A Comparative Study of Judicial Review: Trends in India UK and USA

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***Abstract*- The judiciary controls the discretionary powers granted to the government by Parliament through judicial review. As a result, Parliament will continue to be the top lawmaker, supporting the notion of Parliamentary supremacy, which is safeguarded as a fundamental fact. Today, the government and other public entities make thousands of decisions every day that have an enormous impact on people. The activities of ministers and other public bodies are, nonetheless, subject to review and other forms of scrutiny. The supremacy of law is the core concept of review. The court has the ability to examine the legislative, executive, and judicial actions. Any legislation and order that is in disagreement with the country's fundamental law might be declared unconstitutional and unenforceable by the court. The position of legal review in the USA and UK. Judicial review first appeared in the USA with the famous Marbury v. Madison landmark case. However, the original Lord Coke ruling in Dr. Bonham v. Cambridge University had established the first time the scope of review in 1610 in England. Although the authority of review is not directly stated in the U.S. Constitution, it is established by Articles III and VI. Since the UK does not have a written constitution, the paper will also discuss the "Parliamentary Sovereignty" notion, which was central to the Constitutional democracy. Parliament In the UK, supremacy takes into account the needs of the people, therefore the courts are unable to review Parliament's acts. Except in a few instances involving human rights and individual freedom, the Parliament forbids the reconsideration of main law. However, secondary laws are up for reconsideration. In the UK, a court may examine executive and administrative acts. The course taken by Great Britain was different. Instead, a body of literature, customs, and traditions assert that a valid act of Parliament cannot be called into doubt in court. The final word belongs to the legislature, not the judiciary.**

***Index Terms*- Judiciary, judicial power, judicial review, written Constitution, USA.**

I.INTRODUCTION

The natural law argument advanced in Dr. Bonham's case in England while finding void an Act of the Parliament that had put its seal on the Charter of the Royal College of Physics planted the roots for Judicial Review. The theoretical basis of the judicial review process that the Court will follow the Constitution in cases where there is a conflict between it and a legislative statute and declare the latter to be unconstitutional, was established by him. He asserted that the common law will govern it and declare an Act of Parliament to be invalid if it violates common law right and reason, is objectionable, or cannot be carried out[2].

The core of judicial review is the supremacy of law. The judiciary's actions as well as those of the legislative, executive, and judicial wings are subject to investigation by the court. It also has the power to judge whether a piece of law or other action is right or wrong. The Rule of Law is relevant here. The role of judicial review in maintaining the separation of powers is as a control mechanism. The division of powers serves as the foundation for the judicial review process. Any statute or order that conflicts with or is inconsistent with the fundamental rule of the nation may be ruled by the court to be unlawful and ineffective. The theory of limited government and constitutional supremacy, as well as the requirement that common law must be consistent with constitutional law. A part of the procedure known as judicial review is the idea of activist judges. As of right now, the Indian constitution has set up an independent judiciary with the power to assess whether any executive action or law is constitutional through judicial review. The Supreme Court of India created a number of concepts based on judicial review, including the Doctrines of Severability, Eclipse, and

Prospective Overruling, among others. Judicial review of changes to the constitution, judicial review of legislative measures, and judicial review of administrative actions are the three basic facets of judicial oversight in India[3].

The primary goal of judicial review is to establish whether legislative Acts are unconstitutional. It modifies the constitution to fit the current circumstances and demands. The primary goals of judicial review in India are to enforce the supremacy of constitutional law, safeguard citizens' fundamental rights, and preserve a federal balance between the Centre and the States. The primary focus of judicial review is also the division of legislative and administrative authority between the federal government and each state. The judiciary has a responsibility under the constitution to maintain the boundaries of the authority that the various governmental organs have been given. The Rule of Law and the requirement that public entities follow the law serve as the foundation for judicial review's legitimacy. When decisions are made beyond the actual control of the political process, using judicial review, one can make those who use public power answerable for their actions. A powerful tool for checking arbitrary, unfairly harassing, and unlawful laws is judicial review.

In the historic Marbury v. Madison case, the United States is where the idea of judicial review essentially first emerged. However, the original Dr. Bonham v. Cambridge University case by Lord Coke had established the first precedent for judicial review in England in 1610. Article III alludes to the judicial power of the United States, which includes original and appellate jurisdiction as well as issue originating under law and equitable jurisdiction, as covering judicial review capabilities, despite the fact that it is not clearly mentioned in the US Constitution. Article VI of the Constitution states that only the body created by the Constitution is allowed to exercise complete executive power. According to Article VI, the US Constitution is the highest law. Although it is not directly stated in the US Constitution, judicial review is a concept that the Court has developed. In order to prevent Congress and State Legislatures from granting the executive the requisite statutory authority, the US Supreme Court has the jurisdiction to do so. Due process of law identifies unreasonable and unlawful laws, which maintains a democratic balance in the US.

However, the UK has no formal written constitution. Judicial review was not previously permitted in the UK. In the United Kingdom, constitutional democracy was dominated by the concept of "Parliamentary Sovereignty." In the UK, there is a system known as "Parliament Supremacy" that includes popular will and prevents courts from reviewing legislative actions. Primary legislation (legislation enacted by Parliament) is not subject to judicial review in the UK since Parliament prohibits it, with the exception of a small number of issues involving human rights and individual freedom. However, secondary legislation (i.e., rules, regulations, and acts of Ministries) is up for judicial review. In the UK, courts have the authority to examine executive and administrative acts. In the UK, judicial review is mostly based on technical grounds, such as administrative action[4].

II.THE POWER OF JUDICIAL REVIEW IN INDIA

The superiority of the law is one of the founding principles of the Indian Constitution. The Indian Constitution is built on the idea of judicial monitoring. The concept of the Rule of Law serves as the foundation for the Indian Constitution. The underpinning of the Indian Constitution is the idea of the Rule of Law. Judicial review is an essential basis of governance, even though it is not specifically mentioned in the Indian Constitution. Without it, the Rule of Law would become a meaningless notion and a guarantee of impotence. A functional system of checks and balances between the legislative and executive branches may be established in India by the courts. The Indian Constitution clearly grants the courts the right of judicial review in a number of places, including Articles 13, 32, 131-136,141,143,226,227,245, and 372.

Judicial review's primary objective is to ensure that the person is treated justly and equitably and that the power is not abused. The stated purpose of judicial review is to uphold a claimed right of one party to a litigation and, in the event that the court finds that an enactment is unlawful, to provide remedy to the party who was aggrieved by it by pronouncing it void. However, the true goal is to ensure that no law that violates the constitution is upheld by legal authorities.

III.ORIGIN OF JUDICIAL REVIEW IN INDIA

The United States of America's idea of judicial review served as a major source of inspiration for India as well

as other constitutions around the world that developed after the 18th century. The concept of judicial review is based in India on the Rule of Law, which is the immensely proud legacy of the country's traditional culture and society, is the foundation on which the notion of Judicial Review is based in India. Only the ways in which Judicial Review operates and how it is applied have changed significantly; the theory of Judicial Review's underlying assumptions, however, remain the same. There was no judicial review available because the Government of India Act of 1858 and the Indian Council Act of 1861 in India restricted the governor general's power in Council to flout laws. The court could only incriminate people. Very first case in India to define and establish the notion of judicial review was *Emperor v. Burah*[5], which was decided in 1877. The court determined that the victim of the infringement has the right to challenge the legality of a statute that the Governor General Council passed without following the procedures specified by the Royal Parliament. In this instance, both the High Court and Privy Council agreed that Indian courts' ability to conduct judicial reviews is circumscribed. In *Secretary of State vs. Moment*[6], Lord Haldane reaffirmed that the Government of India cannot, through law, repeal the rights granted to Indian subjects by the Parliament Act, or more precisely, the Government of India Act of 1858. In *Annie Besant v. Government of Madras*[7], the Madras High Court observed that there was a notable change between the law making powers of the Imperial Parliament and the subject Indian Legislature, and that any action taken by the Indian Legislature that went beyond its express authority or broke the constraints imposed by the royal parliament would be unconstitutional.

Despite the fact that the Government of India Act, 1935 does not directly reference judicial review, the court was forced to do so because of the constitutional issues it. The Constitution of India, 1950 now clearly establishes the doctrine of judicial review in a number of its articles, including 13, 32, 131–136, 143, 226, 227, 245, and 372[8].

IV.SIGNIFICANT DOCTRINES DEVELOPED BY COURTS THROUGH JUDICIAL INTERPRETATIONS

A clause in Article 13 of the constitution calls for the judicial review of pre- and post-constitutional laws. This article received the most important judicial review theories, including the Doctrine of Severability and the Doctrine of Eclipse. Article 13 permits the "judicial scrutiny" of all previous and current Indian laws. The High Courts and the Supreme Court of India have the ability to declare a law invalid if it interferes with any of the provisions of Chapter III, in accordance with Articles 226 and 32 of the Indian Constitution. The Doctrine of Pith and Substance and the Doctrine of Colorable Legislation. These theories were developed by the Supreme Court utilizing its judicial review authority to interpret several Articles. The doctrine used to interpret judicial decisions is known as prospective overruling. These concepts are listed in the Supreme Court's interpretation of the Constitutional provisions. In India, judicial review is based on a number of factors, including express provisions in these principles for judicial review of legislative, executive, and judicial acts:

a. Doctrine of Severability:

This concept is covered in Article 13 of the Indian Constitution. The core of Article 13's severability doctrine is the phrase 'to the degree of contravention'. Using this tactic, the court is able to distinguish between the rest of the legislation and the unlawful portion. To the greatest extent possible, other provisions of the law shall continue in effect. Fairness and caution have been the pillars of this ideology. The entire provision is to be void if the legitimate and invalid components are so intimately intertwined that they cannot be distinguished. This is referred to as the severability principle. In the case of *A.K. Gopalan v. State of Madras*[9], it was determined that Section 14 of the Prevention Detention Act violated Article 14 of the Constitution. Only Section 14 of the Act, not the entire Act, must be repealed, according to the Supreme Court. Additionally, it was decided that Section 14 of the Act is severable because its absence will not change the Act's purpose. By using the severability theory, the Supreme Court invalidated the challenged law.

b. Indian Doctrine of Eclipse:

In the case of a pre-constitutional statute, this doctrine is applicable. All pre-constitutional laws that conflict with part 3 of the constitution become invalid and unenforceable after the constitution is enacted, according to article 13(1) of the constitution. As a result, when such statutes were passed, they were entirely legitimate and in effect. Due to Art. 13, they

are now eclipsed and are no longer valid. The Doctrine of Eclipse refers to this. The statute will once again be implemented if the constitutional prohibition is lifted because it will no longer be eclipsed. In *Bhikaji Narain Dharkras v. State of M.P.*, the State Government successfully used an existing state statute to bar all personal vehicles transport companies from the transport industry. Parts of this statute were then deemed to be unlawful as of the date the constitution took effect because they breached the terms of Art. 19(1)(g) and could not otherwise be supported by Art (6). The First Amendment Act of 1951 altered Article 19(6), enabling the government to control any area of the economy. The Supreme Court came to the conclusion that the disputed Act was no longer unlawful and that it was now functional and binding after the change to clause (6) of Art. 19 eliminated the constitutional impediment.

c. Doctrine of Prospective Overruling:

The basic objective of prospective overruling is to interpret a prior ruling in a way that best satisfies present needs without having any enforceable implications for the parties to the initial case or other parties obligated by the rule. The older precedent still holds true for all prior instances, but this concept substitutes it with impact just for circumstances continuing forward. In plainer language, it indicates that the court is establishing a new rule of law for the future. In the legal proceeding *Golak Nath v. State of Punjab*[10], this argument was advanced in India. In this instance, the court established the doctrine of prospective overruling and overturned the rulings in the *Sajjan Singh v. State of Rajasthan* [11], and *Shankar Prasad v. Union of India*[12], cases. The judges of the Supreme Court of India gave a very thorough declaration clarifying their opinion on this theory when they said that the theory of prospective overruling is a modern doctrine suitable for a fast-moving society. The First, Fourth, and Nineteenth Amendments will still be in force in accordance with the Supreme Court's application of the doctrine of prospective overruling, which states that this decision will only be effective in the future. The terms judicial review of constitutional modifications, "judicial review of parliamentary and state legislation and judicial review of executive activity are all used in the Indian Constitution. The following is a summary of these dimensions:

1. Judicial Review of Constitutional Amendments:

Amendments to the constitution are quite rigorous in India. Although the Indian Supreme Court is the protector of the Constitution and periodically reviews the constitutionality of amendment laws, Although Parliament has the ultimate power to alter the Constitution, it cannot alter its guiding principles. But whether Article 368 of the Constitution permitted the modification of fundamental rights was a point of contention between the Court and the Parliament.

The constitutionality of the first amendment act, which restricted the right to property guaranteed by Art. 31 of the constitution, was contested in *Shankari Prasad v. Union of India*, the first case involving the constitution's applicability. The Supreme Court was asked to consider whether fundamental rights can be amended under Art. 368. The argument against the constitutionality of the first amendment was that since Article 13 forbids the enactment of laws that violate or abrogate fundamental rights, any law, including laws amending the constitution, would fall under this prohibition. As a result, the constitutionality of such laws could be judged and examined in light of the fundamental rights that they could not violate. It was claimed that since Parliament was included in the definition of State in Article 12 and law in Article 13(2) must consequently include constitutional modification. According to the Supreme Court, which denied the above said assertion and retained that the authority to amend the constitution, including the fundamental rights, is enclosed in Art? 368, the word law in Art. 13(2) would include only an ordinary law made in the discharge of law making power and precludes amendment to the constitution made in the exertion of parliamentary sovereignty. Therefore, even if a constitutional amendment limits or eliminates some essential rights, it will still be enforceable.

When the constitutionality of the Constitution (Seventeenth Amendment) Act, 1964, was contested, the same issue was raised again in Sajjan Singh v. Rajasthan in 1964. This time, the court revised its earlier conclusion that constitutional amendments made in accordance with Art. 368 are not subject to judicial review. The Constitution (17th Amendment) Act of 1964 was contested in this case and upheld.

The same constitutional amendment subject was raised in 1967, two years later Sajjan Singh's decision in Golak Nath v. State of Punjab. In this instance, the

argument that the First and Fourth Amendments, as well as the Seventeenth Amendment, which included it in the Ninth schedule and which also abridged fundamental rights, were unconstitutional was used to challenge the addition of the Punjab Security of Land Tenures Act, 1953 schedule IX. The ruling in the Shankari Prasad and Sajjan Singh case was overturned by the Supreme Court. The Supreme Court ruled that a constitutional amendment that breached Article 13(2) will be invalidated because it falls under the definition of law as defined by that article, which includes both statute and constitutional law. The court decided that Article 245 when read alongside Entry 97 of List 1 of the Constitution gives Parliament the authority to change the Constitution, not Article 368. Only the process for amending the Constitution is outlined in Art. 368. Only the process for amending the Constitution is outlined in Art. 368. The procedure for amending laws[13].

The According to the minority judgment of five out of the eleven judges, the Shankari Prasad and Sajjan Singh case was appropriately determined since the word "law" in Art. 13(2) only apply to ordinary legislation and not a constitutional reform. They asserted that although Article 368 discussed the procedure for changing the constitution, it also contained the power to do so[14].

In *Minerva Mills v. Union of India*, the Supreme Court was requested to examine a decision made in accordance with Section 18-A of the Industrial (Development and Regulation) Act of 1951 and the taking over of the mill's management in accordance with the Silk Textile Undertaking (Nationalization) Act, 1974. The petition contested the constitutionality of Article 368's provisions (4) and (5), which were added by Section 55 of the 42nd Amendment. If these provisions were upheld, the petitioner would be unable to challenge the 39th Amendment's placement of the Nationalization Act of 1974 in the IX schedule[15].

Art. 368's subsections (4 and 5) were added by S. 55 of the Constitution (42nd Amendment) Act of 1976. Clauses (4) and (5) of Article 368, which the 42nd Amendment added, were overturned by the Supreme Court on the grounds that they damaged the fundamental aspect of the Constitution's fundamental structure. A fundamental aspect of the Constitution is its limited amending authority, which was destroyed by these sections, which eliminated all restrictions on the power and granted an unrestricted amending power.

The Supreme Court uses the doctrine of judicial review in these cases to examine the constitutionality of Amendment Law. By carefully examining the court rulings, the Supreme Court also interprets numerous clauses like Art. 13,368 and furthermore upholds the Constitution's supremacy, which is its fundamental characteristic[16].

Judicial Review of Parliamentary and State Legislative Action:

The law making power to the parliament and state legislature have been conferred by Articles 245 and 246 of the Indian Constitution. According to Article 245(1) of the Constitution, the State Legislature may pass legislation for the entire state and any portion thereof, and the Parliament may pass laws for both the whole and any portion of the Indian Territory. The State Legislature and Parliament are given restrictions on how much legislation they can pass thanks to the phrase "subject to the provisions of the constitution. In India, judicial reviews of legislative activities are essentially defined by these words. It makes sure that legislation should adhere to constitutional provision restrictions. According to Article 141, which includes the Doctrine of Precedent, the Supreme Court has the authority to apply its own stance on any contentious matter and it has legal effect? Through its legal decisions, the Supreme Court provides us with some insightful views about the legislative activity of the Parliament and State Legislatures[17].

In *SP Sampat Kumar v. Union of India*[18], it was contended that the Administrative Tribunal Act, 1985 was unlawful because it violated the constitution's basic feature of judicial review by denying the High Courts' jurisdiction over service-related disputes under Articles 226 and 227. The Supreme Court ruled that while if the Act barred the High Court’s from exercising judicial review in areas of employment, it did not completely eliminate the Supreme Court's authority to do so under Articles 32 and 136. Furthermore, the court ruled that "a statute established under Article 323-A excluding the High Courts' jurisdiction must provide an efficient substitute institutional mechanism of power of judicial review. A basic component of the constitution, judicial review cannot be eliminated from a particular domain until a substitute efficient institutional machinery or ability is provided.

Clauses 2(d) of Article 323-A and clause 3(d) of Article 323-B were once more contested in *L Chandra v. Union of India*[19], on the grounds that they prohibit High Courts from having jurisdiction in service matters. The High Courts and Supreme Courts' authority under Articles 226 and 227 and 32 of the Constitution is undermined by these provisions, according to the majority ruling of the Constitutional Bench. Judicial assessment A fundamental part of its basic structure is that the High Courts and Supreme Court have the power to review legislative actions under Articles 226 and 227 and 32.

In the case of *I.R. Coelho vs. State of Tamil Nadu*[20], the petitioner disputed a number of Central and State regulations, including the Tamil Nadu Reservation Act. Any statute added to the Ninth Schedule after the verdict in Keshvananda Bharati's case, according to the Nine Judges Bench, will be subject to dispute. According to the court, the Supreme Court has upheld the legality of all Ninth Schedule laws; hence another challenge to that constitutionality is not permissible. But from the other hand, if a statute is found to infringe fundamental rights listed in the Ninth Schedule after the Keshvanand Bharati case's decision date in a way that undermines or affects the fundamental principles of the Constitution According to the Supreme Court's decision, legislative actions should be subject to judicial review based on the Constitution's fundamental principles.

Judicial Review of Administrative Action:

In India, judicial examination of administrative action was created by the British. It's possible that the greatest significant advancement in public law is the judicial review of administrative action. A person may petition the Supreme Court or High Court under the Constitution's Doctrine of Judicial Review to have a right that is protected by the Constitution upheld. Conventional courts of law may rule an action to be unlawful if the executive or government abused the authority granted to it or if it was done on purpose. If any rules, regulations, ordinances, byelaws, notifications, customs, or usages conflict with or violate any of the provisions of Article 13 of the Constitution, the Supreme Court and the High Courts may declare them to be ultra vires. The goal of judicial review of administrative action is to safeguard individuals from government malfeasance. The legislature imposes responsibility that such discretion be utilized honestly, appropriately, and reasonably when it grants discretion to a court of law or to an administrative authority[21]. This interpretation of DE Smith makes it quite evident that administrative discretion should only be applied sparingly and carefully. Therefore, the judiciary must assess the excessive discretionary power of administrative action. The judiciary has a responsibility to uphold checks and balances if it determines that any administrative action is unlawful.

Grounds of Judicial Review of Administrative Action:

In general, courts lack the authority to impede the activities of administrative officials acting within the scope of their discretion. However, this does not imply that the court lacks authority to exercise control over administrative judgment. In India, the courts will intervene with the administration's use of discretion primarily on the basis of either failing to use discretion or using discretion excessively or inappropriately. There are a number of reasons for judicial review of administrative action, which includes:

- Illegality: This means that the decision-maker must understand the applicable laws well and adhere to them.
- Irrationality: No logical person could have reached the conclusion given how ludicrous it is in breach of moral standards that are generally accepted.
- All administrative decisions and actions must be made in a fair, reasonable, and just manner.
- The reasonableness of the link between the means and the ends in any administrative decision or action is required by the principle of proportionality.
- Unreasonableness: Indicates that the authority's or the decision's implementation is either incomplete or unfair, or that the circumstances do not support the authority's conclusion.

I would classify the first ground as illegality, the second as irrationality and the third as procedural impropriety

V.DOCTRINE OF PROPORTIONALITY

Using the doctrine of proportionality as a foundation for judicial review is another crucial step. This means that administrative actions must not go beyond what is required to produce the desired outcome. The doctrine

is applicable to both substantive and procedural issues. This principle envisions examination of whether the authority granted to an executive agency is being used in accordance with the intended purpose. Therefore, any administrative authority that exercises a discretionary power must prove that the judgment it makes is reasonable and appropriate for the task at hand[22].

The Regional Engineering College's admissions were challenged in *Ajai Hasia vs. Khalid Mujib*[23], on the grounds that a high percentage of the marks for the oral test and a brief interview period made them arbitrary and unfair. Because allocating a third of the total marks for the oral interview was obviously arbitrary and irrational and in violation of Article 14 of the Constitution, the Court invalidated the rule that prescribed a large percentage of marks for the oral test. An air hostess would quit the company's employment at the earliest opportunity of age 35, marriage, if it happened during the preceding four years on the job, or first pregnancy, according to one of the company's criteria in *Air India v. Nargesh Meerza*[24]. If a flight attendant met the first requirement before to getting pregnant and the regulation did not forbid marriage after four years, her pregnancy could not be used as a reason to terminate her job. The Flight India and Indian Airlines Regulations' restrictions on the retiring and gestation bar for air hostesses' services were found to be wholly irrational by the Supreme Court.

VI.CURRENT TRENDS OF JUDICIAL REVIEW IN INDIA

The Supreme Court of India broadened the meaning of the judicial review principle during the AK Gopalan case, which resulted in the landmark ruling in the I.R. Coelho case. Since then, the idea of judicial review has grown to be a cornerstone of constitutional law, and the Supreme Court now has a major influence on how constitutional clauses are defined. In its recent ruling in *Madras Bar Association v. Union of India*[25], the Apex Court analyzed the provisions of the Companies Act, 1956 and determined that several of them were unconstitutional. The petitioner is challenging the NCLT and NCALT constitutions, the creation of the Committee, and the selection of the judicial and technical members in this process. Sections 411(3), 409(3), and 409(3)(a) (c). the section of 412(2) that includes the Board of Company Law Administration's by laws. The Supreme Court determined that the aforementioned clauses are extra vires despite upholding the legality of the NCLT and NACLT as a result, inconsistent with the constitution on the grounds that any institution having performed judicial functions should be composed of members with judicial skills and experience, and that, as a result, judicial members must outpaces specialized members in order to protect the basic element of that constitution.

VII.JUDICIAL REVIEW IN UK

In the UK, parliamentary primacy must be considered while evaluating judicial review. No authority on earth can reverse what Parliament accomplishes, according to William Blackstone. This claim is predicated on two unstated premises: the first is that precedents do not apply to Parliament, and the second is that precedents do not apply to Parliament's future. Similar to Coke, Blackstone discusses the privileges of Parliament and contrasts it with other courts. For the same reason that the High Court or Parliament is regulated by its own unique law, every court of justice is subject to a variety of conventions, some of which are based on civil and catholic law, others on common law, and still others on their own unique laws and customs[26].

Sovereignty is a legal concept. A putative act of Parliament may be challenged in court as to its validity. The legal authority of a sovereign legislature cannot be questioned, regardless of the grounds, which may be those of composition and procedure. It is common practise in England for Parliament to arbitrarily supersede the judiciary. The judiciary's sole responsibility is to uphold the rule of law. However, as was already established, the Parliament will win out, however slowly.

The issue in *Liversidge v. Anderson*[27], was whether the judiciary may use an objective standard to determine the reasonableness of the secretary of state's judgment. The majority of judges believe that if anything was done in good faith, the court cannot examine the reasonableness of his beliefs. This idea of "reasonableness belief," according to Lord Atkin's dissenting opinion will further obstruct the judicial investigation. According to Lord Atkin, the danger to individual liberty was strictly emphasized.

According to the criteria defined by British courts, judicial review's values are set. English judges are typically better accommodating of governmental

factual findings than US judges are, and perhaps less understanding of mistakes on legal matters. It might be challenging to tell the difference between a legal and a factual inquiry. In such cases, the appellate court's authority is not restricted by the "no evidence rule" and may review both the finding of law and the finding of fact[28].

The common law forms the foundation of the judicial review process in the United Kingdom. The judiciary has the inherent authority to invalidate any act that violates the law and to provide appropriate remedies. In Britain, the right to judicial review is only a useful component of the rule of law. Therefore, there is no true notion of sovereign immunity because the courts protect or recompense the population if power is used in a manner that was not authorized by Parliament. The two distinct theories of overreach of jurisdiction or ultra vires and inaccuracies on the face of the records, respectively, govern how the jurisdiction of courts is ultimately determined.

The first rule is the excess jurisdiction or extra vires doctrine, which has a long history in British administrative law. In the case of *Boddington v. British Transport Police*[29], this theory of supra vires was acknowledged. According to this theory, an action is legal if it falls under the authority that was granted. But if it extends beyond the authority granted, it is invalid. Ultra vires is the common law term for an illegal act.

The second principle is judicial review in circumstances where mistakes on the record's face led to lesser courts' rulings being overturned for a prolonged period of time. The only instance in which a British court would overturn a decision that was acknowledged to be within its authority (intra vires) yet broke a fundamental norm of law. The initial method of judicial oversight was document review when the Court of King's Bench had charge of supervising lower tribunals and administrative bodies, such as Justices of Peace and Commissioners of Sewers. The court on King's Bench may overturn a judgment if the records of lower courts show a legal error therein. Review of records turned into excessively formal. Numerous orders were overturned in the matter of R. v. Ruyton (Inhabitants) due to regrettable and deplorable technicalities. In order to prevent abuse, Parliament has taken two steps: I adding no certiorari provisions to a number of acts that date back to the 17th century; and (ii) forcing a prison sentence to be backed by a very brief record, deleting the accusation, the supporting proof, and the reasons that were formerly necessary to be presented.

Judicial review depending on errors in the evidence was long forgotten after 1848, but it was brought back in 1950 in *R. v. Northumberland Compensation Appeal Tribunal, ex p. Shaw*[30]. This situation involved compensation. The appellate panel misapplied the law and did not let the whole duration of service to be taken into account for compensation. Although the Tribunal accepted two terms of service, only the second term was counted.

The order was consequently invalidated on this count because it constituted a clear legal error. The House of Lords has ruled that all judicial review is warranted for all errors of law, regardless of the record.

VIII.COMPARATIVE STUDY OF JUDICIAL REVIEW IN UK AND USA

Compared to the USA and India, the situation in the UK is quite different. The US constitution does not expressly grant judicial review. The primary distinction between American and British judges is that the former speaks in terms of constitutional authority, while the latter must depict him as acting in accordance with parliament's genuine intentions, which are impatient with any form of restraint. However, from some angles, the US and UK have the same judicial review authority. Despite the fact that British colonialism in the 17th and 18th centuries was not founded on a federal structure and that England was not familiar with judicial supremacy as it exists in the 20th century's constitutional system, Britain did plant the seeds for American judicial review.

Comparing the US to the UK, we can see that the US evolved the ability of judicial review for the simple reason of setting limitations on the congress, the president, the states, and the union, as stated explicitly in the US constitution. In the UK, judicial review is based on both common law and law of nature. The US has a procedure that is based on the UK's earlier use of the notion. The concept of right and plain reasoning is the foundation of judicial review in the UK. It also has no explicit foundation in the written Constitution of the United States. The Supreme Court does not have specific judicial review authority under the US constitution. Kenneth Janda, Jeffrey M. Berry, and Jerry Goldman[31], argued that the court obtained this

authority from the constitution's wording and construction in a disputed interpretation.

Judicial review in the US is based on imaginative Constitutional interpretation. The American system ran into the issue present in any written constitution that distributes authority between the federal and state legislatures or grants some powers to its legislature while reserving others.

In the UK, the guiding premise is that if a person or body granted authority exceeds it or exercises power without permission, the court may declare the action to be illegal. It entails abiding by the restrictions placed on the use of the authority, acting honestly, and avoiding taking into account unimportant factors[32]. In the UK, judicial review is given legitimacy by appealing to the higher powers of reason and natural justice, whereas in the US, it is justified by citing the Constitution's supremacy clause and higher law notion. The Constitution was referred to as the "fundamental and paramount law of the nation" in the *Malbury v. Madison, decision*[33].

IX.JUDICIAL REVIEW IN USA

Despite having a codified constitution, the judiciary's review authority has never been uncontested or without controversy. John Hart Ely proposed that a new domain of interpretation and the proper operation of the court. According to him, "the court's goal is to defend the process of combining popular government with minority protection, or to put it another way, to protect the process of representation[34]. The power of courts has significantly increased thanks to judicial review.

By adhering to John Marshall's precepts, the US Supreme Court has preserved the Constitution and Darwinism. John Marshall once said, It is a Constitution we are expounding, and that statement has stood the test of time[35]. Thirteen independent states entered into an agreement to form the American federation, giving the centre little power and keeping the rest for them. States come together to form the American federation. Although it is highly advanced and novel, judicial review was not originally intended to be part of the US constitution. It is true, as political scientist Benjamin F. Wright noted, that the framers barred the judiciary from policy-making." In 1965's Griswold v. Connecticut and 1968's Flast v. Cohen, learned Black J and Douglas J both presented this viewpoint once more.

The US Constitution has been creatively interpreted to form the foundation for the judicial review idea. The American System ran into the issue inherent in any written constitution that grants some powers to its legislative while reserving others for it or that divides those powers between the federal and state legislatures.

The Landmark Case OF Marbury v. Madison[36]:

In the well-known Marbury v. Madison case from 1803, the judicial review jurisdiction was once more used legitimately to find a Congress Act unconstitutional. In this precedent-setting case, President John Adams used the final days of his presidency to improperly make a significant number of political deals after losing the election for a second term in 1801. When Thomas Jefferson was elected president, he told James Madison, his secretary of state, not to provide the elected representatives Adams had picked the official printed documents[37].

Thus, it was impossible for the administration employees, including William Marbury, to find other employment. William Marbury requested a writ of mandamus from the U.S. Supreme Court in order to compel Madison to deliver the commission.

The questions were as follows: Whether the Supreme Court permitted to issue mandamus writs? Can Congress go above what is stated in, when expanding the original jurisdiction of the Supreme Court, does Article III of the Constitution apply? Can the Supreme Court review legislation that Congress has passed? Chief Justice John Marshall asserts that while the court should have appellate jurisdiction, it lacked the power to order a writ of mandamus. The Supreme Court's original jurisdiction cannot be increased by Congress without violating T he court also decided that Article III of the Constitution was invoked. The Supreme Court has the right to examine legislative actions taken by Congress and assess their validity. The Supreme Court of the United States has the authority to judge any law's legality at any time. Madison was denied the commission because Section 13 of the Judiciary Act of 1789 was ruled unconstitutional by the US Supreme Court, which also dismissed the writ petition.

As a result, the US Supreme Court created the idea of judicial review. Prior to this ruling, the Supreme Court of the USA never exercised its complete legal authority to declare any action by Congress to be unconstitutional. This landmark case gives the Supreme Court the fundamental authority for judicial

review to ascertain the legality of any legislative actions taken by Congress.

As a result of this important landmark decision, the Supreme Court of the United States of America formally endorsed the concept of judicial scrutiny in the US constitution. Even while judicial review is not officially provided for in the US constitution, the court has expressed its preference for the idea in prior significant rulings. When using their judicial review authority, the courts must accomplish their goals while upholding each person's rights.

The following are the goals of judicial review in the USA:

- To declare legislation that is against the Constitution to be unconstitutional.
- To uphold the constitutionality of laws that are contested as being invalid.
- To defend and sustain the Constitution's supremacy by interpreting its provisions.
- To prevent other government departments from encroaching on Congress' legislative authority.
- To prevent Congress from giving the executive branch of government the power to make important legislative decisions or to prevent Congress from giving the State Legislatures such power.

The American Constitution is a written document that is primarily founded on the Rule of Law and is federal democratic in nature. In the USA, the judiciary has the power to review Congress and President Activities and declare them invalid if they are in violation of the Constitution. Articles III and IV of the US Constitution imply judicial review even though it isn't stated explicitly in those sections. According to Bernard Schwartz, the core of the judicial branch's authority under the US Constitution is to decide whether a legislative Act is constitutional. Judicial review is a restriction on popular rule and is a feature of the legal system that is constitutionally created for America, according to Justice Frankfurter's ruling in the Gobitiz case[38]. Judicial scrutiny is predicated on the idea that the Constitution is the Supreme Law[39].

The concept of judicial review is based on the assumption that the Constitution is the Supreme Law. There was a dispute on how to distinguish between federal and state legal power in McCulloch v. Maryland[40]. The Bank of America in the State of Maryland was established by government laws. Immediately after that, the State of Maryland implemented tax legislation that charges banks for connected operations. This was contested on the grounds that a bank founded by federal law cannot be taxed under state law. The Court ruled that the Union authority cannot be taxed by the State. A court granted the national government immunity. This ruling states that the theory of immunity was created by the US Supreme Court.

President Truman directed the confiscation of the steel in Youngstown Sheet Tube Co. v. Sawyer[41], to stop the then-ongoing national adversity. The President passed a legislation requiring the seizure of all citizens' steel in this manner. According to Justice Black's ruling, the Court determined that this was a case in which the Executive's legislative overreach was found to be illegal. The Court further noted that the US Constitution does not grant the power to make laws to the President or the military.

X.CONCLUSION

While concluding, I believe that in the current environment, such as in the UK, the influence of judicial review strengthens the power of courts. Initially absent from the UK, the idea of judicial review has since become well-established there. In the UK, parliamentary sovereignty still exists, but judicial review also has a position in the current situation. The doctrine of judicial review has evolved into a very dynamic idea in the modern context. By employing the authority of judicial review, the judiciary serves as the protector of the constitution in many different countries. In India, courts closely examine whether any administrative actions or laws are valid if they are contradictory or illegal in nature. In the current situation, judicial review of administrative action has a greater reach. The goal of judicial review is to ensure that each organ operates within its capabilities.

All of the organs are associated with the idea of separation of powers, and it is the Court's responsibility to uphold a system of checks and balances. However, in India, courts can only get involved when a case is brought before them; they lack the authority to take notice suo moto and nullify a law. Courts cannot be asked about any political problem, but that does not mean that they should withhold their judgment because of a political issue; that would be against their duty. Occasionally, it appears as though

courts are developing judicial legislation, but this may not be the case in India. In India, parliament has the power to enact laws, but judicial legislation is being developed by courts in the US and the UK. Judicial review prevents the legislature from delegating its fundamental duties and, on occasion, deters it from passing meaningless and unconstitutional laws. There are a number of implicit and explicit constitutional restrictions in both India and the US that place restrictions on the legislative branch's ability to enact laws, such as the restriction that it cannot exceed its authority or violate the Natural Justice Principles. The Constitution's essential design prohibits legislation from violating these rights.

Judicial Restraint exists because the judiciary lacks the authority to enact laws. The court also has some restrictions. Courts are not permitted to anticipate constitutionality issues or to nullify laws that may be dubious. A law cannot be declared invalid by a court on the basis of one person's feelings or opinion.

In my opinion, judicial review should be expanded in all nations throughout the world, just as it is in the UK. The courts in the UK should be granted the authority to evaluate legislative acts, as doing so fosters democracy among the public. In whatever way, one organ should be answerable to another, but it must not overstep its bounds. It solidifies the idea of the Rule of Law.

Whether it be the legislature, executive, or any other authority, Justice P.N. Bhagwati held that the law had to be a requirement for the government to exercise its jurisdiction. It is the responsibility of the judiciary to uphold supremacy of the constitution and to enforce constitutional limitations[42].

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