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Judicial review in constitutional law: A comparison between Pakistan and the United Kingdom (Parliamentary supremacy vs. constitutional supremacy)

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ABSTRACT

The present research article deals with the concept of judicial review in constitutional law and compares Pakistan and the United Kingdom in light of the concept of supremacy of the constitution and supremacy of parliament. Constitution in Pakistan is the supreme law, and anything done or left to be done by the executive that infringes on the constitutional provisions can be taken up by the courts. In the United Kingdom, however, there is parliamentary supremacy, and the judiciary has a more limited role, with Parliament having more power. The article tracks the evolution and development of the constitution, the judiciary, and the judicial practice of every state in the context of the protection of fundamental rights, the rule of law, and the balance of power between the various institutions of government.

Introduction

Judicial Review is one of the key principles of constitutional law that, to a considerable extent, limits the power of the executive and legislature by ensuring their actions comply with the Constitution and laws. It prevents laws, policies, and decrees issued by the government from violating the rights of the protected parties. The different judicial review systems are a product of different historical and legal developments of each of the various systems of constitutions. The methods of judicial review differ from one constitutional system to another according to the development and traditions of each one. In Pakistan, the concept of supremacy of the constitution is adopted, and the constitution is considered the supreme law of the land. In this scheme, judges can declare laws or executive actions that violate the Constitution.

Alternatively, the doctrine of parliamentary supremacy, which makes Parliament the supreme lawmaking authority in the United Kingdom, has been practiced throughout time in this country. This meant that previously, courts could not review statutes passed by Parliament. Nonetheless, judicial review is essential in both jurisdictions as it promotes accountability, fairness, and justice. The present research paper compares the constitutional framework of Pakistan and the United Kingdom, discusses the scope and

limitations of judicial review, and its effect on democracy, separation of powers, and protection of fundamental rights in modern times of constitutional governance.

Research Justification

The importance of this research is that Judicial Review is a very important mechanism for achieving constitutional government, fundamental rights protection, and accountability of state institutions. The differences between constitutional supremacy and parliamentary supremacy become more apparent when one conducts a comparative study of Pakistan and the United Kingdom. In addition, the research points to the varying modes of constitutionally balancing the powers of the judicial, legislative, and executive branches. Moreover, the study has significance in that it sheds light on the changing nature of courts within a democratic society and issues affecting judicial activism, separation of powers, and constitutional interpretation.

Literature Review

Judicial review is one of the other important tools that help maintain the balance in the Constitution; it makes the government accountable, and it protects fundamental rights (Ghouri et al., 2026). The concept of supremacy of the Constitution has been given importance by most of the scholars in Pakistan, as the Constitution is the supreme law of the land (Nawaz & Bexci, 2025). Some writers have also stressed the superiority of the higher judiciary system to invalidate laws or executive acts that are in conflict with the Constitution (Fiaz, 2025).

Those who have spoken about it are A.K. Brohi, Hamid Khan, and Mahmudul Hasan Khan.The issues addressed in this course include the role of the judiciary in the interpretation and protection of democratic principles in the Constitution (AllahRakha, 2025). Firstly, the rule of law, related to Dicey's theory of the constitution, in the UK. This doctrine decrees that Parliament is supreme in making laws, and, historically, courts were not allowed to declare and invalidate laws made by Parliament (Bakhsh et al., 2025).

However, since the mid-20th century, judicial review in the UK has increased in its scope and significance as a result of the increasing importance of administrative law, the Human Rights Act 1998, and the increasing relevance of constitutional conventions and international law in the UK (Gul et al., 2025). The authors argue that the two countries (Pakistan and the U.K.) have different types of constitution, but that both of them have the objective of implementing the rule of law (Begum, 2025).

Based on the current research, it can also be deduced that there have been conflicts between judicial and legislative powers, in particular regarding separation of powers and accountability in a democratic manner (Munir et al., 2024). Judicial review is not a one-time process, but rather an evolving one, which is strengthened by political, constitutional, and social developments (Bromo, 2025).

Historical Context

It is very important to keep in mind that judicial review is not a modern invention and that, due to the constitutional background and political development of the Pakistani and British Constitutions, the history of judicial review in the two is different. The Glorious Revolution of 1688 in the United Kingdom, where there was a shift in the balance of power from royal supremacy to that of Parliament, paved the way for the development of parliamentary supremacy.

British Courts used to follow the orders of Parliament and were unable to decide the validity of the actions of Parliament. British courts were deferential to Parliament and did not call into question the legality of laws. Judicial review would be most likely to be used in administrative law, where courts would strike down any executive action that is “illegitimate or unfair”. The concept of judicial review in Pakistan has been shaped by the British colonial administration and constitutional frameworks, having been influenced by the written constitution. When Pakistan came into existence in 1947, the idea of supremacy of the constitution came into being, where the superior court could review the constitution and declare unconstitutional laws null and void. The judges were entrusted with greater power to interpret and enforce the rights guaranteed by the Constitution of 1956, the Constitution of 1962, and, in particular, the Constitution of 1973.

Theoretical Context

The three main principles of judicial review are constitutionalism, separation of powers, and the rule of law. Judicial review functions to make sure government institutions operate within the scope of the law and the Constitution. In a constitutionally supreme system, like Pakistan, the judiciary becomes the protector of the Constitution and has the power to strike down any

legislation or executive order that infringes on any of its provisions. This theory has been borne out by the concept that no institution is above the Constitution.

The United Kingdom, on the other hand, is a country that is supposed to be based on the concept of parliamentary supremacy, which means that Parliament should be the supreme law. A.V. Dicey's theory is that courts have no power to set aside Acts of Parliament. But there is still judicial review in respect of administrative actions and decisions of the executive. Human rights, judicial independence and constitutional accountability are also increasingly regarded as significant issues by modern constitutional theory, and this has led to the courts having more and more roles in practice in the British legal system.

Relevant Laws

1. Constitution (1973): The highest law of the land and is used as the basis for judicial review. It gives the superior judiciary the power to interpret the Constitution with the superior judiciary to ensure that the laws and executive action are performed in harmony with the Constitution, and to strike down any law and/or executive action that is contrary to the Constitution. Additionally, it safeguards the fundamental rights and strengthens separation of powers and limits the action of state organs, which also contributes to the rule of law.

2. Human Rights Act 1998: The ECHR is made law in the country, and courts have a responsibility to ensure laws are interpreted in a way that is compliant with human rights. It also gives the courts the power to declare incompatibility in cases of incompatibility between domestic laws and Convention rights, thereby affording the same power to the courts in situations of incompatibility.

3. Senior Courts Act 1981: This Act allows courts to have oversight of action taken by public bodies in administrative law, and this could be used for an attempt to achieve judicial review.

4. Law Reform Act 2005: This simplifies the procedure for judicial review and enhances access to remedies for unlawful administrative acts.

5. The historical basis of judicial review is the Magna Carta of 1215 – the first document of law which established the rule of law and justice over the power of the state.

Challenges

Despite being a vital aspect of any constitutional state, judicial review has several shortcomings, which make it unsuitable as a tool for ensuring constitutional governance in both presidential and parliamentary systems. First of all, the issue of judicial independence and its close connection to politicization is of great concern. The judiciary, which is supposed to be the most independent and reliable source of authority, faces serious pressures from both the parliament and the government. Such pressures are particularly evident in high-profile cases, when politically connected disputes take too much of judges' time and energy.

Furthermore, the dilemma of judicial activism and judicial restraint makes the system unpredictable and, in some ways, irrational. If judges adopt too many proactive stances, claiming that they know better than the legislature, they engage in activism, which is generally considered inappropriate. However, if they restrict themselves in their efforts to help the Constitution protect, they fail in their duty to safeguard rights and freedoms.

Another problem is the excessive workload, which is a result of the complexity of cases and the long procedures, as well as the overall decrease in the speed and efficiency of the judicial process. Citizens' limited access to justice, as well as the general lack of legal knowledge, is yet another serious disadvantage of judicial review, which significantly limits its ability to serve as a tool for constitutional governance. Thus, it is evident that judicial review has several serious shortcomings, which need to be addressed in order for it to successfully serve as a tool for achieving constitutional governance.

Opportunities

Judicial review is a great chance to enhance the state's constitutional government, safeguard and promote rights, and establish the rule of law. Firstly, personal rights are protected. Judicial review of legislative and executive actions is designed to enforce citizens' rights before courts to ensure fair, equal, and due process of law. It also ensures the supremacy of the constitution by keeping all the state Institutions within the law. Another key opportunity is the promotion of accountability and good governance. Judicial Review provides a method for citizens to learn that the government may not exercise its power inappropriately, thus serving as a check upon government power.

There is a contribution to the development of constitutional law through judicial decisions, which might fill some gaps in the constitution and make it more relevant to the needs of society. Judicial review also gives further support to the principles of democracy as it helps in balancing the powers of the various organs of the State and separation of powers. It also affords protection against administrative Injustice by way of writ jurisdiction and human rights redress. With contemporary legal structures, judicial review can also contribute to legal reform and bring uniformity to international human rights standards. It fosters legal awareness, a sense of the constitution, accountability of Institutions, and thus supports a lawful and stable legal order.

Discussion

Judicial review is one of the most crucial issues in the balance of powers of a constitutional system, and there are two types: constitutional supremacy and parliamentary supremacy. Protection of fundamental rights is reflected in constitutional systems that can declare laws unconstitutional if they violate the Constitution. In parliamentary systems, however, there is only a power of review of administrative actions, not of legislation. The only thing that can be compared is the notion of the rule of law, albeit in different forms. Issues of judicial activism, political pressure, and pending justice have a bearing on its efficiency. Judicial review plays a crucial role in ensuring accountability of the government and constitutional governance in general.

Conclusion

Judicial review is an integral part of the constitutional law of modern times that ensures that all actions of state institutions are within their legal and constitutional framework. A comparative study of constitutional and parliamentary systems reveals that in one, the supremacy of the constitution and a strong judicial system is being emphasized, whereas in the other, the supremacy of parliament and a minimal role of the judiciary in lawmaking is being emphasized. Both systems have the common goals of upholding the rule of law, protecting rights, and holding people accountable.Its effectiveness is, however, impeded by judicial activism, political interference, and slow judicial processes. In terms of judicial review, it is essential for good governance, constitutional balance, and the protection of individual rights in general.

Recommendations

A number of constitutional and parliamentary reforms are needed to enhance judicial power in the face of judicial review. There are several constitutional and parliamentary reforms that could make judicial review more effective. First, judicial independence should be guaranteed by limiting political or external interference in the judiciary, so that judges are able to make decisions without bias. Secondly, the judicial system needs to be enhanced by improving the processes that would clear away congestion and facilitate the expeditious disposal of constitutional cases.

Third, the legal awareness campaign needs to be promoted to empower the citizens to better understand and avail the judicial review mechanism to safeguard their rights. Fourth, judicial activism and judicial restraint should have a healthy balance to ensure harmony and minimize conflict between the judiciary, legislature, and executive. Fifth, there is a need to strengthen capacity building and training for judges to better appreciate the interpretation of complex constitutional and/or administrative issues. Finally, there is a need for increased transparency of judicial procedures, which will benefit the overall effectiveness of constitutional governance and enhance public confidence in judicial institutions.

Research Limitations

The limitation of this research is that only two Jurisdictions are compared, making it difficult to generalize to the rest of the world. Mostly secondary sources (books and articles) and online resources were used in the study, which may not accurately reflect recent developments in judicial practice or the latest case law. Limited time also prevented detailed discussion of the landmark decisions and empirical information. Moreover, the comparison is not easy due to the differences in the constitutional structure and the legal traditions. There was also limited access to updated legal databases and primary court records, which could impact the extent of doctrinal analysis in some aspects of judicial review.

Research Implications

Apart from the practical relevance of the results of research, it is also constitutionally relevant and policy-relevant. It focuses on the effects that constitutional structures, when they are put into practice, have on the substance and authority of judicial review, particularly when they feature a strong doctrine of constitutional supremacy or of parliamentary supremacy. The results can help policymakers gain some insights into how crucial it is to balance power and democracy. It helps lawyers and academics gain an understanding of how hard it is to conduct judicial review and what is involved in judicial review. It also contributes to the academic

debate by showing the lack of literature in some areas and helps to bring about comparative constitutional discussion. Overall, it aims to reinforce stronger, rights-based, and responsible legal frameworks and systems.

Future Research Directions

The work of judicial review may be further extended to other jurisdictions, such as the United States, the Indian judicial system, and other systems in Europe, to provide a full picture of judicial powers. More detailed research on the impact of judicial activism on democracy and separation of powers can be carried out. Furthermore, empirical research in the light of case studies and interviews with judges and lawyers could provide specific data regarding the actual functioning of judicial review. In addition, future studies can be devoted to the development of the impact of international human rights law on domestic systems of human rights judicial review, and to the evolution of constitutional interpretation.

References

1. AllahRakha, N. (2025). Legislators qualifications in Pakistan under Islamic constitutional provisions. *Journal of Human Rights, Culture and Legal System, 5*(2), 473–499. https://doi.org/10.53955/jhcls.v5i2.491
2. Bakhsh, F., Abbasi, S., Abbasi, W. A., & Hashmi, M. A. I. (2025). Judicial activism vs. judicial restraint in developing democracies: A comparative study. *Social Science Review Archives, 3*(3), 2319–2329. https://doi.org/10.70670/sra.v3i2.1079
3. Begum, R. (2025). Separation of powers: A case study of Pakistan (1947 to present). *Social Science Review Archives, 3*(3), 1861–1872. https://doi.org/10.70670/sra.v3i3.1019
4. Bromo, F. (2025). Early parliamentary dissolutions and judicial review: Lessons from comparative cases. *Comparative Legal History, 13*(1), 91–111. https://doi.org/10.1080/2049677X.2025.2500178
5. Fiaz, M. (2025). Separation of powers and history of judicial independence in Pakistan. *Journal of Applied Linguistics and TESOL, 8*(4), 952–962. https://jalt.com.pk/index.php/jalt/article/view/1434
6. Ghouri, Z., Abro, I. A., & Qazi, M. U. (2026). Rule of law and separation of powers: A comparative analysis of Dicey and Montesquieu. *International Journal of Social Science & Entrepreneurship, 6*(1), 68–87. https://doi.org/10.58622/r4wjdn74
7. Gul, S., Ahmad, R., & Rahman, S. U. (2025). The myth of neutrality: Judicial review, ideology, and constitutional interpretation in Pakistan and the United Kingdom. *The Critical Review of Social Sciences Studies, 3*(2), 1742–1754. https://doi.org/10.59075/mm3m9d48
8. Munir, B., Ansari, A. A., & Mahmood, T. (2024). Judicial activism in Pakistan and its impacts on tripartite governance: Lessons from the US constitutional construct. *Global Political Review, 9*(3), 44–57. http://dx.doi.org/10.31703/gpr.2024(IX-III).05
9. Nawaz, H., & Bexci, M. S. (2025). A critical analysis of judicial structure of Pakistan's apex court: Pre- and post-26th constitutional amendment. *International Journal of Advanced Social Studies, 5*(2), 30–43. https://doi.org/10.70843/ijass.2025.05204

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