



## A comparative analysis on the impact of judicial review in rendering justice with special reference to India and USA

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### Abstract

In order to have a proper governing structure in a federal nation, there will be various organs of the government who are being assigned with particular work to look after the proper and effective implementation of the matters which is vested on them. The three organs of the government include the legislature, the executive and the judiciary. Sometimes, in pure federalist countries like the United States of America proposes the press as the fourth estate which is outside the organs of the government to look after the checks and balances of the governing system. While we look into the aspect of judicial system, it is being evident that the role played by the judiciary in a federal – democratic nation is irreplaceable and they will act as the guardian of the Constitution. The judicial system must need to be impartial and independent because they can only render justice if they are impartial and not biased towards anything. The judiciary in federal states like India and United States is vested with a special and predominant power known as the Judicial Review where the courts will act as the watchdog of the Constitution and will look after any of the actions of the legislature, executive or even the administrative arms of the government do anything which is inconsistent and not in par with the Constitution. Thus, judicial review plays an important role in the protection of democratic and federal structure of every Constitution.

**Keywords:** judicial review, federalism, independent & impartial judiciary, democracy, organs of the government, constitution

### Introduction

The basic idea of every democratic nation is to protect the will of the people and the government should need to act for the welfare of the people rather than imposing ulterior motives or the political agendas of the government. In every democratic country, the whole organs of the government, that is, the legislature, the executive and the judiciary should need to be very active and they must need to complete the roles that are assigned on them impartially. The common man may have easy access to the legislative wings since they are being directly chosen by the people and administrative authorities and high-ranking officers will have the direct contact with the executive authorities. The Judiciary plays a much different role than the aforementioned other organs of the government. The judiciary is considered to be the one which is accessible by the very downtrodden sections of the society to the multimillionaires who may sometimes be listed as the immensely richest personalities in the whole world. The basic thing is that, judiciary will protect the rights of the people by upholding the principles laid down in the Constitution and they will try to reinstate those rights which they think that is being violated for one reason or the other.

For the proper working of the judicial wing in every democratic – federal government, it should need to stand apart from the other organs of the government. That means, the said system should need to be independent and impartial enough in order to avoid favoritism and biasness to any particular section of the society. The role of judiciary is very broad and their basic duty is to interpret the Constitution as well as other laws in order to identify the much broader and wider meanings that are being laid under those statements enacted in different statutes. Thus, judiciary can be considered as a watchdog of the Constitution and as a

facilitator to look after the rights of the people in the nation which is being provided under the Constitution. The Judicial Review can thus be considered as an important cornerstone for the principles to have an impartial and independent judiciary. Even though the principles of separation of powers are there, the judiciary will check upon the matters of legislative and executive actions in order to identify any misuse or abuse of power is being present over there and to rectify the same if something like that is identified.

Thus, simply we can say that the judicial review can be considered as the power of the judiciary to review certain things including the decisions made by the lower courts, actions and decisions of the executive authorities or the particular enactments, statutes or the legislations which are being passed by the parliament or the other concerned state legislatures. The status of judicial review in England with that of the United States and India is very different. In England, the legislative enactments can never be questioned for reasons of parliamentary supremacy. While we look into the status of judicial review in the United States or in India, the judiciary plays a very prominent role in order to have a broader judicial interpretation of the Constitution where it helps to strike down all laws and enactments which are even being passed by the parliament which is actually violation of the provisions of the Constitution of the concerned nation.

### Judicial review: Origin and development

The major idea laying behind the judicial review is that it helps to abolish or strike any laws or enactments which is inconsistent to the law of the land, that is, the Constitution itself. The concept of judicial review was there in India at the time India got its independence and it is being laid down in the Constitution of India after India becomes a republic nation having its own governmental system. The concept is

not being limited to any particular provision to the Constitution but its implication and application can be seen in a variety of provisions enshrined in our Constitution under the different Parts and Chapters of the Constitution.

The concept of Judicial Review can be dated back to early 1800's in the United States of America. The founding fathers of the Constitution of the United States was very prudent about the role of an impartial and independent judiciary in their Constitution even though the same was not explicitly provided under any provision of the Constitution then. The interpretation of the term "judicial review" which we can see as of now is emerged from the famous case of *Marbury v Madison* where the Supreme Court of the United States headed by then Chief Justice Sir John Marshall held the landmark decision that the judiciary is having the power to invalidate the legislations which was enacted by the Congress if the found to be inconsistent or not in par with the provisions of the Constitution. Through this landmark judgment, Chief Justice John Marshall brings the idea of the Judicial Review which still now is considered to be one of the most prominent and paramount roles of the judiciary while exercising its powers over the government and on the citizens for establishing a common welfare state. It was not as easy to implement a novel concept in the legal system as we think because supporters of the Congress and such legislations actively criticized and questioned the scope and legitimacy of this judicial review. Even after it is being considered as an integral and essential part of the American legal system, many of the supporters of the Congress stated that the constitutional order of the country itself is in danger because of the over exercising of the powers by the courts in the United States. Thus, the founding fathers of the Constitution of the United States decided to explicitly sanction the judicial review of the state law in the supremacy clause in order to have a better and effective implementation of the same in the society.

The ambit of judicial review was incorporated in the Constitution of India also. The aspect of judicial review is considered to be essential element in order to follow the principles of federalism in a nation. Since the courts in India are considered to be the guardian of the Constitution as well as the protector of the rights of the individuals in the nation, judicial review must need to be considered as the cornerstone of the theory of constitutionalism since it may delimit the powers of the government from arbitrary exercise of powers as well as the conversion of the status of a state from the democratic status to that of an autocratic or dictatorial state. The Constitution of India contains express provisions for the judicial review over the executive as well as the legislative authorities and stated that the said power should need to be in conformity to the Constitution. Through several judicial pronouncements from the Supreme Court of India and various other High Courts of different states, the ambit of judicial review gets much broader and more widened. Thus, the more concrete laws made by the judiciary surely helps to make a concrete idea on the concept of judicial review and with the implementation of this practice, the overwhelming and absolute powers of the parliament and other executive authorities gets delimited since the court starts to act as a guardian on the protection of the rights of the people and they implemented proper measures to make checks and balance system and to prevent the misuse or abuse of power that were prevalent in some groups of people among the legislature as well as the executive themselves.

### **Judicial review and its importance: A critical study**

The judicial review is having paramount status in order to protect the principles of democracy because the courts through judicial review considers the constitutionality of the various forms of the government and will declare any of the statutes, legislations, actions or laws passed by them if they are inconsistent with the basic principles of the Constitution and thus strike down those areas of laws by declaring them to be unconstitutional. Even in the United States and in India, the classifications of the judicial review are somewhat the same, that is, the judicial reviews over the legislative actions, the judicial reviews over the administrative actions and the judicial reviews over the judicial decisions which was being ruled by the lower courts themselves which is also a part of the said judicial wing of the system.

The United States of America is considered to be the nation who propounds the ambit of the judicial review that we can see in the present day. Even before the famous *Madbury V Madison* case, the federal courts of the United States developed and practiced another form of judicial review in which the canonical laws, the principles of the common law and some other doctrines of the public action were used by the federal courts in order to determine whether the concerned organs of the government acted ultra vires or in consistent with the provisions enacted under the Constitution of the United States. Therefore, it is being evident from the earlier times itself that a monitoring body must need to be there over the executive and administrative authorities in order to prevent the misuse and abuse of power which can be laid down from their side.

The judicial review which can be seen in India is also having somewhat the same characteristics of the principle of judicial review which is being evolved and practiced in the United States prior to 200 years back. In India, we cannot say that the judicial review is an expression which is only being extensively used in the Constitutional law of India. This is because a judicial decision probably in matters of judicial review will either stigmatizes or legitimizes the particular decision or action made by the legislative wing or by the executive authorities. In India, the judicial review constitutes an essential and integral part and thus the same is considered to be a basic structure of the Constitution which cannot be even amended by the Parliament under the provisions enacted as per Article 368 of the Constitution of India.

The judicial review is very important in a democratic society because it helps to maintain the supremacy of the Constitution of the concerned nation who follows the principles of federalism as well as that of the democracy. The judicial review also helps to prevent the tyranny of executives which helps to promote a harmonious relationship between the authorities of the various levels of the government which will actually results in the maintenance of a good federal system. Thus, in order to protect the rights of the people, the judicial review by the courts should need to be considered as an irreplaceable action which finally ensures the impartial and independent nature of the judicial system in every democracy.

### **The role of judicial review in good governance**

Every society should need to have a good governing system in order to achieve the economic and social welfare of the nation. For achieving these things, the government should need to make sure that all the organs of the government are

acting in an efficient manner where there is no chance for biasness or undue favoritism. The judiciary plays a very important role in the administration of justice in every democratic nation. In a democratic – federal nation like India, the judicial wing acts in a much prudent manner in order to balance the interest of the society with that of the interest of the government.

Rather than looking the judicial review as a tool to protect the provisions laid down in the Constitution, the courts should need to act as the protector and custodian of the fundamental rights guaranteed to the common citizens of India in addition to the role of guardian of the Constitution of India. With the process of judicial intervention in matters relating to the legislative and administrative concerns, it started to become more transparent and now the authorities are accountable as well as answerable to the judiciary as well as to the common public too for the acts they had committed while they are in the said official position. Moreover, if there is proper judicial review by the judiciary on certain matters relating to the functioning of the various organs of the government, the principle of separation of powers can be protected and thus the court will ensure that there will be no concentration of powers in any one hand which may ultimately results in the abuse and misuse of the power by the concerned authorities.

### **The roadblocks to have an effective judicial review**

The laws, statutes and other forms of enactments are prepared and passed by the legislature in order to have proper regulations to govern a nation. The executive wing as an organ of the government will play a crucial role in filling the gaps of laws which was earlier enacted by the parliament and they will implement proper scheme in order have an effective implementation of the same. Thus, the role of judiciary can simply be defined as the one who is there to interpret the same broadly and widely. Through proper interpretation, the government themselves can make a fine equilibrium between the concerned laws passed by the parliament and the constitutional values which upholds the basic principles which can be enshrined through that particular legislation.

The constitutional amendments made by the parliament is actually a barricade for the effective implementation of the judicial review. This is because even if the judiciary says something through judicial pronouncements, the same can be overridden by the parliament by passing a bill if the concerned ruling government is having a clear-cut majority in the houses. Then, everything will be back to the square one position where the things will not act in a proper and lawful manner. When we look into the aspects of judicial review in the United States, it is evident that the judiciary is much more transparent than that of in India and they are passing decisions which upholds the principles of federalism and democracy without looking on the congress or the senate. The position in India is slightly different. Even though Indian courts exercises the judicial review on laws passed by the parliament, the legislature is also having the right to put the ambit of judicial review out of some laws by enacting those said laws under the Ninth Schedule of the Constitution of India where the concerned legislatures determine its internal procedures where the judicial wing or the courts cannot interfere. Many of the political thinkers as well as the eminent jurists point out that at certain times the judicial review will cause a negative impact on the functioning of the government since the same will act as a

limitation to the proper functioning of the various organs of the government. The repeated intervention of the courts on the laws passed by the parliament or the concerned state legislatures will diminish and disintegrate the faith, of the common people in the efficiency, integrity, quality and transparency of their concerned governments.

Thus, one of the basic problems that may be caused in a democratic society because of this judicial review is that it may sometimes act as an antithesis between a rigid and doctrinaire attitude in preserving the basic fundamental rights and human liberties in order to achieve a social welfare objective because if the common citizens lose the faith in the concerned government, then there cannot be a proper implication of laws and that society cannot be regulated in a proper way as well. Thus, the judiciary should need to take proper care while reviewing a particular law or a legislation which is enacted by a statute or a legislature since it may have some retarding effects on the concerned ruling government which will surely reflects in the society through the laws and legislations passed by the said government.

### **Conclusion**

A proper judicial system is an essential and integral part for every democratic and federal nation. The judiciary not only acts as the guardian of the Constitution but also as the protector of the fundamental rights of the common citizen. The three organs of the government, that is, the legislature, the executive and the judiciary are independent but they are actually interdependent in nature. One cannot act without the aid and help of the other. Even if they all are interdependent, the judiciary should need to take an approach which promotes the impartial attitude towards the other two organs as well as to the common citizens.

The judiciary should need to be impartial and independent because an impartial judiciary can only make good and effective laws in order to effectively guide a society. Thus, the concept of judicial review takes place where the courts will act as a caretaker and watcher to look after the activities and actions made by the legislative authorities as well as the executive authorities in order to check whether there is any abuse or misuse of power by having an effective checks and balance system. Thus, the judicial review plays an important role in the administrative matters of every nation who follows the principles of federalism and democracy.

Thus, through proper and effective measures which is being adopted by the judicial wing in India, the judicial review can be considered as an essential mechanism to protect the constitutional values and in order to have a proper separation and distribution of powers which is very essential in every federalist nation. That is the sole reason, the judicial wing of the United States and the implementation of the judicial review over there is far more effective than the current Indian scenario. Through proper implementation, the judicial review helps the Indian society as well in order to ensure a proper and welfare governance all over the nature.

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