonomy makes maintaining constitutional harmony especially challenging. In such systems, judicial review must accommodate diverse local interests while ensuring that amendments do not compromise the nation's core values. The tension between centralized oversight and decentralized governance demands careful calibration of judicial powers.

6. Proposed Reforms and Future Framework

It is evident from the Comparative Analysis that, as constitutional frameworks face unprecedented challenges, there is an urgent need to rethink judicial review practices

³⁵ Likhitha Landa, A Comparative Study of Judicial Review in the United States and India, 10 IJCRT (2022).

and develop mechanisms that ensure both democratic legitimacy and constitutional resilience:

a) Standardized Judicial Guidelines

To address the challenges highlighted above, one proposed reform is the development of standardized judicial guidelines. These would offer a uniform set of principles for evaluating the constitutionality of amendments, ensuring consistency and predictability in judicial decisions. Clear criteria, articulating when and how courts may intervene, would help balance judicial responsibility with respect for the legislative process.

b) Balancing Core Values with Adaptability

An effective constitutional framework must safeguard immutable core values while allowing for adaptability to shifting societal needs. Proposed reforms should include criteria for judicial intervention that protect the fundamental structure of the constitution. At the same time, these guidelines must ensure that the amendment process remains flexible enough to accommodate necessary reforms, thereby aligning legal evolution with democratic imperatives.

c) Incorporating Checks and Balances

Reforms must also safeguard the separation of powers by incorporating strong checks and balances. While judicial review is key to preventing abuses and preserving democratic norms, it should not stifle legitimate legislative innovation. Establishing clear limits on judicial intervention can help maintain a dynamic equilibrium between ensuring constitutional integrity and supporting progressive policy changes.

d) Lessons from Comparative Systems

Insights from other federal systems, including those of the USA, India, Germany, and Canada, offer valuable lessons in balancing judicial oversight with legislative freedom. For example, the United States model emphasizes deference to established political processes, while India's Basic Structure Doctrine showcases judicial review as a counterbalance to majoritarian impulses. Germany's codified "eternal clauses" serve as a blueprint for constitutional permanence, and Canada's approach demonstrates the

integration of judicial interpretation with flexible constitutional practices. Drawing on these diverse experiences can guide the formulation of a balanced and adaptable framework for future constitutional reforms.

Therefore, the evolving dynamics of judicial review over constitutional amendments reflect a global contest between judicial safeguarding of fundamental rights and the preservation of democratic legitimacy. While current practices reveal a trend toward increased judicial oversight, concerns over judicial overreach and the impact on diverse federal systems persist. Proposed reforms centered on standardized judicial guidelines, a balanced approach to core values and adaptability, and reinforced checks and balances; offer a promising pathway forward. Embracing comparative lessons from global models, legal systems can navigate the challenge of harmonizing constitutional permanence with responsive governance, ensuring that the constitutional framework remains both resilient and democratic.³⁶

7. Conclusion

The analysis demonstrates that judicial review and constitutional amendment provisions are deeply interdependent in federal systems. Judicial review acts as a protective mechanism for fundamental rights and the core structure of a constitution even as legislatures enact amendments to address evolving societal needs. This balance is crucial to safeguard democratic integrity while ensuring that constitutional change remains relevant and responsive.

A key contribution of this paper is the proposed framework that harmonizes judicial oversight with constitutional adaptability. By setting standardized judicial guidelines, the framework seeks to clearly delineate when and how courts should intervene in matters of constitutional amendment. This approach not only reinforces the protective role of the judiciary but also respects the democratic mandate of legislative bodies, ensuring that constitutional evolution does not come at the expense of foundational principles.

³⁶ Mahim Gupta & Amit Kashyap, *A Comparative Analysis of the Doctrine of Judicial Review in India, US & UK*, 8 LRD Journal, 39, 52-53 (2024).

The future scope of this research is broad and promising. There is significant potential for exploring the impact of judicial review on emerging democracies, where legal institutions are still developing and face unique challenges. Additionally, further study is needed on how judicial oversight can address contemporary global challenges such as climate change and digital governance, areas where traditional constitutional frameworks increasingly require innovative adaptation.

In conclusion, maintaining the balance between judicial review and constitutional amendment is pivotal for the resilience of federal systems. By harmonizing these forces, legal frameworks can both protect constitutional integrity and facilitate necessary reforms, ensuring that democracies remain robust, adaptive, and capable of meeting future challenges.

References

Books

- Narender Kumar, *Constitutional Law of India*, 2nd ed. (Allahabad Law Agency 2000)

Articles

- Pandey, T. N., *Administrative Discretion and Judicial Review: Concept and Ideologies*, 33(4) *Indian J. Pub. Admin.* 895 (1987)
- P. H. A. Lehner, *Judicial Review of Administrative Inaction*, 83 *Colum. L. Rev.* 627 (1983)
- J. N. Bhatt, *Separation of Powers: The Role of Judicial Review—Juristic or Forensic: Evolving or Elusive*, 86 *A.I.R.* (1999)
- Rahul Raman, *A Comparative Study of Judicial Review in India, the United States and the United Kingdom*, 3 *Law Mantra Quarterly Online Journal*, (2016)
- Steven de Munnik, “*Amending Canada’s Constitution*,” *Federalism-E* Vol. 5 (June 2004)
- Likhitha Landa, *A Comparative Study of Judicial Review in the United States and India*, 10 *IJCRT* (2022)
- Mahim Gupta & Amit Kashyap, *A Comparative Analysis of the Doctrine of Judicial Review in India, US & UK*, 8 *LRD Journal*, 39, 52-53 (2024)

Reports

- Thomas H. Neale, *The Article V Convention to Propose Constitutional Amendments: Contemporary Issues for Congress*, CRS Report R42589, (Mar. 29, 2016), available at <https://www.congress.gov/crs-product/R42589>

Case Laws

- *Marbury vs. Madison*, 5 U.S. 137 (1803).
- *Dr. Bonham vs. Cambridge University*, (1610) 8 Co Rep 114

- U.S. v. Todd (U.S. 1794)
- Hylton v. United States, 3 U.S. 171 (1796)
- Emperor vs. Burah, 1877 (3) ILR 63 (Cal)
- Secretary of State vs. Moment. [1913] 40. ILR 391 (Cal)
- Annie Besant v. Government of Madras, 1918 AIR 1210 (Mad)
- R. v. Oakes, [1986] 1 SCR 103
- Amalgamated Society of Engineers v. Adelaide Steamship Co Ltd, (1920) 28 CLR 129
- Kesavananda Bharati v. State of Kerala, AIR 1973 SC 1461
- Minersville School District v. Gobitis. 310 U.S. 586.
- McCulloch v. Maryland. 17 U.S. 316
- Youngstown Sheet & Tube Co. v. Sawyer. 343 U.S. 579
- Plessy v. Ferguson. 163 U.S. 537
- Reed v. Town of Gilbert. 135 S. Ct. 2218.
- Shankari Prasad v. Union of India, 1951 AIR 548
- Sajjan Singh v. State of Rajasthan, 1964 AIR 845.
- Golak Nath v. State of Punjab, 1967 AIR 1643.
- Indira Nehru Gandhi v. Raj Narayan, 1980 AIR 1789
- Minerva Mills Ltd. v. Union of India, 1975 AIR 2299