CHAPTER – I

INTRODUCTION
CHAPTER I

INTRODUCTION

1. Confrontation of Two Notions of Designing a Constitutional Review System
2. Decline of Parliamentary Sovereignty; Development of Constitutional Review
3. Functions and Pitfalls of Constitutional Review
4. Plan of the Study
5. Conceptualization of Terms and Expressions
6. Research Questions and Problems
7. Objectives of the Study
8. Hypotheses of the Study
9. Significance of the Study
10. Methodology Adopted
11. Sources
12. Scope of the Study
13. Limitations of the Study
14. Implications of the Research Findings
15. Structure of the Study
The written Constitution, in any country, is regarded as “the supreme law of the land.”\textsuperscript{1} It stands supreme over all laws, citizens, institutions, and all branches of the government whether central or regional. No institution of the government is authorized to make law or chalk out a policy that is against the Constitution. To maintain such supremacy, all the legal systems having a written Constitution propounded monitoring the laws.\textsuperscript{2} In other words, there must be a monitoring system predicted to be competent enough to examine the laws and to be able to issue judgments for their constitutionality. In case this system finds the laws contrary to the Constitution, it shall prevent them from being approved or declare them null and void.

\section*{1. Confrontation of Two Notions of Designing a Constitutional Review System}

Some of the questions regarding the establishment of a constitutional review system are, “Is there any action by supreme organs in a legal system that is ultra vires? If so, who has the power to decide whether an action crosses the line?”

The historical transitions of the concept of constitutionality in the United States and Continental Europe resulted in the shaping of two different notions and models of the constitutional review. In the American model, the ordinary judges, who are to enforce the statute approved by the legislature, are authorized to examine the conformity of the same with the Constitution. This model is based on the presumption that the Constitution enjoys judicial value and one can consult and rely on it in the courts. That is to say, each of the litigants is allowed to resort to its provisions and principles and the judge as well is authorized to ground his deduction of orders on them.\textsuperscript{3} However, in Continental Europe, except for some countries,\textsuperscript{4} such a system of review (indirect judicial review) could not be introduced because of the too high

\begin{flushright}
\textsuperscript{1} As stipulated in the Constitution of the United States, Art. VI, para. 2.
\textsuperscript{3} Ibid., pp. 107-10.
\textsuperscript{4} Denmark, Sweden, Norway, Estonia, and Ireland.
\end{flushright}
reputation of the legislative bodies.\textsuperscript{5} For example, the French legal doctrine, emphasizing the equality of the three branches of government, has always been against the notion that the acts of superior bodies and especially of parliamentary assemblies might be subjected to review by the judiciary.\textsuperscript{6} The Rousseauian theory of the general will, combined with the regressive position of the judicial parlements in the French Revolution, brought about a long tradition of distrust of judges in France. The government du juges replaced the crown as the primary threat to popular will in the French legal and political thought.\textsuperscript{7}

Dialectically speaking, as a synthesis of the above thesis and antithesis, the view of Hans Kelsen, the great Austrian legal theorist, well illustrates that establishing a constitutional court that one of its responsibilities is to review the conformity of laws with the Constitution,\textsuperscript{8} perfectly goes consistent with the theory of separation of powers.\textsuperscript{9} Hence, the Austrian model of review integrates both the American notion and the French one in the form of Constitutional Court.

\section*{2. Decline of Parliamentary Sovereignty; Development of Constitutional Review}

The idea of the parliamentary sovereignty was long seen as the heart of democratic practice. The superior position of the popularly elected legislature and its corollary of majority rule have been central principles for democratic revolutionaries since the idea was appended to the English unwritten Constitution. In the tradition of continental Europe, the intellectual

---


\textsuperscript{6} Ibid.


\textsuperscript{8} Constitutional courts also have other functions, including such duties as reviewing referenda and international agreements for conformity with the constitution; determining whether political parties are unconstitutional; adjudicating election violations; and impeaching senior governmental officials. Recently, constitutional courts have been given a wide range of other powers that move even more far away from their traditional role. For a discussion, see Ginsburg, supra note 7, pp. 39-40.

underpinning of parliamentary sovereignty was provided and stabilized by the Rousseauian concept of the general will. The people were supreme, and their general will as declared through their republican representatives could not be challenged.\textsuperscript{10}

Constitutional review in the proper sense of the word, taken from the theoretical point of view, was able to develop only when instead of the principle of the sovereignty of Parliament, there prevailed the idea of the supremacy of the Constitution and where constitutional review is performed by a special body independent of the Legislative and Executive power. Accordingly, between the two World Wars, known as “the Austrian period,” the Constitution of 1920 marks the foundation of the Austrian Constitutional Court with the exclusive power to review the constitutionality of statutes. The Austrian model was followed in some countries, such as Spain (1931) and Ireland (1937), before World War II. However, the trend to broader enforcement of constitutional review was interrupted by the War and the already founded institutions failed to become active in practice, for example from 1933 to 1945 Austria was without a constitutional review system.\textsuperscript{11}

After the Second World War, constitutional drafting efforts focused on two concerns: first, the declaration of fundamental rights to demarcate a zone of autonomy for individuals, which the government should not be allowed to abridge; and second, the formation of special courts to protect these rights. These courts were adopted precisely because they could be countermajoritarian, able to protect the substantive values of democracy from procedurally legitimate elected bodies.\textsuperscript{12} Therefore, most countries including Japan (1947), Italy (1948), Germany (1949), and India (1949) introduced constitutional review directly after the Second World War.\textsuperscript{13}

\textsuperscript{10} Ginsburg, supra note 7, pp. 1-2. Article of the 1789 Declaration of Human and Civil Rights states: “Legislation is the expression of the general will [la volonté générale].”
\textsuperscript{12} Ginsburg, supra note 7, p. 2.
\textsuperscript{13} Harutunyan and Mavcic, supra note 11.
1970s was marked with political changes in certain South European countries, which introduced constitutional review upon the abolition of dictatorships such as Portugal (1976).\textsuperscript{14} In this period, constitutional review was also introduced in some other countries like Iran (1979).

Today, in the wake of a global wave of democratization, parliamentary sovereignty is a waning idea, battered by the legacy of its affiliation with illiberalism. Parliamentary sovereignty has faded away all over the world.\textsuperscript{15} Although organizing a constitutional review body differs from one country to another, providing for a system of constitutional review is now a norm among democratic Constitution drafters. One theory argues that the spread of constitutional review power is a reflection of a broader extension of rights consciousness around the globe. This theory focuses on the demand for judicial protection of fundamental rights. As rights consciousness has spread, the importance of courts as the primary political actors with the mission to protect rights has been revealed.\textsuperscript{16}

3. Functions and Pitfalls of Constitutional Review

Constitutional review plays a great role in the legal, political, and social life of a country. Irrespective of its form and procedural law, it has been established to meet individuals’ satisfaction directly. The justification and legitimacy of constitutional review must be sought in its general and required functions for the institutions of the modern government and in safeguarding the fundamental rights. In fact, safeguarding and protecting the fundamental rights from the legislature’s violation is the first important function of the constitutional review bodies.\textsuperscript{17} Therefore, it can be said that in the proper sense of the word, constitutional review is the characteristic of democracy.\textsuperscript{18} On the other hand,

\textsuperscript{14} Ibid.
\textsuperscript{18} Harutunyan and Mavcic, supra note 11.
constitutional review bodies can contribute to making a new regime not merely a democracy but a state governed by rule of law and respectful of its citizens.\textsuperscript{19} Moreover, in a federal state these bodies play a significant role in the disputes between the central government and the member states or between the states.\textsuperscript{20}

Constitutional review discharges other secondary functions, too; it reflects the incentives of Constitution makers to adopt a form of political insurance. By ensuring that losers in the legislative arena will be able to bring claims to court, constitutional review reduces the cost of making the Constitution and allows its designers to conclude constitutional bargains that would not be obtainable under other circumstances.\textsuperscript{21} Therefore, constitutional review pacifies the political life because the opposition group[s] is assured to enjoy a means to make the majority respect the Constitution. Furthermore, by maintaining the balance and directing the reformations required by the majority, it secures and regulates the political changes and transitions and guarantees the accuracy and righteousness of them.\textsuperscript{22}

Another function of the constitutional review is to update the contents and texts of the Constitution. This function proves more significant in the countries where the Constitution is too rigid to allow numerous revisions and amendments.\textsuperscript{23} Constitutional review particularly in the active work of judiciary makes the necessarily vague terms of constitutional provisions more concrete and gives them practical applications. Through this work, static terms of the Constitution come alive, adapting themselves to the conditions of everyday life. It is in this way that the values embodied in the higher law become practical realities. In other words, “by adjudicating constitutional questions and enforcing constitutional provisions, constitutional courts make the constitution a living document that shapes and directs the exercise of

\textsuperscript{21} Ginsburg, \textit{supra} note 7, p. 33.
\textsuperscript{22} Favoreu, \textit{supra} note 69, p. 377.
\textsuperscript{23} Ibid.
political power, rather than merely a collection of fine phrases that symbolize human aspirations.”

In sum, through modern constitutionalism natural law has put on a historical and realistic footing, and has found a new place in legal thought.

However, the worry and fear with constitutional review is that the members of its bodies, who are never elected by the people and who are not normally accountable before the people, are authorized to examine or even to invalidate the Acts of popularly elected Legislature. Therefore, there is a possibility that they may turn to their own personal and political interests, and this turn of mind will impede the progress and natural movement of the society. Furthermore, in some countries, for any reason, most of the laws are excluded from being reviewed as in France. On the other hand, in some others, the judges interfere, at times so involvedly with the governance that some lawyers speak of the governance by the judges as in the United States. Still in the others, constitutional review bodies have grown to the extent that they act aggressively and even directly get involved in legislation and enacting laws as in Hungary. As a result, there is so much criticism on constitutional review and, at times, even its necessity goes under question, and it is generally denied by some.

In fact, not all constitutional review bodies manage to attain their valuable goals, but, at times, they even deviate from their true course and come to a conclusion which denies their own objectives: “some become powerless structures, unable to gain public respect, compel compliance with their decisions, or restrain the appetites of politicians. Others become, essentially, intrusive political actors, dictating in details what legislatures and executives must or must not do, blocking the popular will, and arrogating power to themselves. In the end, such a course compromises the political neutrality of

24 Horowitz, supra note 19.
25 Harutunyan and Mavcic, supra note 11.
26 See Favoreu, supra note 9, p. 341.
28 Hamon and Wiener, supra note 20, p. 126.
the courts, makes the constitutional court itself a political issue, and threatens the rule of law.”

4. Plan of the Study
Unlike the judicial review in India that dates back to its early years of independence and even farther before with the first Act of British Parliament in 1858, the constitutional review in Iran dates back to the 1979 Constitution when the Shah’s regime was overthrown and the Islamic Republic was established. In this system, a statute passed by the Parliament (the Majlis) is reviewed by an institution with political nature called the Guardian Council. If this Council does not confirm the conformity of the statute with the Islamic rules (Shariah) and the Constitution, it is returned to the Majlis to be revised and rectified. Provided that the Majlis is not willing to rectify it or the Council finds the rectifications insufficient, it is referred to the Expediency Discretion Council of the Regime to solve the dispute.

This study, having reviewed the historical and theoretical generalities and common principles of the constitutional review and its most important models in the world, comparatively examines the constitutional review scenarios regarding the Acts of Legislature in India and Iran. The study is concerned with the concept of constitutional review and the role that it plays, both in theory and in practice. Focusing on the most visible and important aspects of constitutional review power, an attempt will be made to examine the impact of the organs of constitutional review in two countries, India and Iran, vis-à-vis the legislative branch.

5. Conceptualization of Terms and Expressions
During the course of this study, so many technical terms and expressions have been utilized to denote certain concepts of constitutional law. In order to have

---

29 Horowitz, supra note 19.
31 The Constitution of IRI, Art. 112.
an easy understanding, the meanings of these expressions are given hereunder. It should be noted that these concepts are not the only concepts occurring in the study. However, because of their greater significance and larger reference they are concisely explained in this Chapter.

5.1. Constitutional Review, Constitutional Justice, and Judicial Review

These three terms refer to the same concept of reviewing the laws and regulations of a country for their constitutionality. They are the power of a constitutional court to annul the laws where it finds them incompatible with the Constitution. The present study uses the terms interchangeably.

It should be noted that there is a technical distinction between judicial review, in which ordinary judges play the role of constitutional check, and constitutional review, in which the function is given to specialized judges or political actors.32

5.2. Constitutional Court

This term, in its particular sense, refers to a specific type of constitutional review body derived from the Austrian Constitutional Court model whose particular jurisdiction is to examine the constitutional validity of laws. However, in its general meaning, this term refers to any type of body either influenced by American model, French model, or Austrian model, which is responsible for protecting the Constitution.

5.3. Judicial Activism

Judicial activism is inherent in judicial review.33 Sterling Harwood defines it as containing four distinct practices: refusing to take an attitude of deference for legislative or executive power or judgment; relaxing requirements for justiciability; breaking precedent; and loosely or controversially construing

---

32 Ginsburg, supra note 7, p. 15.
33 Sathe, supra note 30, p. 6.
constitutions, statutes or precedents. Judicial activism has often been described as judicial supremacy, judicial absolutism, judicial legislation, and judicial policymaking, etc.

5.4. *A Priori* Review vs. *a Posteriori* Review

The constitutional review of the Acts of legislature either can be before or after the Act comes into force. In the first case, *a priori* review, the Act that is not yet promulgated and enforced is reviewed. Here, declaring the unconstitutionality of the Act will prevent it from being signed and enforced. In the second case, *a posteriori* review, the Act that has already been enforced will be reviewed. Here, the objective of the constitutional review is to annul that Act or prevent the effects of its enforcement.

In the countries where just *a priori* review is common, the right of referring the case to the competent authority is not normally guaranteed for the individuals, but for the political authorities who are limited in number.

5.5. Centralized Review vs. Decentralized Review

The constitutional review of the Acts of legislature can be exercised in two forms: centralized system and decentralized system. Under a centralized (concentrated) system of review, a special constitutional court is created. Such a court is the only judge competent to check the constitutional validity of statutes passed by the Parliament. This kind of review can be exercised either “*a priori*” (as in France), or “*a posteriori*,” or both of them (as in Austria). However, under a decentralized (diffuse) system of review, there is no special constitutional court, but the review is discharged through the ordinary courts and any judge whatsoever is entitled to check the conformity of statutes to the

---

36 Hamon and Wiener, *supra* note 20, p. 89.
37 Ibid., pp. 89-90.
Constitution. Such a kind of review is necessarily exercised “a posteriori” (as in the United States).\(^3\)

5.6. Constitutionalism

Constitutionalism has a variety of meanings. Most generally, it is “a complex of ideas, attitudes, and patterns of behavior elaborating the principle that the authority of government derives from and is limited by a body of fundamental law.”\(^3\) This term is often associated with the political theories of John Locke and the “founders” of the American republic, that government should be legally limited in its powers, and that its authority depends on its observing these limitations.\(^4\) Historically, this term refers chiefly to the struggle for constitutional recognition of the public rights and freedoms.\(^5\)

5.7. Separation of Powers

Separation of powers, a term ascribed to French Enlightenment political philosopher, Baron de Montesquieu, is a model for the governance of democratic states. The pure doctrine of separation of powers may be stated as follows:

It is essential for the establishment and maintenance of political liberty that the government be divided into three branches or departments, the legislature, the executive, and the judiciary. To each of these three branches there is a corresponding identifiable function of government, legislative, executive, and judicial. Each branch of the government must be confined to the exercise of its own function and not allowed to encroach upon the functions of the other branches.\(^6\)

\(^6\) Reddy, supra note 35, p. 16.
The concept of checks and balances is also based on the notion of a separation of powers. When applied to the pure doctrine of separation of powers, the idea of checks and balances is essentially of a passive or negative character.\textsuperscript{43} The pure doctrine of separation of powers was gradually fused with the logically distinct theory of mixed government. The latter is based on the belief that the major interests of society should all be allowed to share in the governing process.\textsuperscript{44}

\textbf{5.8. Rule of Law}

The rule of law is a concept defined, as Roberto M. Unger has put it, by “the inter-related notions of neutrality, uniformity, and predictability.”\textsuperscript{45} This concept, in its most basic form, means that no one is above the law. It follows logically from the idea that “truth, and therefore law, is based upon fundamental principles which can be discovered, but which cannot be created through an act of will. The most important application of the rule of law is the principle that governmental authority is legitimately exercised only in accordance with written, publicly disclosed laws adopted and enforced in accordance with established procedural steps that are referred to as due process. The principle is intended to be a safeguard against arbitrary governance, whether by a totalitarian leader or by mob rule. Thus, the rule of law is hostile both to dictatorship and to anarchy.”\textsuperscript{46} The judicial review is merely the practical aspect of the rule of law.\textsuperscript{47}

\textbf{6. Research Questions and Problems}

Undoubtedly, every system of constitutional review, more or less, confronted some questions and problems. The main questions and problems that are examined in this particular study are as follows:

\textsuperscript{43} Ibid., p. 18.
\textsuperscript{44} Ibid., p. 33.
\textsuperscript{46} Available at: http://www.lexisnexis.co.in/about-us/rule-of-law/default.aspx, visited on Mar. 6, 2009.
(i) Opponents of decentralized judicial review (as in the United States and India) maintain that interference of judiciary courts causes the principle of independence and balance of powers to get breached and the judiciary to be superior to the legislative branch. On the other hand, centralized constitutional review through an institution with political nature (as in France and Iran) has constantly been subject to complaint, because it is said that by establishing a political institution to review the laws, a new huge organ develops alongside the three branches that would concentrate all powers specifically the legislative power in its own favor and interest.48

(ii) Manner of appointing the members of constitutional review bodies as well as the stability of their tenure is a key indicator of their independence or dependence. Therefore, if the leader of a political party or an Executive authority freely appoints the members and the tenure is not for a long period or a non-renewable period, then their independence will be under question.

(iii) The Guardian Council in Iran is constitutionally authorized to examine the consistency or inconsistency of the laws passed by the Majlis with the Islamic rules and the Constitution and to return the inconsistent ones to the Majlis to be revised and modified.49 To examine the laws approved after 1979 Revolution, the Council returns the inconsistent laws to the Majlis; however, to examine the laws passed before the Revolution it automatically declares them null and void without their being revised by the Majlis.

(iv) Although it is said that the Indian constitutional courts have the vast power of judicial review for the enforcement of fundamental rights, there are some limitations on this power in the Indian legal system. For example, once a law is enacted and included in the

48 See Ghazi, supra note 2, pp. 109-10.
49 The Constitution of IRI, Arts. 4 & 94.
Ninth Schedule, it gets protection under Article 31-B of the Constitution (validation of certain Acts and Regulations) and is not subject to judicial scrutiny.

(v) In the constitutional law of Iran, the Expediency Council, to solve the disputes between the Majlis and the Guardian Council regarding the constitutionality of a law, has in practice gotten involved with legislation as a law-maker without being constitutionally authorized.

7. Objectives of the Study

The objectives of the study are as follows:

(i) To uncover the circumstances, premises, and factors necessitating the establishment of an efficient system of constitutional review, which in turn will require a systematic approach in evaluating the achievements of constitutional review in the unresolved issues and bottlenecks

(ii) To help foster the public awareness of the constitutional review, and its role in paving the way for democracy and its betterment

(iii) To explain and clarify the issues and problems which constitutional courts are confronting in protecting the principles of democracy

(iv) To promote a sense of respect and observance by the public towards the Constitution, and to create awareness among the public authorities and public servants to uphold rule of law

(v) To uncover the social, historical, and national features and the internal logic of formation functioning of the constitutional review in India and Iran to propose specific approaches to establish a completely independent and efficient body of constitutional review
(vi) To assess the impact of the decisions made by the constitutional review bodies of India and Iran and their contribution in bringing about a legal and social change within the parameters of the Constitutions of these two countries

(vii) To examine the various aspects of judicial review in India and other pioneer countries to find out some solutions for the shortcomings which exist in the constitutional review system of Iran

8. Hypotheses of the Study

In the present study, the researcher has undertaken to put to test the following hypotheses regarding some significant aspects of constitutional review in Iran and India:

(i) Constitutional review of the Acts of legislature by an institution with a political nature is normally prone to turn towards one specific political party’s interests and inclinations.

(ii) Interference by the ordinary judges through constitutional review leads to the domination of the judiciary, creating the governance by the judges.

(iii) The manner of appointing the Guardian Council members and their temporary tenure in Iran harm their independence; however, the way of appointment of the Indian constitutional courts judges and the stability of their tenure highly maintain their independence.

(iv) The Expediency Council’s engagement in lawmaking causes legislation crisis in the Iranian legal system.
9. Significance of the Study

As mentioned earlier, it is quite vivid that consolidation and maintenance of democracy in a political society highly relies on the rule of law, particularly the Constitution, as the supreme law. All essential conditions of democracy such as individual rights and freedoms, political pluralism, etc. heavily depend on respecting the Constitution and protecting the constitutionality. In spite of the aforementioned facts, the lack of clarity and determinacy in this matter can impede the deployment of an efficient system of reviewing the constitutionality of laws. Therefore, surveying and examining to explore the strengths and shortcomings of the constitutional review system and rectifying it are always and everywhere felt necessary. A comparative study of the experiences and findings of the two systems with their special characteristics will highly lead to a greater understanding of one’s own system as well as that of others. It will also lead to eradicate or at least lessen the shortcomings of the system and reinforce its strengths.

The constitutional review system of Iran is, in practice, facing various challenges and issues; therefore, the researcher of this study strongly hopes that findings of this research work can to a large extent assist the development of constitutional review of Iran. Nevertheless, it seems that some findings of the research may be practically and usefully contributory to the development of Indian judicial review as well.

What appears of significance in this study is that the two constitutional review systems under scrutiny originate from two major universal models, which theoretically and historically come from two opposing points: Indian system of review is taken from the American decentralized model whereas Iranian system of review is taken from the French centralized model. There are also differences between the two systems, such as the existence of principle of secularism in Indian Constitution and principle of theocracy in Iranian one; federal state of India and unitary state of Iran; and finally European civil law influence on Iranian law and common law influence on Indian one. Studying
these distinctions significantly makes this research work fascinating and at the same time of great importance.

10. Methodology Adopted
This research work follows the methodology utilized in descriptive studies. However, since a legal research may not precisely be conducted in any particular and recognized scientific method, a multi-faceted approach has been adopted, depending on the necessity, in this study. Accordingly, to explain the background and the position of the constitutional review system in the world in general and that of India and Iran in particular, the methodology adopted has been merely historical. On the other hand, to evaluate the constitutional review bodies’ behavior in specific areas of the constitutional law of the countries under study, the methodology has been both historical and analytical. All in all, the study is essentially library based and doctrinal in nature with characteristics of historical and analytical methodology. This doctrinal study has been conducted by critical surveys of the decisions made by the constitutional review bodies in Iran and India.

Another feature of this research work that should be mentioned is that it is a descriptive comparative study. As vivid, in this method, the comparative study is to find similarities and differences and present the findings. Albeit, a comparative study of this type must be somewhat general. This is due to both methodological and practical considerations. It is virtually impossible to discuss two countries from different systems in specific details. Therefore, although this study is designed to reveal both similarities and differences, the main emphasis is on differences.

11. Sources
As a library based study, this research work will focus on examining the variety of legal texts and documents related to the subject matter. These sources can be divided in two following categories:
11.1. **Primary Sources**
A focus study about the functioning of the constitutional review bodies of India and Iran is going to be conducted by using primary sources available in India and Iran. The Constitutions of the countries related to the subject matter, their related statutory laws and regulations, some evidences and documents such as the landmark decisions of their constitutional review bodies are applied in this research work.

11.2. **Secondary Sources**
Further literature on the subject matter, journals, publications, newspapers, periodicals, reports of the different committees from different countries on the subject and various internet websites are made use of in this research work.

Needless to say, the related studies done in this field will be consulted and the necessary modifications to suit the objectives of the present research will be applied.

12. **Scope of the Study**
This study is limited to the constitutional review of the Acts of legislature - not executive- in India and Iran. However, since the Indian Courts supervise both the executive and the legislative actions and some of the most significant rules relating to the composition, independence, and some other issues of the Indian constitutional review system have been established by the Supreme Court through its landmark decisions in supervising the actions of the Executive authorities, the researcher, at times, feels it necessary to refer those decisions in some related parts of this study.⁵⁰

Because the Legislature in India consists of the Parliament and the State Legislatures, this research work deals with supervising the constitutionality of the Acts passed by any of them. Moreover, because the Constitution Amendment Acts in this country are exclusively enacted by the Parliament and

---

⁵⁰ Supervising the Executive acts in the Iranian legal system, according to Articles 170 and 174 of the Constitution of Iran, has been assigned to a body with judicial nature called the Administrative (High) Justice Court (Divan-e Edalat-e Edari). This body is affiliated to the Iranian Judiciary.
in some cases, the Indian Supreme Court held that these Acts cannot abridge or destroy the basic structure of the Constitution, this study discusses supervising the constitutional validity of the Constitution Amendments Acts in India as well.\textsuperscript{51}

Furthermore, while in the Indian legal system, the principle of supremacy of the Constitution is dominant, in the Iranian one, the supremacy is with the Islamic rules or \textit{Shariah}.\textsuperscript{52} In other words, \textit{Shariah} appears as the infrastructure of the Iranian Constitution. Hence, the researcher in this study feels it necessary to take \textit{Shariah} review into consideration, too.

In this particular study, the bodies to be viewed are the Supreme Court and the High Courts in India\textsuperscript{53} and the Guardian Council and the Expediency Council in Iran. However, because of some historical and technical reasons, it is also felt necessary to discuss the experiences of the American Supreme Court and the French Constitutional Council.

13. Limitations of the Study

While any piece of this research work had a great number of limitations, and a complete discussion of them would no doubt be much longer than the work itself, there were a few factors of special importance about this study that should be mentioned.

Perhaps the most significant problem faced in the study was the sparseness of material regarding the constitutional review of the Acts of Legislature in both Iran and India. The problem was much more severe in the case of Iran. As religion is the basic structure of the Islamic Republic of Iran, some significant portions of the Guardian Council’s work are religious, so the issues related to the Guardian Council and the Expediency Council are mostly considered political. As a result, the discussion of the subject matter is circumscribed and

\textsuperscript{51} According to Article 177 of the Iranian Constitution, revising and amending the Constitution is made by a Council called the Constitutional Revising Council. Approvals of the Council, after ratification and assent by the Leader, must be approved through referendum by the absolute majority of those participating in the referendum.

\textsuperscript{52} The Constitution of IRI, Art. 4.

\textsuperscript{53} It should be mentioned that because of the high master review of the Supreme Court, this study has examined the judicial review in India mostly under the name of the Supreme Court.
prudently carried out, which has in effect resulted in limited number of research works conducted on the topic. In addition, these limited research works as well as other material such as the Acts of Iranian Parliament and decisions of the Guardian Council and the Expediency Council are entirely in Persian; therefore, the researcher had to translate all of them into English.

As mentioned above, the matter at hand may raise some political reflections; however, the researcher does not have any political intent in developing this research work. Needless to say, for better examination, a matter should be considered in all its entire aspects. If some aspects for any reason are left off, the examination will surely not be complete and will not touch upon the point.

14. Implications of the Research Findings
Specialists of wide-ranging profiles, civil servants, political parties, advocates of human rights, lawyers, political scientists, economists and members of legislative and constitutional review bodies in different countries specially in India and Iran can gain knowledge in both general fundamentals as well as in organization and functioning of constitutional review bodies, their jurisdiction, operational modes and techniques, and their relations with other institutes of state authority. They can also use this research’s guidelines in addition to the suggested methods of comparative constitutional analysis in their work.

15. Structure of the Study
This study is entitled “Constitutional Review of the Acts of Legislature (A Comparative Study of Indian and Iranian Law).” It is divided totally into 6 chapters, including the Introduction and Conclusion.

The First Chapter contains the Introduction. It primarily is concerned with the explanation of the principle of supremacy of the Constitution and necessity of protecting it through reviewing the statutory laws. It explains the concept and history of the constitutional review and highlights its functions and significance in the contemporary world for consolidation of democracy and guarantee of human rights. Further, this Chapter discusses and elaborates the
practical challenges, pitfalls, and deviations that constitutional courts face in practice. In addition, the significance, the objectives, the questions and problems, the hypotheses, the methodology adopted, the scope, and the limitations of the study are included in this Chapter.

The Second Chapter is entitled “Theoretical Framework”. This Chapter, focusing on some main legal theories and doctrines relating to the various aspects of constitutional review such as the independence of the constitutional courts and the effects of their decisions, deals with papers and books written by some upstanding legal scholars on the subject matter. In this way, it presents some universal standards and criterions as a theoretical framework for this study.

The Third Chapter is discussed under the title “Constitutional Review in the United States of America and France.” In this Chapter, the researcher discusses the different aspects of constitutional review of the Acts of Legislature in the United States and France. This Chapter concludes with the most critical issues related to each of the aforementioned systems.

Therefore, the Second and Third Chapters contain a general discussion about the legal theories of constitutional review and its main models throughout the world.

The Fourth Chapter is entitled “Constitutional Review of the Acts of Legislature in India.” In this Chapter, the historical background of judicial review in India, the legal position and structure of the Indian constitutional courts (the Supreme Court and High Courts), the number, qualifications, manner of appointment, tenure, and removal of judges of the Supreme Court and High Courts, the scope and limitations of judicial review power in India, the constitutional adjudication procedure of the courts, and the effects of the courts’ decisions have been discussed. The Chapter has finally surveyed the Indian constitutional courts’ performance focusing on the role of the courts, particularly the Supreme Court, in political and social life of India.

The Fifth Chapter is discussed under the title “Constitutional Review of the Acts of Legislature in Iran”. In this Chapter, the historical background of
constitutional review in Iran, the position of the Guardian Council in the Iranian legal system, the composition of the Council, the manner of the appointment and tenure of the councilors, the internal administrative organization of the Council, its powers and duties, the manner of reviewing of a law, the most essential issues concerning the Council, the effects of the Council’s decisions, and eventually the Council’s performance during its almost thirty years of existence as well as its role in the political scenario of Iran have been discussed. Furthermore, the different aspects of the Expediency Council in the Iranian constitutional review system such as the history of the Council’s formation, the structure and organization of the Council, its powers and duties, the most essential issues concerning the Council in the Iranian constitutional law, and finally the effects of its decisions have been highlighted in the Chapter.

The Six and the last Chapter is the conclusion. In this Chapter, a brief review of all the previous chapters will be made and the findings of this study will be presented. The Chapter also covers some suggestions and recommendations for the eradication of weaknesses and restrictions of the two systems of constitutional review in Iran and India as well as for future study.