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# Balancing Power: A Comparative Analysis of Judicial Review in India and United Kingdom

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## ABSTRACT

*This paper presents a comparative analysis of judicial review in the United Kingdom and India, exploring the foundational principles, historical development, and practical applications in each jurisdiction. Judicial review serves as a critical mechanism for upholding constitutional governance and protecting individual rights by ensuring that legislative and executive actions adhere to constitutional and legal standards.*

*In the UK, judicial review has evolved within the framework of an unwritten constitution, relying heavily on common law principles and parliamentary sovereignty. The judiciary's role in reviewing government actions is grounded in the principle of legality and the protection of fundamental rights, particularly through the Human Rights Act 1998, which incorporates the European Convention on Human Rights into domestic law. Despite the absence of a codified constitution, judicial review in the UK plays a crucial role in maintaining the rule of law and checking arbitrary power.*

*Conversely, India's judicial review is enshrined in a written constitution, with explicit provisions granting the judiciary the authority to invalidate legislation and executive actions that contravene constitutional mandates. The Indian judiciary, particularly the Supreme Court, has been proactive in interpreting and expanding the scope of judicial review to include social justice and fundamental rights, often invoking the doctrine of basic structure to prevent constitutional amendments that undermine the core principles of the constitution.*

*This paper examines key cases and legislative frameworks in both jurisdictions, highlighting the distinct approaches and underlying philosophies that shape judicial review in the UK and India. By comparing these systems, the paper aims to elucidate the strengths and challenges of each model, offering insights into the dynamic interplay between law and governance. The analysis underscores the importance of judicial review as a tool for safeguarding democracy and promoting accountability in diverse legal landscapes.*

***Keywords**: Judicial review, constitutionalism, separation of power, checks and balance, parliamentary sovereignty.*

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## I. INTRODUCTION

The idea of judicial review is popularly believed to have originated during the eighteenth century in the US from *Marbury v. Madison*[2]. However, the idea of judicial review can be traced back to the UK from the 16th century itself. Thus, the courts in the UK propounded the idea of judicial review[3] and this was later developed by the US in their legal jurisprudence. The concept was a complete change of approach in the UK from its erstwhile principle of "the king can do no wrong".

In modern democratic countries, judicial review is considered as one of the essential features of good constitutionalism[4]. It is also one of the strongest checks and balance systems to limit or regulate the power of the legislature and executive branches of the government when they exceed their authority. This is because absolute power can corrupt any institution absolutely irrespective of its strong foundational beliefs.

The judiciary uses judicial review along with the doctrine of separation of power to supervise the legislation enacted and enforced by the government. It can also be viewed as a remedy available for the people against the government if it violates the constitution or agreed on principles of governance[5]. The separation of power was equally introduced to assure and maintain the individual autonomy of the government.

Thus, when separation of power is substantiated with checks and balances the democratic essence of the government is preserved while granting necessary individual autonomy to the various branches of the government to function effectively. Both India and UK have adopted judicial review as a part of their governance but the methods of application, interpretation and implementation are completely different. However, both countries have assured that the fundamental rights of the people will be protected and that the government cannot make laws, policies or actions infringing on these basic rights.

A comparison between both of these models of judicial review leads to the long-debated academic question of Whether the judiciary is destroying the idea of separation of power in the name of judicial review? It also leads to the question of how much interference should be permissible to maintain good constitutionalism. This also casts doubt as to whether the judges in India are exercising their power to review a statute under the shadows of their capability to

[2] 5 U.S. 137 (1803)
[3] Wellington, Harry H. "The nature of judicial review." *The Yale Law Journal* 91, no. 3 (1982): 486-520.
[4] Prakash, Saikrishna B., and John C. Yoo. "The origins of judicial review." U. Chi. L. Rev. 70 (2003): 887.
[5] "id".

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strike it down completely.

### (A) Background of the research

Judicial review and separation of power are often seen as antithesis concepts. The concept of separation of power states that the (legislature, executive and judiciary) are separate and must not interfere with the affairs of the other organ. However, the Constitution also permits judicial review as a part of the checks and balances system which permits the judiciary to interfere with the powers and actions of the government to some extent.

The concept of checks and balances states that each organ of the government that is the legislature, executive and judiciary should exercise a check and balance on the other. However, in reality, the legislature is not allowed to interfere in the matters of the judiciary specifically in India under the defence of judicial independence. Thus, the power and actions of the judiciary completely remain unchecked while it is allowed to check the powers and functions of the other organs of the government. The 2014 amendment of the National Judicial Appointment Commission (NJAC) is one such glaring example.

This paper shall analyse and describe the functioning of judicial review mechanisms in the UK and India and thereafter compare both of them to suggest a solution to balance the concepts of judicial review and separation of power.

## II. JUDICIAL REVIEW AND SEPARATION OF POWER: A BRIEF SUMMARY

"Judicial review is the process by which the constitutional court in a country reviews the lawfulness of the actions of the legislative and executive arms of the government[6] and determine whether the actions of the government are consistent with the constitution" or any accepted Grund norm prevailing in that country. This is one of the reasons for referring to judicial review as constitutional review.

### (A) Origin and Need for Judicial Review.

The concept of judicial review is generally believed to have evolved from the American *landmark supreme court case of Marbury v. Madison in 1803*[7]. In this case, it was held that the judiciary has the power *to* invalidate legislation enacted by the legislative wing of the US (Congress). However, further research brings forward evidence to show that the idea of judicial review originated in the UK even before the American Revolution[8]. Thus, it can be said that the UK created it and America as a British colonial subject later developed it substantially. The idea

[6] Rostow, Eugene V. "The democratic character of judicial review." Harv. L. Rev. 66 (1952): 193.
[7] 5 U.S. 137 (1803).
[8] Law, David S. "A theory of judicial power and judicial review." Geo. LJ 97 (2008): 723.

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that later evolved as the judicial review was originally laid down by the Chief Justice of the *Court of Common Pleas in England Sir Edward Coke* in Dr. *Bonham's case*[9] *(1610).*

**(B) Judicial review mechanism in India.**

In the constitutional debates, judicial review is characterized the as the "heart of the Indian Constitution". Article 13[10] empowers the judiciary to review the legislation enacted by the Parliament of India on one hand and simultaneously casts a restrictive duty on the legislature from enacting any law that "takes away or abridges the fundamental rights" of the people. In India, the "concept of judicial review" was first discussed in the High Court of Calcutta and the Privy Council in the case of *Emperor v. Burah*[11]. In this case, the court laid down the view that the Indian Courts had the power of judicial review with certain limitations.

The people of India can directly seek remedy in case of "violation of fundamental rights" through Article 32 of the Constitution of India[12]. The drafters of the Indian Constitution have skilfully included these provisions of judicial review to balance federalism, protecting the fundamental rights guaranteed to the people and as a powerful tool to ensure equality, liberty and freedom[13]. In India, both judicial review and "separation of power are considered the basic structure of the Constitution" thereby completely limiting the power of the government from amending these concepts.

**(C) Judicial forums and grounds.**

In the UK a judicial review proceeding shall be initiated before the Administrative Court of England and Wales. English law has conferred it with supervisory jurisdiction which is mainly exercised through the procedure of Judicial Review[14]. There is a strict time limit within which a judicial review proceeding should be filed before the administrative court. The claimant must first obtain the permission of the Court that the case is reasonably arguable to proceed with a judicial review proceeding[15]. The three main grounds for invoking judicial review in the UK are *illegality, procedural unfairness and irrationality*[16].

In India, a judicial review proceeding shall be initiated before the High Court in various states or the Supreme Court in Delhi. In India judicial review extends to both the administrative

[9] 8 Co. Rep. 107; 77 Eng. Rep. 638
[10] Article 13, The Constitituion of India, 1950.
[11] (1878) ILR 3 Cal 64
[12] Article 32, The Constitituion of India, 1950.
[13] Ruparekha Jena & Shreyasi Nath, Understanding Judicial Review in Administration, 6 Int'l J.L. Mgmt. & Human. 4, 152 (2021).

actions of the government and the legislation enacted by the Parliament. Article 13 of the Indian Constitution prevents the Parliament from enacting legislation that affects the fundamental rights of the people.

### (D) Academical debates on judicial review and separation of power.

From an academic perspective judicial review and separation of power are often viewed as antithetical concepts. This power of the judiciary allows it to interfere, review, check and strike down the actions of the other two branches of the government[17] (legislative, and executive). This is because absolute political power is very tempting and capable of being misused. The idea of separation of power is premised on the idea that all three branches (legislative, executive and judiciary) should work completely independent, and no particular arm of the government should interfere with each other[18]. Thus, there is a clear divergence between both concepts at least in theory and frictions between the judiciary and the government can often be seen on different issues. In India, the constitution recognizes both the idea of judicial review and separation of power.

## III. COMPARATIVE ANALYSIS OF METHODS AND PROCESS OF INTERPRETATION IN JUDICIAL REVIEW PROCEEDINGS IN INDIA AND THE UK

### (A) First Stage: Ordinary Methods of Interpretation.

The first common method used by any Court to review a statute or a particular provision is by checking for compliance with important rights of the people by examining the provision in the statute using the ordinary principles of interpretation. In the UK this process of statutory interpretation is based on settled common law principles. If the Court using ordinary principles of interpretation finds the legislation to be compliant with the rights of the people it ends the inquiry at this stage itself without advancing[19] to stage two.

The Indian Courts while deciding a case challenging the constitutionality of legislation, first presume that the impugned legislation is constitutionally valid[20]. This presumption acts like a revocable guarantee that the judiciary won't unnecessarily interfere in the primary functions of the government. Further, the Indian Courts have laid down the burden of proof on the litigant to prove that their fundamental rights have been violated by the statute or a provision of it.

The presumption of constitutionality influences the Indian judiciary while interpreting

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[18] Breyer, Stephen. "Judicial review of questions of law and policy." Administrative Law Review (1986): 363-398.
[19] "id".
[20] Friedman, Barry. "The politics of judicial review." Tex. L. Rev. 84 (2005): 257.

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constitutionally challenged legislation. Moreover, if multiple interpretations are possible for a statute or a provision in it, the court can flexibly adapt the interpretation that complies with the constitutional mandate. This presumption of constitutionality is not absolute and capable of being rebutted by presenting adequate evidence that the particular action or statute of the government is violating the fundamental rights or some constitutional principles[21].

In that case, the burden falls on the state to prove that there has been no fundamental right violation or incursion into the sacrosanct constitutional principles. However, in certain cases, the Supreme Court has also developed an alternative perspective of using the "strict scrutiny test" instead of the "presumption of constitutionality" to check the constitutional validity of legislation or amendment. However, the courts have not clarified or made any guidelines on when and on what circumstance to use this alternative test.

**(B) Second stage: Special Methods of Interpretation**

The courts at this stage, where statutory language permits, attempt to read down or interpret the legislation in a restrictive manner thereby making it fall within the permissible constitutional limits[22]. This process is referred to as the doctrine of reading down or severability. This allows the court to restrict the application of legislation to those areas in which it would be constitutionally permissible, thereby omitting its application in other areas where it might transgress constitutional limits.

Thus, even if the language of the legislation does not consider these spheres of the application separately, the courts can narrow it down within the constitutional limits as long as the constitutionally valid spheres of application can be separated from the unconstitutional spheres of application[23].

The court may also apply the principle of *"severability in the form"* and sever or disapply the former, without affecting the operation of the latter part of the statute. Therefore, the principal question as to whether the invalid portion of a statute can be separated from the valid portion (textually or in terms of its scope of application) remains for both types of severability.

The UK also has a somewhat similar mechanism in the second stage but its application and scope are different. After the courts in the UK identify the nature of the legislation as primary or substantive only it can invoke its judicial review powers. In the UK the courts do not have the power to review the primary legislation enacted by the parliament due to its parliamentary

[21] *Supra* Note 19.
[22] Paramjit S. Jaswal, India-Judicial Review, in Preventive Detention and Security Law 71-103 (Brill Nijhoff ed., 1993).
[23] *Supra* Note 25.

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sovereignty structure. This applies to existing legislation and those legislations passed after the enforcement of the "Human Rights Act".

The courts are required to consider the legislature's intention in enacting the impugned statute and the intention of the legislature in enacting Section 3[24] of the Human Rights Act[25]. The English courts generally prefer the second intention over the first one. Thus, section 3 aims at identifying the intention of the legislature with the rebuttable presumption that the legislature does not intend to breach Convention rights. Moreover, the English courts have adopted statutory interpretation techniques like 'reading down and 'reading in' to protect legislation from conflicting with the Convention rights.

### (C) Third Stage: Striking Down Legislation and Declarations of Incompatibility.

The Indian Courts in the final stage of judicial review proceeding after concluding that it is impossible based on the available statutory interpretation technique to read the statute in compliance with the fundamental rights will resolve to strike down the whole or a particular provision in the statute. The striking down of legislation by the judiciary will have an immediate effect on the statute thereby making it null and void.

In the UK, in the final stage of the judicial review proceeding, the English Courts must decide whether they should issue a declaration of incompatibility to the Parliament[26] if the statute or a part of it cannot be interpreted in compliance with the convention. Thus, it will not give any automatic legal benefit to the litigant and will have no immediate effect on their legal rights. Thus, unlike India where the statute becomes null and void, the challenged legislation in the UK continues to exist in full force until the parliament chose to amend or repeal it.

This is because the "doctrine of parliamentary sovereignty" adopted by the UK makes the parliament "superior to the executive and judiciary". Thus, only the parliament can "enact or repeal a law it chooses". However, such a declaration is considered an important form of political and moral sanction and invites the UK Parliament and the government to address the incompatibility[27]. Section 10 of the HRA[28] empowers a minister of the Crown if he finds compelling reasons to do so, to make amendments to the incompatible legislation. The minister can act as necessary to remove the identified incompatibility in the declaration.

[24] Section 3, Human Rights Act, 1988.
[25] Treanor, William Michael. "Judicial review before Marbury." Stan. L. Rev. 58 (2005): 455.
[26] Section 4, Human Rights Act, 1988.
[27] *Supra* Note 22.
[28] Section 10, Human Rights Act, 1988.

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## IV. COMPARATIVE ANALYSIS OF JUDICIAL REVIEW IN UK AND INDIA

### (A) Constitutional structure and judicial review.

The Courts in the United Kingdom and India are both allowed to exercise judicial review powers. However, the scope and limitation of the judicial review power are completely different between India and the UK. India has a written constitution that specifically includes and recognizes the judicial review powers of the judiciary.

It has also included separation of power and checks and balances as a part of its basic constitutional structure.

### (B) Scope and limitations of judicial review in the UK and India.

The UK has recognized the "Doctrine of Parliamentary Sovereignty" as a defining principle of the British Constitution. The ultimate power to create or abolish a statute is vested in the democratically elected members of the British Parliament. However, the judicial review power of the Courts in the UK is extremely limited in comparison to the judicial review powers of the Courts in India or the USA.

The UK has adopted the doctrine of parliamentary sovereignty as its constitutional structure and therefore even if the Courts are empowered with judicial review powers they cannot quash or overturn primary legislation passed by the parliament[29]. The general rule is that the courts must apply the Acts of the Parliament of the UK even if they breach any of the human rights in ECHR. However certain courts like the Court of Appeal can state that a particular law is "incompatible with the Human Rights Act and issue a declaration of incompatibility".

Only in extreme cases, the Courts "may issue a declaration of incompatibility" to the members of the parliament. This is a non-binding special declaration requesting the members of the Parliament to amend the particular provision in conflict with the Human Rights Act[30], of 1988. The "courts can only overturn secondary legislation made by the ministers on certain grounds of judicial review". In the UK judicial review is seen as a way to challenge the decisions (acts and omissions) of a public body rather than looking into the correctness of the conclusion reached.

The judge only examines or reviews the decision made by the public body and checks whether the law has been correctly followed or not. Thus, the particular public body whose decision has

[29] Jaswal, Paramjit S. "India-Judicial Review." *Preventive Detention and Security Law*. Brill Nijhoff, 1993. 71-103.
[30]Commager, Henry Steele. "Judicial Review and Democracy." *The Virginia Quarterly Review* 19.3 (1943): 417-428.

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been challenged will be able to make the same decision again as long as it is abiding by the laws enacted by the Parliament[31]. If the person who filed the judicial review proceeding is successful then the Court might declare the decision of the public body to be unlawful or quashed and sometimes it can also issue an order to do or not to do something.

The law invoked in such judicial review proceedings is referred to as public law or administrative law. In certain cases which involve matters of "fundamental rights or relationships between democratic institutions, it is called constitutional law". Further, a decision can also be overturned if the action of the public body is incompatible with the Human Rights Act, of 1988. However, there is a small exception to this rule: if the public body was merely doing what the parliament told it to do then its actions cannot be said to be unlawful[32]. In a judicial review proceeding, the claimant cannot demand what he or she wants "even if the court concludes that the public body has acted unlawfully".

This is because the remedies to a judicial review proceeding are always left to the discretion of the Court. The role of the Courts in the UK is seen as merely enforcing the will of the parliament. This is mainly because of the adoption of the doctrine of parliamentary sovereignty in the UK. The judicial review powers of the Courts (Supreme Court, High Court) in India are wider than those enjoyed by the Courts in the UK.

In India, judicial review powers can be exercised by the High Courts and the Supreme Courts while in the UK they can be exercised only by the administrative courts and in rare cases by the Court of Appeal. The "grounds for judicial review" in the UK are limited to the unfair procedure, irrationality, and proportionality of a public body[33] while in India apart from these normal grounds any statute in conflict with the basic structure of the Constitution or fundamental rights of the people can be struck down by the judiciary.

While the UK has adopted the doctrine of parliamentary sovereignty, India has adopted the doctrine of constitutional supremacy in the *Minerva Mills*[34] *case*. In this case, the "Supreme Court of India" has expressly declared that the "*government, legislature, executive and the judiciary are all bound by the constitution and none is above or beyond the constitution".*

Thus, unlike the UK where primary laws passed by the parliament cannot be "subject to judicial review, in India every law made by the Parliament is subject to interpretation and judicial

[31] *Supra* Note 29.
[32] "id".
[33] Wellington, Harry H. "The nature of judicial review." The Yale Law Journal 91, no. 3 (1982): 486-520.
[34] 1986 SCR (3) 718

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review" by the Courts in India. Unlike the UK the Indian Constitution via Article 13[35] expressly prohibits the legislature from enacting a statute in conflict with the basic structure of the constitution and specifically the fundamental rights of the people.

The parliament in India is empowered to make laws, and amend the constitution but the judiciary can check and decide if the "basic structure of the constitution" is affected by the actions of the Parliament[36]. If the judiciary finds that the statute passed by the parliament has affected the "basic structure of the constitution" or the fundamental rights of the people it can declare the statute to be unconstitutional.

This immediately renders the particular statute to be null and void. On the other hand, in the UK the Court's power of judicial review extends only to the decisions of any public body and it cannot review the primary legislation passed by the Parliament[37]. Further, even if the English Courts find a statute to conflict with the Human Rights Act, of 1988 they can only issue a declaration of incompatibility which is a non-binding request to the members of the UK parliament to amend[38] the particular provision in the statute.

Thus, the English Courts do not have the authority to strike a primary legislation howsoever evil it is. The Indian Courts on the other hand can strike down even an entire law if it is found to conflict with the "basic structure of the Constitution". Thus, it is evident that although India has derived most of its legislation from the UK it has a more robust judicial review mechanism that is capable of preventing the Parliament[39] from acting arbitrarily. However, it cannot be denied that the judicial review or simply put the court proceedings in the UK is faster than the Indian judicial mechanism.

### (C) Critical analysis of judicial review in India and the UK.

"The judicial review" process adopted by the Indian legal system and the British legal system is both efficient in reaching their objectives. However, both jurisdictions have some distinctive features as a part of their judicial review. The interpretation techniques adopted by the Indian courts and the English courts are almost similar to each other. The major distinction in the judicial review proceeding lies in the final action taken by the courts in both jurisdictions.

In India, the judiciary is empowered to strike down a whole statute or a particular provision in

[35] "Article 13, The Constitution of India", 1950.
[36] Mate, Manoj. "Globalization, rights, and judicial review in the Supreme Court of India." *Wash. Int'l LJ* 25 (2016): 643.
[37] Shapiro, Martin. "Judicial review in developed democracies." *Democratization* 10.4 (2003): 7-26.
[38] Waluchow, W. J. "Judicial review." *Philosophy Compass* 2.2 (2007): 258-266.
[39] Commager, Henry Steele. "Judicial Review and Democracy." *The Virginia Quarterly Review* 19.3 (1943): 417-428.

it by itself thereby making the legislation null and void both prospectively and retrospectively with immediate effect. On the other hand, the judiciary in the UK is only allowed to deliberate on a statute or a particular provision of it and if it is impossible to make it compliant with the convention rights through statutory interpretation techniques, they can issue a declaration of incompatibility.

This is a non-binding declaration requesting the parliament to amend or repeal the challenged statute or a part of it to suit the convention's rights. Although it is non-binding the British Parliament makes the necessary changes on moral grounds[40]. This is also because of the difference in the constitutional structure of India (constitutional supremacy) and the UK (parliamentary sovereignty).

However, the interesting factor here is the separation of powers is strictly adhered to and the checks and balance mechanism also exists on the other hand, but the judiciary is not allowed to strike down legislation[41] by itself rather it requests the legislature to do so. Thus, none of the branches of the government in the UK is interfering in the primary functions of the other. This prevents conflicts between legislature and judiciary, while still achieving the objective of judicial scrutiny and amendment to legislations conflicting with the Convention rights.

Although the declaration issued by the English courts is non-binding the sheer democratic pressure to adhere to and protect the convention rights itself makes the UK parliament[42] change it all these years. This also helps the legislature to make certain important decisions in the form of legislation without any unnecessary interference from the judiciary. On the other hand, Indian judges while deciding on a judicial review proceeding, adjudicate it from their shadow of power to strike down legislation.

There has been a lot of interference from the Indian judiciary on the actions of the legislature over the past few years in the name of judicial review. The Courts seem to have wrongfully interpreted “constitutional supremacy” as “judicial supremacy”. There have been numerous conflicts between the legislature and judiciary on various issues in India. Another interesting feature of the judicial review mechanism in the UK is the mandate to seek the permission of the particular constitutional court before proceeding to adjudicate on it.

## V. FINDINGS & SUGGESTIONS

The Indian judicial review mechanism is already competent and has proved itself to be

[40]Eylon, Yuval, and Alon Harel. "The right to judicial review." Virginia Law Review (2006): 991-1022.
[41]“id”.
[42] Graber, Mark A. "Constructing judicial review." Annu. Rev. Polit. Sci. 8 (2005): 425-451.

successful in safeguarding the fundamental rights of the people from the actions of the legislature. However, the judicial review mechanism of India can be made more efficient by following certain good features of the British judicial review model. The Indian courts can adopt the British mechanism of seeking the permission of the court before accepting a judicial review proceeding.

In this process, the case of the claimant is assessed by a divisional bench of the concerned constitutional court (Administrative Courts in the case of the UK) as to whether it is a fit case with merits and chances of winning. The claimant can proceed with the judicial review proceeding only if the divisional bench certifies and permits the case. This is a very good mechanism as it prevents claimants with a bogus and groundless case that will surely fail from approaching and wasting the time and resources of the court.

The Indian High Courts and Supreme Courts can also set up a British model divisional bench to assess whether the case is fit to proceed for a judicial review proceeding thereby preventing abuse of the process of law. If legislation is challenged simply, it only creates ambiguity in the application of the statute until the judiciary concludes the case. It also causes an unnecessary conflict between the judiciary and the legislature.

The Indian courts can also adopt the British model of declaration of inadmissibility. Instead of directly striking down the statute, they can direct the legislature to amend or repeal it thereby upholding the principle of separation of powers. The checks and balance mechanism of judicial scrutiny can still be exercised in this model while upholding the separation of powers between the different branches of the government.

## VI. CONCLUSION

It is difficult to draw a general conclusion that the judicial review mechanism of one country is better than the other. The judicial review mechanism of both countries has some good and bad features equally. The British model of first seeking the permission of the court and issuing a declaration instead of directly striking down legislation seems to be better in comparison with various aspects of the Indian judicial review mechanism.

It cannot be denied that judicial review is important, but at the same time, absolute power to review is problematic and can often act as a hindrance to legislative policies. The Indian courts have by observing judicial review as a part of the basic feature of the Constitution, given a completely different meaning to the idea of Checks and Balances. In this process, the Indian judiciary has buried the idea of separation of powers, which is also laid down in the Constitution.

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This empowers the judiciary with the unfettered jurisdiction to review anything and everything done by the legislature. Moreover, without a mechanism to attain the permission of the court before filing a judicial review proceeding in India, this power is abused by people with a vested interest to conduct politics and create needless delays.

The British judges review legislation with a mindset that they can only look into the merits of the case and cannot harm the legislation. They leave the rest of the role for the parliament to handle. In India, the judges review legislation under the shadow of power to strike down legislation, which is a grave threat to the idea of separation of power.

Thus, the power to strike down legislation influences the behaviour of judges in the process of reviewing legislation for compliance with constitutional rights. The judges are empowered to strike down legislation based on their understanding of the legislation and they only use statutory interpretation to interpret the legislation rather than asking for the intention or explanation from the legislature itself.

Thus, to balance judicial review and separation of power apart from maintaining the judicial scrutiny powers the British model of "issuing a declaration of incompatibility" and leaving it to the parliament to amend or repeal it seems to be efficient.

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