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Comparative Analysis in Parliamentary and Presidential System,  
Authored By: Adv. Ananya Roy (LL.M (Corporate Law)), Galgotias  
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## **ABSTRACT**

*“Constitutional courts safeguard democratic principles and maintain the Constitution's pre-eminence through judicial scrutiny. The political systems of India, Germany, and the “United States” are the primary foci. Investigated are the inner workings and organizational structure of constitutional courts in presidential and parliamentary democracies. We compare and contrast various institutional structures, political contexts, and constitutional frameworks in terms of judgment review's scope, independence, and influence. The study delves at the reasons behind judicial review, the ways in which the courts collaborate with other branches of government, and the variations in the understanding of judicial independence across different systems. The judicialization of politics, judicial overreach, delays in constitutional adjudication, and the counter-majoritarian conundrum are some new concerns. Attempts by constitutional courts to maintain justice in a politically divided world are examined in this article. In order to accomplish this goal, it examines foundational theories, institutional frameworks, and case laws. Among the topics covered are recommended practices and protections that can help constitutional courts become more respected and effective in democratic rule. The dissertation argues that courts, regardless of whether they operate under a presidential or parliamentary system, have an obligation to uphold constitutionalism and the rule of law. Independent judges, transparent judicial selection, and adherence to constitutional principles are necessary for constitutional courts to uphold the Constitution”.*

## **KEYWORDS:**

***Judicial Review; Constitutional Courts; Constitutionalism; Rule of Law; Basic Structure Doctrine; Suo Motu Powers; Public Interest Litigation (PIL); Comparative Constitutional Law; Constitutional Adjudication; Constitutional Governance; Legal Interpretation; Jurisprudence; Institutional Design; Global Juristocracy; Separation of Powers; Checks and Balances; Judicial Independence; Court Authority; Democratic Accountability;***

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*Political Interference; Constitutional Crisis; Judicialization of Politics; Counter-Majoritarian Dilemma; Presidential System; Parliamentary System; Judicial Overreach.*

## **I. INTRODUCTION:**

Modern democracies based on the constitution rely heavily on constitutional courts to Above all else, do what the law says. Their duty is to study the Constitution, defend it, and live in accordance with its precepts. Court reviews are their primary tool since they allow them to strike down executive orders and laws that violate the constitution. Marbury v. Madison brought judicial review into the spotlight, and the concept has been influential ever since (1803) an integral aspect of constitutionalism globally. Constitutional courts are structured and operate differently under presidential and parliamentary regimes. The rationale behind this is many people have different views on the best way to organize government, including how authority should be distributed and monitored. Societies that use a parliamentary form of government are two nations that often have the power to legislate, enforce it, and subject it to judicial review are Germany and India. In contrast, the US and Brazilian presidents have more now that they control the courts, they can do whatever they want with the interpretation of the law. The connection between is a common issue for judges working in parliamentary systems strong legislative bodies. For instance, there is much that needs doing by the Indian Supreme Court. Constitutional defense efforts are aided by PIL and the Basic Structure Doctrine.<sup>1</sup> However, under presidential regimes, tribunals such as the US Supreme Court have consistently dissented from executive orders and policies, going against the trend on multiple occasions.<sup>2</sup> This research compares and contrasts the two systems, paying special attention to how in which the integrity of the judicial system is safeguarded by constitutional courts. Through an examination of structure, function, and ideology, it seeks to demonstrate the similarities and differences. It

<sup>1</sup> Kesavananda Bharati v. State of Kerala, AIR 1973 SC 1461

<sup>2</sup> Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 579 (1952)

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examines the leeway that the regarding the judicial system, its ability to safeguard constitutional democracy, and the issues that arise when judges overstep their bounds, politicians intervene, and citizens are compelled to answer for their deeds.

### **I.I REVIEW OF LITERATURE:**

Judicial review and constitutional courts have been the subject of several studies, but you won't find them all in one convenient location. The role of the judiciary in relation to the executive How to collaborate with other branches of government while safeguarding constitutional goals has been studied by scholars in law, politics, and comparative constitutional studies the list goes on and on. Conversely, the vast majority of studies focus on the development of a single theory or a narrow subset of the law. Research that compares presidential and parliamentary systems in a methodical way is few. Research on parliamentary systems is limited. This section examines significant contributions and discusses the gaps that this study aims to fill.

#### **1. Constitutional and Judicial Review Foundational**

##### **Concepts:**

"General Theory of Law and State" by Hans Kelsen, published in 1945, was a seminal work in Kelsen proposed the concept of constitutional courts.<sup>3</sup> It is exclusively these courts that authority to review legislation for potential constitutional infractions and reject them if found to be so. In nations with a civil law system, such as Germany and Austria, his views contributed to the establishment of centralized procedures for reviewing the constitution. Can unelected judges nullify laws passed by democratically elected legislatures? The "counter-majoritarian difficulty" proposed by Alexander Bickel is an original query.<sup>4</sup> The Least Dangerous Branch raises the issue in 1962. This book is usually brought up when

<sup>3</sup> Hans Kelsen, General Theory of Law and State (Anders Wedberg trans., Harvard Univ. Press 1945)

<sup>4</sup> Alexander M. Bickel, The Least Dangerous Branch: The Supreme Court at the Bar of Politics (Yale Univ. Press 1962)

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discussing the role of the US Supreme Court in maintaining democracy and judicial scrutiny.

## ***2. Evaluating Presidential Systems through Judicial Review:***

The American system of presidential democracies, with its emphasis on judicial review, has been the subject of several literary works. Mark Tushnet has investigated the boundaries of judicial sovereignty and proposed a legislative-judicial collaboration mechanism for weak-form judicial review as an alternative to arguing with one another (Taking the Constitution Away from the Courts, 1999).<sup>5</sup> In his multi-volume work Constitutional Law and Politics, David O'Brien examines the ways in which seminal Supreme Court decisions have influenced political theory.<sup>6</sup> This exemplifies the role of the courts crucial component in ensuring that a presidential administration adheres to the constitution. In Latin American presidential democracies such as Brazil and Mexico, Juárez-Figueroa investigates the factors that impact the independence and efficacy of the judicial system.<sup>7</sup> It was believes the constitutional court has greater autonomy as a result of political power separation.

## ***3. Evaluation by the Judiciary in Parliamentary Systems:***

The evolution of the Indian Supreme Court's function has been extensively covered by writers, particularly in light of the Kesavananda Bharati case and PIL (Public Interest Litigation). This group includes some members of the House of Representatives, Jain, Upendra Baxi, and Granville Austin.<sup>8,9,10</sup> People who have written. In spite of their limitations, these writings suggest that parliamentary systems' courts may be steadfast protectors of the constitution. The Federal Republic of Germany's Constitutional Jurisprudence, Third Edition, by Donald P. Kommers and Russell A. Miller discusses the Bundesverfassungsgericht. safeguarding

<sup>5</sup> Mark Tushnet, Taking the Constitution Away from the Courts (Princeton Univ. Press 1999)

<sup>6</sup> David M. O'Brien, Constitutional Law and Politics (10th ed., W.W. Norton & Co. 2020)

<sup>7</sup> Julio Ríos-Figueroa & Andrea Pozas-Loyo, Institutional Determinants of the Judicialisation of Policy in Brazil and Mexico, 39 Int'l Pol. Sci. Rev. 647 (2018)

<sup>8</sup> M.P. Jain, Indian Constitutional Law (8th ed., LexisNexis 2018)

<sup>9</sup> Upendra Baxi, The Indian Supreme Court and Politics (1980)

<sup>10</sup> Granville Austin, Working a Democratic Constitution: The Indian Experience (Oxford Univ. Press 1999)

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fundamental rights and maintaining constitutional order are paramount concerns for Germany's highest court.<sup>11</sup> Kelsenian events and postwar developments form the basis of their work ideas.

#### **4. Perspectives from Theory and Comparison:**

In his 2004 book Towards Juristocracy, Ran Hirschl vehemently opposes the global trend toward empowering judges.<sup>12</sup> He also states that it is possible for constitutional courts to appear impartial while actually benefiting the wealthy. He wonders if justice is served and wants to know the difference between in his writings on the subject of two political systems. The impact of institutional factors on the efficacy is examined by Tom Ginsburg and Rosalind Dixon in Comparative Constitutional Law (2011).<sup>13</sup> Taking into account the power and influence of constitutional courts around the world. How many judges there are, the maximum term for each judge, and the selection process are all factors to think about. Examining the judicial response to Constitutional developments, according to Bruce Ackerman, are analogous to shifts in popular opinion in parliamentary and presidential democracies.<sup>14</sup> To learn the origins of legal concepts, anyone with an interest in history, politics, or law should study his works.

#### **5. Recently Discovered Literature Deficits:**

While many studies have examined constitutional courts and judicial review under presidential systems, few have drawn comparisons between parliamentary and presidential systems. Research into the ways in which institutional and structural factors influence judicial performance in various systems is under-researched. There are no assessments on the validity, impartiality, or efficiency of the judicial system. Judges' responses to constitutional crises,

<sup>11</sup> Donald P. Kommers & Russell A. Miller, The Constitutional Jurisprudence of the Federal Republic of Germany (3d ed., Duke Univ. Press 2012)

<sup>12</sup> Ran Hirschl, Towards Juristocracy: The Origins and Consequences of the New Constitutionalism (Harvard Univ. Press 2004)

<sup>13</sup> Tom Ginsburg & Rosalind Dixon, eds., Comparative Constitutional Law (Edward Elgar 2011)

<sup>14</sup> Bruce Ackerman, We the People: Foundations (Harvard Univ. Press 1991); see also We the People: Transformations (Harvard Univ. Press 1998)

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legislative populism, and presidential overreach vary greatly among systems.

## **I.II OBJECTIVE OF THE STUDY:**

Analysing the parallels and contrasts between the operations of presidential and Parliamentary systems are the object of this study's primary investigation. Their roles, challenges, and impact on the functioning of the Constitution are of interest to it.

## **I.III HYPOTHESIS**

According to the data, constitutional courts operating under presidential systems are superior to their parliamentary counterparts in terms of strength and independence. This is due to the fact that court authority could be limited by legislative authority as well as more autonomous than their parliamentary equivalents.

## **I.IV RESEARCH QUESTIONS:**

### **1. Structural and Institutional Framework:**

- How are constitutional courts structured and empowered within presidential (e.g., United States) and parliamentary (e.g., India and Germany) systems?
- What are the key institutional features—such as appointment processes, tenure, and jurisdiction—that influence the independence and effectiveness of constitutional courts in these countries?

### **2. Judicial Review and Doctrinal Development:**

- In what ways do India, Germany, and the United States differ in their models of judicial review, and how have doctrinal innovations and landmark case laws shaped their constitutional jurisprudence?
- How do these courts exercise judicial review in constitutionally transformative or politically sensitive cases?

### **3. Judicial Independence and Separation of Powers:**

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- How is judicial independence maintained across different systems, particularly in the face of executive or legislative pressure?
- How do constitutional courts interact with the legislative and executive branches, and what are the implications of these interactions for the principle of separation of powers?

#### **4. Democratic Legitimacy and Constitutionalism:**

- What role do constitutional courts play in upholding the rule of law, constitutional supremacy, and democratic legitimacy in their respective jurisdictions?
- How do courts navigate the counter-majoritarian dilemma, especially when their decisions conflict with majoritarian political will?

#### **5. Contemporary Challenges and Political Context:**

- What challenges—such as judicial overreach, populism, political interference, and delays—confront constitutional courts in both presidential and parliamentary democracies today?
- How do courts respond to increasing political polarization, and what strategies do they adopt to balance legal interpretation with democratic accountability?

#### **6. Comparative Insights and Reform:**

- Do presidential systems offer stronger safeguards for judicial independence compared to parliamentary systems?
- What institutional safeguards, procedural reforms, and comparative best practices can be drawn from the experiences of India, Germany, and the United States to enhance the legitimacy, accountability, and global effectiveness of constitutional courts?

#### **I.V SCOPE:**

***The following is everything that is considered in this assessment:***

1. When it comes to interpreting and applying the Constitution, it's the job of constitutional courts.
2. Making ensuring everyone plays by the rules by means of judicial review.

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3. Specifically, the role of constitutional courts in overseeing the administration of law.
4. The impact of constitutional court decisions on government and the general public. What to do the research compares using a qualitative method.

### **I.VI METHODOLOGY:**

A qualitative method of comparison is employed in the study.

## **II. IMPORTANCE OF JUDICIAL REVIEW:**

***In a democracy based on the constitution, judicial review is crucial for numerous reasons:***

1. The courts must examine policies and regulations to determine if they violate the Constitution, prioritizing the Constitution above all other rules and laws. As a result, the primacy of constitutional norms is guaranteed.<sup>15</sup>
2. Upholding Fundamental Freedoms, the role of constitutional courts is to safeguard individual rights by preventing the government from overstepping its bounds or acting arbitrarily.<sup>16</sup>
3. Implementing a system of checks and balances the system of checks and balances relies on judicial scrutiny. It prevents the government's several branches from merging into one and keeps authority decentralized.<sup>17</sup>
4. In Défense of Legal Due Process the accountability of public authorities is fostered through judicial review, which aids in safeguarding the rule of law and fostering public faith in the justice system because of what they did and because they removed individuals that disobey the constitution.<sup>18</sup>

<sup>15</sup> Marbury v. Madison, 5 U.S. (1 Cranch) 137 (1803); Kesavananda Bharati v. State of Kerala, AIR 1973 SC 1461.

<sup>16</sup> Maneka Gandhi v. Union of India, AIR 1978 SC 597; Bundesverfassungsgericht rulings under Art. 1 and Art. 19 GG.

<sup>17</sup> Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 579 (1952)

<sup>18</sup> A.K. Gopalan v. State of Madras, AIR 1950 SC 27; U.S. Const. amend. XIV.

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5. Free and fair elections, a trustworthy legislature, and constitutional amendments that uphold democratic governance democratic principles, such as following the law, are safeguarded by judicial scrutiny.<sup>19</sup>
6. As part of their judicial review process, constitutional courts can examine the ways in which societal and economic developments impact the Constitution. additionally, the impact of technological advancements on the Constitution. By doing so, we can be certain that the Constitution is relevant and current.<sup>20</sup>

## **II.I CONTEXT OF JUDICIAL REVIEW:**

Judicial review functions and produces different results under political structures that include a head of state and a legislative body. Germany and India both have parliamentary systems that have established strong norms for judicial review, even when the legislative branch is in control. The courts in presidential systems, such as the US and Brazil, tend to be less influenced by politics due to the obvious separation of powers. Understanding this calls for comparative research:

The various forms that judicial review can take; What types of organizations are most effective for deciding cases involving the constitution.

With the rise of populism and the erosion of the Constitution, what lessons can we draw to fortify constitutionalism globally?

## **II.II POWERS OF JUDICIAL REVIEW:**

Reviewing decisions is a crucial function of constitutional courts. It aids in their defense guaranteed liberties, establish the Constitution as supreme law, and preserve the system of democratic checks and balances. What a nation is able to do through judicial review is dependent on its political climate, legal traditions, and constitutional structure.

<sup>19</sup> Bush v. Gore, 531 U.S. 98 (2000); Indira Nehru Gandhi v. Raj Narain, AIR 1975 SC 2299.

<sup>20</sup> Justice K.S. Puttaswamy v. Union of India, (2017) 10 SCC 1 (Right to Privacy in Digital Age); Obergefell v. Hodges, 576 U.S. 644 (2015)

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a nation's traditions, code of laws, and founding document. ***Nonetheless, there are commonalities across many contemporary democracies.***

1. Legislative Review Authority Judicial review's primary function is to check whether or not a law's enactment violates the Constitution. The courts in presidential systems can nullify laws that violate the Constitution. The decision in *Marbury v. Madison*, 5 U.S. (1 Cranch) 137 (1803), brought the U.S. Supreme Court the authority to nullify legislation that are found to be in violation of the Constitution.<sup>21</sup> In parliamentary systems, the power is mostly held by the legislative branch, but to ensure that laws are valid, the judicial branch verifies them for potential infractions. In the case of *Kesavananda Bharati v. State of Kerala*, AIR 1973 SC 1461, the Indian Supreme Court invoked the Basic Structure Doctrine to restrict Parliament's ability to enact modifications.<sup>22</sup>
2. Courts have the authority to review executive and administrative activities that are legitimate, constitutional, and carried out correctly. Factors such as non-arbitrariness, logic, proportionality, and natural justice are considered throughout the evaluation. Following its previous decision in *A.D.M. Jabalpur v. Shivkant Shukla* (1976)<sup>23</sup>, the Indian Supreme Court took a firmer stand in protecting individual rights in *Justice K.S. Puttaswamy v. Union of India* (2017).<sup>24</sup>
3. Jurisdiction over Constitutional Questions: In the course of their judicial review, constitutional courts have the authority to clarify any unclear law provisions. Find a solution to conflicts between different parts of the constitution. Adapt interpretations of the Constitution to new social and political realities. A comprehensive analysis of the "United States Congress's" implied powers as outlined in *McCulloch v. Maryland*, 17 U.S. (4 Wheat.) 316 (1819).<sup>25</sup> Article 21, the Right to Life and Liberty, was given a broader

<sup>21</sup> *Marbury v. Madison*, 5 U.S. (1 Cranch) 137 (1803)

<sup>22</sup> *Kesavananda Bharati v. State of Kerala*, AIR 1973 SC 1461 (India)

<sup>23</sup> *A.D.M. Jabalpur v. Shivkant Shukla*, (1976) 2 SCC 521

<sup>24</sup> *Justice K.S. Puttaswamy (Retd.) v. Union of India*, (2017) 10 SCC 1

<sup>25</sup> *McCulloch v. Maryland*, 17 U.S. (4 Wheat.) 316 (1819)

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interpretation by the Indian Supreme Court in the case of Maneka Gandhi v. Union of India, AIR 1978 SC 597.<sup>26</sup>

4. Judicial Innovation's Power (Doctrine Creation): To improve judicial review, constitutional courts frequently propose new concepts and regulations. The following concepts influence the way courts apply constitutional standards to evaluate laws and governmental acts:
  - India's Doctrine of Basic Structure<sup>27</sup>
  - The US's Strict Scrutiny Test<sup>28</sup>
  - Germany, EU, and India's Principle of Proportionality<sup>29</sup>
  - The ECHR's "Margin of Appreciation" and others<sup>30</sup>
5. The Suo Motu Review and Judicial Activism Power: When government agencies fail to carry out their duties or when matters pertaining to fundamental rights are at stake, the Constitutional courts step in. When issues arise that impact the general public or the institution itself, the courts have the authority to initiate suo motu actions. An excellent illustration of this is the Public Interest Litigation (PIL) system at India's highest court.<sup>31</sup> The STF has been addressing environmental and social issues in Brazil even in the absence of formal complaints.<sup>32,33</sup>
6. In order to ensure that amendments to the constitution do not alter its "fundamental identity," courts have the authority to review these modifications in specific areas. According to the Indian organization Kesavananda Bharati, it is illegal to make alterations

<sup>26</sup> Maneka Gandhi v. Union of India, AIR 1978 SC 597

<sup>27</sup> Kesavananda Bharati v. State of Kerala, A.I.R. 1973 S.C. 1461

<sup>28</sup> Adarand Constructors, Inc. v. Peña, 515 U.S. 200 (1995)

<sup>29</sup> Modern Dental College and Research Centre v. State of Madhya Pradesh, (2016) 7 S.C.C. 353

<sup>30</sup> Handyside v. United Kingdom, 24 Eur. Ct. H.R. (ser. A) (1976)

<sup>31</sup> S.P. Gupta v. Union of India, A.I.R. 1982 S.C. 149

<sup>32</sup> Rubens Glezer & Eloísa Machado, Judicial Activism in Brazil: The STF and the Crisis of Democratic Representation, 16 Int'l J. Const. L. 1 (2018)

<sup>33</sup> Daniel Vargas & Mariana Magalhães, The Brazilian Federal Supreme Court's Role in Environmental Protection: Between Judicial Activism and Constitutional Mandate, 12 Brazilian J. of Pub. Pol'y 47 (2021)

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that undermine the fundamental framework.<sup>34</sup> Any change that threatens fundamental human values, such as democracy, is reviewed by Germany's Federal Constitutional Court.<sup>35</sup>

7. In order to maintain the Constitution, the courts must decide on matters involving: Legislative authority; Conflicts between the federal government and the states; Questions about the role of lawmakers; and Cases involving the German Federal Constitutional Court. Power is granted to it by Article 93 of the Basic Law. Cases affecting the federal government are given the authority to be decided by the Supreme Court of India under Article 131 of the Indian Constitution.
8. Authority to Prevent Government Overreach: It is the duty of the judiciary to safeguard individual liberties and prevent the abuse of power by governments or powerful organizations. The courts have the authority to ensure compliance with the Equal Protection, Due Process, Habeas Corpus, and Writs clauses. Cases such as *Brown v. Board of Education* in the “United States”,<sup>36</sup> *Navtej Singh Johar v. Union of India* in India,<sup>37</sup> and *Lüth* in Germany are a few more examples.<sup>38</sup>
9. Some courts have the authority to determine whether or not foreign treaties are compatible with U.S. law via the lens of comparative constitutional oversight. Orders from the president, emergency powers, and decrees. If a foreign treaty violates a country's constitution, the South African Constitutional Court or the Federal Constitutional Court of Germany can nullify the term.

<sup>34</sup> *Kesavananda Bharati v. State of Kerala*, A.I.R. 1973 S.C. 1461

<sup>35</sup> Donald P. Kommers & Russell A. Miller, *The Constitutional Jurisprudence of the Federal Republic of Germany* 55–78 (3d ed. 2012)

<sup>36</sup> *Brown v. Board of Education*, 347 U.S. 483 (1954)

<sup>37</sup> *Navtej Singh Johar v. Union of India*, (2018) 10 SCC 1 (India)

<sup>38</sup> *Lüth*, 7 BVerfGE 198 (1958) (F.R.G.)

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### **III. CONCLUSION:**

Constitutionalism, legal responsibility, and the rule of law all rely on judicial review. By interpreting the Constitution, investigating executive branch misconduct, striking down unconstitutional laws, and safeguarding civil liberties, the court maintains constitutional order. While the checks and balances in a parliamentary system differ from those in a presidential one, they all work toward the same end: protecting the rights of the people by preventing the three arms of government from abusing their constitutional authority. Constitutional democracies place a premium on checks and balances. It prevents the three arms of government—the legislature, the executive, and the judiciary—from becoming too powerful or operating independently.

### **IV. CHECKS AND BALANCES:**

***Constitutional courts are essential to the proper functioning of this system. To achieve this goal, the court examines statutes and executive orders, interprets the Constitution, and safeguards democratic checks and balances.***

1. A system of checks and balances ensures that all parts of government are subject to the Constitution, have their own authority, and can restrict or control the authority of other parts. This system is in place to prevent power abuse, protect fundamental rights, ensure compliance with the Constitution, and promote harmony and amicable resolution of disputes among several organizations.
2. The Role of Constitutional Courts in Maintaining Order. It is the primary duty of constitutional courts to resolve disputes involving jurisdictions, particularly in presidential systems; second, to establish the bounds within which the power of each body can be exercised; and third, to invalidate statutes or executive orders that violate the Constitution through the process of judicial review. The court has the authority to provide checks and balances on the executive branch, as established in the landmark case of “Nixon v. United

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States, 418 U.S. 683 (1974)).<sup>39</sup> For example, in the 1973 Supreme Court of India case *Kesavananda Bharati v. State of Kerala*, the question of how far Parliament can go in revising the Indian Constitution was considered while preserving its basic concepts.<sup>40</sup>

3. Taking a look at how presidential and parliamentary systems vary, comparing the Presidential and Parliamentary Systems, Legislative authority is often subordinate to that of the executive (due to majority rule) and vice versa. Multiple factions vie for control. There must be a check and balance from the judiciary to prevent the two branches of government from becoming one. Vital to maintain a steady equilibrium between the autonomously elected branches to other branches. Verifications through the Legislative body lose confidence vote, and financial control. Legislative and impeachment process supervision. Verifications through expulsion of lawmakers by the executive branch (in certain nations), limited power to reject. Overturn executive orders and laws. Judicial Review: By examining them, constitutional courts ensure that things are kept in check. Stricter constitutional limits, but otherwise the same.
4. Institutional checks and balances, including the role of the court, Judicial Review: Overturn unconstitutional laws and presidential orders, ensures compliance with the Constitution.<sup>41</sup> Basic rights are safeguarded by Writ Jurisdiction.<sup>42</sup> Protects citizens from tyranny by the government. Issues concerning rights or government can be addressed by *Suo Motu* Powers.<sup>43</sup> Leads to a more equitable and responsible society. People are compelled to respect court rulings through contempt powers. Upholds the principle of legality. The idea

<sup>39</sup> *Nixon v. United States*, 418 U.S. 683 (1974).

<sup>40</sup> *Kesavananda Bharati v. State of Kerala*, AIR 1973 SC 1461 (India).

<sup>41</sup> *Marbury v. Madison*, 5 U.S. (1 Cranch) 137 (1803); *Minerva Mills Ltd. v. Union of India*, AIR 1980 SC 1789 (India).

<sup>42</sup> Constitution of India, arts. 32, 226; *R. v. Secretary of State for the Home Department, ex parte Simms*, [2000] 2 AC 115 (UK).

<sup>43</sup> *Bandhua Mukti Morcha v. Union of India*, AIR 1984 SC 802 (India); *Municipal Council, Ratlam v. Shri Vardhichand*, AIR 1980 SC 1622.

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that the three arms of government should have autonomy is central to the Separation of Powers<sup>44</sup> Doctrine put differences between divisions to rest.

5. Constitutional courts have proposed numerous suggestions to strengthen checks and balances, including doctrines that strengthen the judiciary. According to the Basic Structure Doctrine<sup>45</sup>, key provisions of the Indian Constitution cannot be altered by Parliament. The Non-Delegation Doctrine<sup>46</sup> places constraints on the federal government's ability to pass laws in the US. Considers European and Indian norms for what constitutes a fair and appropriate restriction on individual freedoms (Proportionality and Legitimate Aim).<sup>47</sup> The "United States" and "India" are among the numerous countries that apply Equal Protection and Due Process.<sup>48</sup>
6. In India, the prime minister is held responsible by the courts to prevent election fraud, as demonstrated by the case of Indira Nehru Gandhi v. Raj Narain, AIR 1975 SC 2299,<sup>49</sup> which demonstrates the functioning of checks and balances. It was in the case of I.R. It was established in the case of Coelho v. State of Tamil Nadu, AIR 2007 SC 861,<sup>50</sup> that laws included in the Ninth Schedule can be reviewed by the court. In the case of "Hamdan v. Rumsfeld, 548 U.S. 557 (2006)",<sup>51</sup> the "United States Supreme Court" reviewed the military commissions established by the Bush administration during the "War on Terror." In Germany, government policies and regulations are scrutinized by the Federal Constitutional Court to ensure they adhere to the democratic and federal framework

<sup>44</sup> Kesavananda Bharati v. State of Kerala, AIR 1973 SC 1461 (India); United States v. Nixon, 418 U.S. 683 (1974).

<sup>45</sup> Kesavananda Bharati v. State of Kerala, AIR 1973 SC 1461 (India).

<sup>46</sup> J.W. Hampton Jr. & Co. v. United States, 276 U.S. 394 (1928); Gundy v. United States, 588 U.S. \_\_\_\_ (2019).

<sup>47</sup> Modern Dental College and Research Centre v. State of Madhya Pradesh, (2016) 7 SCC 353 (India); Sunday Times v. United Kingdom, 2 E.H.R.R. 245 (1979).

<sup>48</sup> Brown v. Board of Education, 347 U.S. 483 (1954); Maneka Gandhi v. Union of India, AIR 1978 SC 597 (India).

<sup>49</sup> Indira Nehru Gandhi v. Raj Narain, AIR 1975 SC 2299 (India)

<sup>50</sup> I.R. Coelho v. State of Tamil Nadu, AIR 2007 SC 861 (India)

<sup>51</sup> Hamdan v. Rumsfeld, 548 U.S. 557 (2006)

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outlined in the Basic Law, measures to preserve the federalist and democratic basis of the Basic Law.<sup>52</sup>

7. Resolving the issue of judicial power imbalance as a branch of government, the judiciary is responsible for enforcing laws and policies and preventing officials from abusing their position of authority. Remain steadfast in your belief that not biased. Making morally sound decisions and presenting convincing arguments might help you back up interventions. To illustrate the application of constraints, consider the political question theory as determined by the US Supreme Court. The level of importance that the Indian Supreme Court places on cases involving links with other nations or the government's budget.
8. Difficulty with Balances and Checks Judicial overreach or populism.
9. Persistent partisan attempts to reduce judicial independence via measures such as appointment freezes and budget cuts trims and scheduled visits. The lack of speed with which the executive branch complies with court orders; The supremacy of the executive branch Reducing the extent of judicial scrutiny and limiting dissent are two consequences of majoritarianism.

In sum, the system of checks and balances is vital to the constitutional framework for preventing lawlessness. This is particularly the case in systems where dividing or merging abilities causes issues. By enforcing legal precedent and constitutional principles, constitutional courts ensure that authority remains where it should be. A constitutionalism ethos permeating all institutions and impartial courts are necessary for the proper functioning of this system.

## **V. COMPARATIVE ANALYSIS:**

Differences and similarities between the functions of constitutional courts under presidential and parliamentary systems are examined in this comparative analysis. This study examines

<sup>52</sup> Grundgesetz für die Bundesrepublik Deutschland [GG] [Basic Law], art. 93, May 23, 1949, BGBl. I (Ger.); Lüth, 7 BVerfGE 198 (1958) (F.R.G.)

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various aspects of the judicial system, including its structure, independence, case review frequency, constitutional value preservation, and changes in regional courts.

1. The composition, appointment, and authority of courts around the world vary greatly. The “United States” and Brazil are examples of presidential systems, whereas India, the “United Kingdom”, and Germany are examples of parliamentary systems.<sup>53</sup> Structure of Courts: Some nations, like Germany, have a separate constitutional court, while others, like India, use a more unified structure. Ranked highest among the federal courts that have been merged is the Supreme Court. The collegium system (led by the judiciary) in India, the Bundestag and Bundesrat in Germany, and the president and Senate in the “United States” follow a presidential nomination and confirmation process, respectively. The terms of office include a complex removal procedure, a set retirement age (such as 65 for Indian Supreme Court judges), lifetime appointments (in the US), and the possibility of impeachment by Congress.

Examples of presidential systems are the United States and Germany. Brazil is one of the Subject matter and Article 143 of India's Powers Advisory, the initial text, judicial, review, and fundamental broad authority to evaluate cases in court, that is, the US Constitution grasping the concept and implementing How broad is the domain of An extensive and detailed evaluation of India (Part III) as well as abstract and concrete IV rights examine (Germany) The supremacy of the judiciary in constitutional analysis; emphasis with relation to issues with the US government.

2. Degree of autonomy and engagement in politics a member of Congress and the head of state Institutional Maximum protection—legal requirements in terms of steadily increasing wages, ensuring employment, and United States of America transfer mechanisms: high-life tenure no dedicated funds, removing immediately the appointment of judges is a judicial process in India. (Collegium) in Germany. Just from a political perspective American

<sup>53</sup> U.S. Const. art. III, § 1; Marbury v. Madison, 5 U.S. (1 Cranch) 137 (1803).

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parliamentary process for choosing the president sometimes, nomination displays agreement on concepts Dangers from Control by the executive branch, autonomy of the legislature Postponements in scheduling increased politicization by means of political confirmations. For instance, in India, the NJAC Act was struck down in The Supreme Court's legal team on National Archives of India v. Record (2015) in order to maintain the independence of the judiciary The Supreme Court suggestions (such as Amy)

3. The Nature and Frequency of Judicial Review, the Character of the Arguments that Brett Kavanaugh and Coney Barrett Started in Parliament, and Other Factors That Led to Fiery Arguments Extensive and frequently employed (e.g., PILs in Germany and abstract review in India); narrowly focused on individual cases in the US; and finally, permitted for use in Brazil the Constitution is frequently interpreted by courts in Germany and India. The United States occurs moderately. Between 70 and 80 cases are heard by the Supreme Court each term. Judges in Germany and India take the initiative to reform society. Due to their emphasis on originalism and textualism, American judges tend to be restricted or formalist. A few instances of cases include the following: the Indian case of Kesavananda Bharati v. State of Kerala, the German case of Lüth, the US cases of Roe v. Wade, Obergefell v. Hodges, and Bush v. Gore.<sup>5455565758</sup>
4. Assessment of Parliamentary Presidential Criteria for Comparative Effectiveness in Preserving Constitutional Norms India takes a more expansive view of rights (Puttaswamy, which upholds privacy as a fundamental right)<sup>59</sup>, whereas the United States is more rigid when it comes to personal liberties (Miranda v. Arizona)<sup>60</sup>. A powerful tool against the

<sup>54</sup> Kesavananda Bharati v. State of Kerala, AIR 1973 SC 1461 (India)

<sup>55</sup> Lüth, 7 BVerfGE 198 (1958) (Ger.)

<sup>56</sup> Roe v. Wade, 410 U.S. 113 (1973)

<sup>57</sup> Obergefell v. Hodges, 576 U.S. 644 (2015)

<sup>58</sup> Bush v. Gore, 531 U.S. 98 (2000)

<sup>59</sup> Justice K.S. Puttaswamy (Retd.) v. Union of India, (2017) 10 SCC 1 (India)

<sup>60</sup> Miranda v. Arizona, 384 U.S. 436 (1966)

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abuse of legislation is the basic structure theory, which limits state power (India)<sup>61</sup>. As seen in cases like *Youngstown v. Sawyer*<sup>62</sup>, it prevents the executive branch from overreaching its authority. In cases involving the 2G spectrum and coal distribution, for instance, Indian courts oversee the government, whereas American courts guarantee equal protection under the law and a fair trial for all citizens.

5. Judicial orders have an impact on changes to legislation and public administration. When elected branches take over, judicial restraint wanes and the courts step back. Enforcement in India: The courts constantly issue orders and monitor adherence. American soldiers often carry out their commanders' commands, although partisanship can undermine their effectiveness (the Dobbs backlash).<sup>63</sup>
6. *Kesavananda Bharati v. State of Kerala* (AIR 1973 SC 1461)<sup>64</sup>, a case heard in the Indian Parliament, laid the groundwork for the fundamental structure doctrine. A more malleable concept of due process was established by the case *Maneka Gandhi v. Union of India*<sup>65</sup> (AIR 1978 SC 597). In 2018, the ruling in *Union of India v. Navtej Singh Johar* established the legality of Section 377 of the Indian Penal Code.<sup>66</sup>
7. In the case of *Puttaswamy v. Union of India*, justice K.S. was the judge. According to 10 SCC 1, the right to privacy is universal.<sup>67</sup>
8. In 5 U.S. 137 (1803), the precedent for judicial review was established in the case of *Marbury v. Madison*.<sup>68</sup> Racial segregation in schools came to an end with the landmark judgment in *Brown v. Board of Education*, 347 U.S. 483 (1954).<sup>69</sup> The case involving the

<sup>61</sup> *Kesavananda Bharati v. State of Kerala*, AIR 1973 SC 1461 (India)

<sup>62</sup> *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579 (1952)

<sup>63</sup> *Dobbs v. Jackson Women's Health Org.*, 597 U.S. \_\_\_\_ (2022)

<sup>64</sup> *Kesavananda Bharati v. State of Kerala*, AIR 1973 SC 1461 (India)

<sup>65</sup> *Maneka Gandhi v. Union of India*, AIR 1978 SC 597 (India)

<sup>66</sup> *Navtej Singh Johar v. Union of India*, (2018) 10 SCC 1 (India)

<sup>67</sup> *Justice K.S. Puttaswamy (Retd.) v. Union of India*, (2017) 10 SCC 1 (India)

<sup>68</sup> *Marbury v. Madison*, 5 U.S. (1 Cranch) 137 (1803)

<sup>69</sup> *Brown v. Board of Education*, 347 U.S. 483 (1954)

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2000 presidential election was resolved in *Bush v. Gore*, 531 U.S. 98 (2000)<sup>70</sup>. To begin a conversation over the legitimacy of the courts, the case that reversed *Roe v. Wade* was *Dobbs v. Jackson Women's Health*, 597 U.S. \_\_\_\_ (2022).<sup>71</sup> The German parliament and the constitutional court are two distinct bodies in BVerfGE 7, 198, the *Lüth Case* established a compromise between fundamental rights and free expression.<sup>72</sup>

9. Protecting and identifying individuals is governed by the regulations established in the famous *Soraya Case* (BVerfGE 34, 269).<sup>73</sup> The constitutionality of the European Union's capacity to incorporate Germany was called into issue in the *Maastricht Treaty Case* (BVerfGE 89, 155)<sup>74</sup>. During the time when Brazil's president, from 2005 to 2012, was in office, the *Mensalão Case* was one of numerous instances of political corruption that the Supreme Federal Court heard.<sup>75</sup> Preventing threats to democratic processes by aggressive use of judicial review to prevent the overreach of the executive branch.

## **VI. CONCLUSION:**

The study highlights the significance of constitutional courts in upholding protecting fundamental freedoms and the rule of law. For the purpose of reviewing actions taken by the executive, legislative, and popular branches, these courts play a crucial role. Congressional and political and institutional frameworks within which presidential regimes operate, significantly impact the legitimacy, efficacy, and authority of these entities.

1. Looking at it from a comparative perspective, Unique comes up with the next significant findings. Although it retains its independence generally, the Supreme Court does get more politically active in presidential campaigns. With lifetime appointments and extensive

<sup>70</sup> *Bush v. Gore*, 531 U.S. 98 (2000)

<sup>71</sup> *Dobbs v. Jackson Women's Health Org.*, 597 U.S. \_\_\_\_ (2022)

<sup>72</sup> *Lüth Case*, BVerfGE 7, 198 (1958) (F.R.G.)

<sup>73</sup> *Soraya Case*, BVerfGE 34, 269 (1973) (F.R.G.)

<sup>74</sup> *Maastricht Treaty Case*, BVerfGE 89, 155 (1993) (F.R.G.)

<sup>75</sup> *Mensalão Case*, STF, AP 470 (Brazil, 2005–2012)

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decision-making authority, the US system fits this description. The involvement of the judiciary is more prevalent in Under parliamentary systems, such as those in India and Germany, the power is exercised by the executive or legislative branch. It is said, however, that is sluggish to administer justice and isn't transparent about their process.

2. There are issues with the level of political pressure on judges and their independence in both systems when it comes to nominations. Indians have a lot of problems with In contrast to the highly politicized American system, the collegium system is hazy. How confirmation is handled by the Senate. The objective of Germany's nomination process based on consensus Striking a balance between institutional isolation and democratic legitimacy is the system's primary objective
3. Has judicial review been helpful? How frequently, visually, and consequentially judicial review occurs varies. The Constitutional Court of Germany the Indian Supreme Court places an emphasis on federal harmony, proportionality, and coherence; the US Court uses selective review to evolve doctrine; Many matters that benefit the general populace are heard by the court.
4. Here we have a dilemma: how much judicial intervention is necessary and how much self-restraint is desirable an ongoing conflict in every company. Excessive or insufficient power poses a threat to democracies. The objective is to maintain the Constitution's status as the supreme law while also safeguarding judicial power while maintaining prioritization of the Constitution.
5. Public opinion in light of the present political atmosphere: The credibility of the courts is affected by the public's faith in constitutional courts as well as the stability of the government. The judicial branch's autonomy is every time a government attempts to

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dismantle it. However, one's legitimacy and resilience are enhanced by being faithful to constitutional principles.<sup>76</sup>

## **VII. SUGGESTION AND RECOMMENDATIONS:**

1. The following measures can be taken to guarantee that constitutional courts maintain the rule of law:
  - a. The selection of judges should be conducted in an open, transparent, and equitable manner; and
  - b. The procedures for selecting judges should be accessible to all interested parties. feedback from the general audience. Other countries can learn from the successes of others, such as the Judicial Appointments Commission in the United Kingdom and the supermajority rule in Germany keep politics out of it.
2. Raise the bar for internal accountability measures: the court system must maintain its autonomy in making decisions in a system with built-in safeguards including ethical standards, assessments of judicial performance, and the release of rationally sentences.
3. Seek reforms to the judicial system to expedite the administration of justice. Fairness: When constitutional issues are still being debated, it becomes more difficult for people to obtain justice. If courts want to maintain the confidence of the people, they need to prioritize crucial constitutional matters, enhance processes through the use of technology, and ensure a seamless operation.
4. Limit the scope of judges' discretion by requiring them to adhere to standards of textual faithfulness and constitutional interpretation in developing novel concepts. It

<sup>76</sup> Indira Nehru Gandhi v. Raj Narain, AIR 1975 SC 2299 (India); Brown v. Board of Education, 347 U.S. 483 (1954)

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It is prudent to establish transparent norms or constitutional conventions that define the scope of permissible behavior.

5. Educate more people about the law and encourage their participation; everyone should be aware of the scope and limitations of judicial review. Public are more democratic society benefits from an impartial justice system, public access to legal resources, and active participation from all members of the community.
6. Judges should be shielded from political reprisal in order to monetary incentives, coercion, or disciplinary measures such as the transfer to a different position cast doubt on the fairness of the legal system.<sup>77</sup>
7. Insist that courts from many nations and areas work together by exchanging ideas and Collaborating on constitutional matters and exchanging experiences with foreign courts can help us all learn more and improve our abilities. We shall all emerge from these stronger nations that practice democracy.

### **VIII. FINAL REFLECTION:**

Despite the varied forms and circumstances of constitutional courts globally, their primary objective remains uniform: to guarantee the rightful exercise of authority. For judicial review to be effective and legal, it must be devoid of external intervention, limited in scope, subject to accountability, and readily available. The future of constitutional democracy is shaped by judicial decisions and its capacity to uphold credibility under changing political, social, and legal challenges.<sup>78</sup>

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