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JUDICIAL REVIEW: DIFFERENT NATIONS PERSPECTIVE

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Abstract

Judicial Review alludes to the authority of judges to manage on the judicial review of administrative and leader choices of the public authority that fall under their ward[1]. Administrative, Leader, and Legal executive have harmed central standards and tested the advantages given to Indian occupants by the Indian Constitution. Judicial review has a significant part as a sentinel for ensuring individuals' privileges. We've progressed significantly to get to where we are presently. "The Supreme Court of the United States established the 'Doctrine of Judicial Review' for the first time"[2]. At first, the arrangement in regards to the 'Judicial Review' was not satisfactory in the US, yet it was subsequently acknowledged by the High Court of the US in the milestone instance of "Marbury v Madison"[3]. As per Chief Justice Marshall, "the constitution is either preeminent principal resolution, verifiable by typical strategies, or it is on a standard with normal administrative activities and, as most demonstrations, is modifiable if the council so wants. Unquestionably, those who drafted constitutions see themselves as the fundamental and preeminent leader of the country, and accordingly, the way of thinking of any such administration should be that each demonstration of the council that is in opposition to the constitution is invalid and void. Prior to the presentation of the Indian Constitution, the courts in our nation held the privilege of 'Judicial Review'. "The Public authority of India Act 1935", authorized by the English Parliament, set up the Government Framework in India before the presentation of the Indian Constitution, the courts in our nation held the privilege of 'Judicial Review'."The Government of India Act 1935"[4], authorized by the English Parliament, set up the Government Framework in India. A vote based system is considered imperfect on the off chance that it requires any kind of judicial examination. Nearly without, special cases this has been the situation in Europe. Also,

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[1] Fayaz Ahmed Bhat, The Doctrine of Judicial Review in India, Latest Laws, (01 Feb 2020), (Doctrine of Judicial Review in India: A Judicial Perspective By: Fayaz Ahmed Bhat (latestlaws.com)

[2] *Id*

[3] Marbury vs. Madison, 5 U.S. 137 (1803)

[4] The Government of India Act, 1935

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1. Research Objective

1.1. To understand the scenario of Judicial Review before the case of Marbury?

1.2. To determine the global expansion of Judicial Review

1.3. To understand the retrospective and prospective view of Judicial Review in the contemporary world

1.4. To determine Judicial Review in India during Covid-19

2. Research Questions

2.1. What was the scenario of Judiciary before the case of Marbury?

2.2. What are the salient features of Judicial Review?

2.3. How Judicial Review expanded around the globe?

3. Research Methodology

The doctrinal technique was utilized for this research paper, and different articles and case laws were utilized to outline the entirety of current realities in the suitable way required for this research paper. The key insightful strategy utilized in the research paper is the procedure utilized in the research paper.

4. Literature Review

The researcher read an article named, "Judicial Review: A near investigation of India, U.S.A., the UK"[5] where the scientist read about the current status of the Judicial Review in India, US of America, and the United Kingdom. In India, the current circumstance of Judicial Review discusses the High Court plays out a vital part to assess the arrangements of the rule. The case of "Madras Bar Association versus Union of India"[6], The Apex Court inspected the standards of "The Companies Act of 1956"[7] and discovered some of them illegal. The offended party tested the 'NCLT' and 'NCLAT' constitutions just as their design and the arrangement of judicial and specialized individuals. The following paragraphs the researcher will be discussing the current scenario of Judicial Review of U.S.A. and the U.K.

Current scenario of Judicial Review in U.S.A

[5] Sargam Jain, Judicial Review: A comparative analysis of India, USA, UK, Vol. 1, IJLMH, 1-16, 2018
[6] Madras Bar Association vs. Union of India, 2015 S.C.C. 484
[7] The Companies Act, 1956

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The American Constitution, which is composed of and government vote based on soul, depends on Law and order. It accommodates the partition of forces with balanced governance which is its entire being. One of the central cycles in America to decide the legitimacy of law is Judicial Review. In the USA, the legal executive can check the activities of Congress and the activity of the President, if it is in opposition to the Constitution, the legal executive can announce it invalid and void**.** After Marbury's case, the extent of judicial review has broadened in the USA. In "Reed v. Town of Gilbert, Arizona"[8] a mandate was passed worried about Gilbert town which precludes the presentation of the outside sign except for certain signs which are political signs which were characterized as plans to impact the result of a political decision, and philosophical signs which were characterized as plans for conveying thoughts and another directional sign which were characterized as plans for guiding general society to chapel or another passing occasion**.** This mandate was tested by a congregation and its cleric. Justice Clarence Thomas for the benefit of the dominant part held that differentiations drawn by the statute were impermissible. It was held that all substance-based law requires a specific type of judicial review and exacting investigation. Court additionally held that content-put together laws target discourse-based concerning its open substance, they are possibly illegal and might be supported just if the public authority demonstrates that they are barely customized to serve convincing state interests.

Current scenario of Judicial Review in U.K

"Dr. Bonham v. Cambridge University"[9], was the establishment of judicial review in Britain. The Courts in the UK are rigorously following the standards of judicial review concerning managerial activities and optional enactment. Undoubtedly, they are outside the domain of judicial review however for certain extraordinary cases. Authoritative activities which are leader in nature are generally the topic of judicial review in the current situation.

In, "Les Verts v. European Parliament"[10], it was held that "the European Association is a local area dependent on Law and order, in however much neither its part states nor its foundations can keep away from a review of the inquiry whether the actions embraced by them are in similarity with the essential protected character. In Britain, subordinate enactment is dependent upon judicial review. The sovereignty of Parliament isn't influenced by such subordinate enactment. The tenet of ultra vires in the space of subordinate enactment can be named procedural and considerable ultra vires.

[8] Reed v. Town of Gilbert, Arizona, 13 US 502, 23 (2014)
[9] Dr. Bonham vs. Cambridge University, 638 Eng. Rep. 638, 646, (1610).
[10] Les Verts vs. European Parliament, 1 E.C.R 1339 (1986).

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An article titled, "Judicial Review and the Indian Courts"[11] read by the researcher where the writer wrote about cases related to Judicial Review in India as well as Extent of Judicial Review in India. The researcher will discuss both the topics in following paper.

Cases related to Judicial Review in India

The essential capacity of the courts is to arbitrate questions among people and the state, between the states and the association and keeping in mind that so settling, the courts might be needed to decipher the arrangements of the constitution and the laws, and the translation given by the High Court turns into the law regarded by all courts of the land. There is no allure against the judgment of the Supreme Court.

In "Shankari Prasad v Union of India"[12] the 'First Amendment Act of 1951' was challenged before the Supreme Court on the ground that the said Act abridged the right to property and that it could not be done as there was a restriction on the amendment of Fundamental Rights under "Article 13 (2)"[13]. The Supreme Court dismissed the conflict and collectively held. The terms of "Article 368"[14] are entirely broad and enable Parliament to change the constitution with no special case whatever. With regards to "Article 13" law should be interpreted as meaning standards or guidelines made in exercise of conventional administrative force and corrections to the constitution made in exercise of constituent force, with the outcome that 'Article 13 (2)' doesn't influence alterations made under 'Article 368'.

The memorable instance of "Golak Nath v The territory of Punjab"[15] was heard by a unique bench of 11 adjudicators as the legitimacy of three constitutional amendments (first, fourth, and seventeenth) was challenged. The Supreme Court by a majority share of 6 to 5 switched its previous choice and pronounced that parliament under 'Article 368' has no ability to remove or shorten the Fundamental Rights contained in chapter II of the constitution the court noticed.

(a) 'Article 368' solely specifies the method to be followed for amending the constitution.
(b) 'Article 368' does not grant the authority to modify the constitution.

[11] Chinmoy Roy, Judicial Review and the Indian Courts, Vol-3, IJLMH, 2-18, 2019
[12] Shankari Prasad v Union of India, AIR 1951 SC 458
[13] The Constitution of India, 1949
[14] *Ibid*
[15] Golak Nath v The territory of Punjab, AIR 1967 SC 1643

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(c) The term 'law,' as defined in 'Article 13 (3)', comprises not only legislation enacted by parliament in the practice of its regular legislative authority, but also constitutional amendments enacted by parliament in the practice of its constitution authority.

(d) The amendment to the constitution, if it is a regulation under 'Article 13 (3)', would be unconstitutional under 'Article 13 (2)' if it deprives or limits the rights provided by Part III of the constitution.

In the Minerva Mills[16] case, the Apex Court by a majority vote, struck down Section 4 of the 42nd Amendment Act, which gave precedence to the Directive Principles over 'Articles 24, 19, and 31' of Part III of the Constitution, on the grounds that Part III and Part IV of the Constitution are equivalently as essential as well as unconditional primacy of one over the other is not allowable because it would disrupt the rule of law.

Extent of Judicial Review in India

Between 1950 and 1975, the Indian Supreme Court determined that over a hundred federal and state case laws were unlawful. The judiciary had a critical role in the system of government. On a number of complaints of violations of essential humanitarian law under the Indian Constitution, the Supreme Court undertook a judicial review of proceedings. The Supreme Court has said that any effort to modify the Constitution in relation to the effects of civil rights laws or norms is open to judicial scrutiny. India has likewise limited the function of judicial scrutiny of executive and legislative authority. Judicial scrutiny of legislation continues beyond the initial assessment to all acts of government or management. It may be claimed that, save from certain cases in which the Court exercises its judicial authority constraint, judicial review has essentially no boundaries.

Researcher read an article titled, "Judicial Review as an Inviolable Part of Basic Structure of Constitution - A Critical Study"[17] where the researcher read about Judicial Review of Legislative Action. The researcher read that the framers of the Constitution gave the court vast authority to scrutinize all legislation, including constitutional changes. In this regard, it is more appropriate to reference Dr.B.R Ambedkar, who firmly advocated judicial review measures as vitally required. In his perspective, the mechanisms for Judicial

[16] Minerva Mills Ltd. & Ors. v Union of India & Ors., 1980 3 SCC 625

[17] Dr.P. Mohana Rao, Judicial Review as an Inviolable Part of Basic Structure of Constitution - A Critical Study, Vol-2, IJLMH, 2019

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Review, notably the writ jurisdiction, provided rapid redress against the arbitrary exercise of state authority to infringe on basic rights, which comprise the soul and spirit of the Constitution. Mr. Alladi Krishna Swamy Ayyer stated, "The prospective advancement of the Indian Constitution will therefore rely to a significant level on the functioning of the Supreme Court and guidance provided to it by the court, while its role may be one of amending the law, it cannot afford to ignore the Social, financial, and cooperate inclination of time which provides the necessary background". According to Justice Untwallia, "the Judiciary is a monitoring watchtower over all the huge structures of other appendages of the State from which it keeps a sentinel's watch."[18]

An article titled, "Judicial Review of Administrative Actions and Principles"[19]. The article talked about that, Judicial Review is a necessary element of the judicial system, which is a fundamental characteristic of the Indian Constitution. The Judiciary is autonomous and impartial with broad powers vested on it to judge disputes, impose fines and punishments, and, most importantly, to administer the legislation. It is the jurisdiction of a court to evaluate the activities of other departments or levels of government, with regard to the court's ability to declare legislative and executive decisions unlawful. This is the Superior Court's evaluation of a lower court's or an institutional body's genuine or legal responses. The Hon'ble Supreme Court stated in "L. Chandra Kumar v Union of India"[20], as there was a light on the short equitable meaning of the Judicial Review, that, "Definition of judicial review in the American context is, beholden to a few alterations, commonly attributed to the notion as it is comprehended in Indian Constitutional Law." Judicial review in India is divided into three categories: judicial review of legislative action, court review of judicial decisions, and judicial review of executive law.

The researcher read an article title, "Judicial Review- a Comparative Study"[21] where the researcher read about the exceptions of Judicial Review. The researcher read that a written Constitution does not necessitate judicial review. It arises only when such a Constitution is viewed as a higher-order legal document than regular law and is ordered to serve as a legal restraint on the authority of all institutions of state established by the Constitution, as in the United States of America or India. There are documented constitutions, such as those of the USSR and China, that are derived up in the type of a law but do not impose any legal constraints on the political organ of the state so that the Judiciary lacks the authority to disprove any organizational or legal act done by such supreme body on the basis of a violation of any

[18] Union of India vs. Saklchand H.Seth (1977)SCC ,193
[19] Usha Antharvedi, Judicial Review of Administrative Action and Principles, SSRN, 11 March 2008
[20] L. Chandra Kumar v Union Of India, AIR 1997 SCC 1125
[21] Mohit Sharma, Judicial Review- A Comparitive Study, International Constitutional Law Review, Jan 2017

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requirement of the Constitution. On the other hand, there are written Constitutions that are meant to serve as legal instruments, but the power to determine the illegitimacy of laws enacted by the Legislature is delegated not to the Judiciary, but to some non-judicial body or entity other than conventional courts. These countries are France and Ceylon.

An article titled, "Judicial Review in Comparative Perspective"[22] talked about 'Centralized versus Decentralized Judicial Review'. The article talked about despite the fact that the experiences of the twentieth century convinced the West as a whole of the importance of judicial review of legislation, historical philosophical disparities across Western governments have hindered the adoption of comparable institutions to exercise such oversight. Deep-seated views of the judicial office, convictions to legal realism and other more concrete reasons have resulted in judicial review in diverse nations being undertaken by distinct organs of review, employing different techniques, and whose rulings may have varying effects. One of the most informative features of any judicial review system, from a statistical aspect, is the state's choice of either a centralized or a decentralized system. The decentralized system empowers all judicial organs within it to determine the constitutionality of legislation. The centralized tem, on the other hand, limits this authority to a single judicial entity. Terms have been established, even lately, in various nations, and have so acted as models in nations other than their own.

Decentralized Judicial Review

The decentralized concept originated in the United States, whereby judicial review is still a distinctive and unique institution." It is mostly found throughout Britain's former colonies, such as Canada, Australia, and India. Under the present 1947 constitution, the American system was established in Japan**.** The American has had and continues to have counterparts throughout Europe. A similar may be found in Swiss law, where, in addition to a direct action, there is a general right of review in regular courts. Although this judicial examination is confined to cantonal legislation and has far lower operational significance than the previously described collective action, Swiss judges have the broad authority to dismiss cantonal legislation that are in violation with the Federal Constitution**.**

Centralized Judicial Review

Despite the overwhelming logic of the decentralized position, the centralized system has its supporters—all of whom are civil law countries—and its reasons. The year was 1929. This constitution, built on Hans

[22] Mauro Cappelletti, Judicial Review in Comparitive Perspective, Vol 58, California Law Review, Oct 1970

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Kelsen's recommendations, was recreated after World War II. 8- The centralized model was implemented in recent times by the 'Italian Constitution of 1948', and the 'Bonn Constitution of 1949', both of which are still in existence. Even more lately, in 1960, Cyprus used this method**.** A centralized system of judicial review is used in an increasing number of civil law nations for three main reasons**.** The reasons are, (a) The Continental Conception of Separation of Power, (b) The Absence of Stare Decisis and (c) The Unsuitability of Ordinary Courts.

The last article read by researcher titled, "Judicial Review in Modern Constitution System"[23] discusses the history of judicial review and its context According to the researcher, "there is not enough evidence for attributing, in whole or in major part, the establishment of modern judicial review to antique and medieval laws." The Greek courts were, in many respects, the assemblage in some form, the Roman Senate was not a legal organization at all, and the acts of the French parliament were not directed at a competent legislative. To be sure, before the feudal period ended, the contemporary understanding of laws was little grasped. On the other hand, the expansion of judicial review owes considerably to some background notions of classical and mediaeval conservative philosophy. It is improbable that it would have emerged through Judicial Review at the period in such a fashion if classic and mediaeval thinking had not developed principles such as natural law and human fairness.

5. List of Cases

- Marbury vs. Madison, 5 U.S. 137 (1803)
- Madras Bar Association vs. Union of India, 2015 S.C.C. 484
- Reed v. Town of Gilbert, Arizona, 13 US 502, 23 (2014)
- Les Verts vs. European Parliament, 1 E.C.R 1339 (1986)
- Shankari Prasad v Union of India, AIR 1951 SC 458
- Golak Nath v The territory of Punjab, AIR 1967 SC 1643
- Minerva Mills Ltd. & Ors. v Union of India & Ors., 1980 3 SCC 625
- Union of India vs. Saklchand H.Seth (1977)SCC ,193
- L. Chandra Kumar v Union Of India, AIR 1997 SCC 1125

[23] David Deener, Judicial Review in Modern Constitutional System, Vol.46, The American Political Science Review, 1079-1099, 1952

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- Emperor v Burah, 1877 3 ILR 63 (Cal)
- Secretary of State v Moment, 1913 40, ILR 391 (Cal)
- Secretary of State v Moment, 1913 40, ILR 391 (Cal)

6. Chapter 1

Origin of Judicial Review

The theory of Judicial Review in the United States of America is truly the founder of Judicial Review in other Constitutions of the globe that arose after the 18th century, and it has been a source of enormous encouragement in India as well. The notion of Judicial Review in India is based on the Rule of Law, which is the proud legacy of ancient Indian tradition and civilization Only in the techniques of operation and administration of Judicial Review have there been notable modifications, but the core principle on which the theory of Judicial Review is based remains unchanged. In India, "the Government of India Act of 1858"[24] and "the Indian Council Act of 1861"[25] established certain limitations on the authority of the Governor General in Council in circumventing legislation, but there was no recourse for judicial review. The court's only authority was to indict. However, "Emperor vs. Burah"[26] was the first case in India to understand and pioneer the notion of judicial review in 1877. In this case, the court determined that the complainant had the capacity to dispute the validity of a legislative Act adopted by the Governor General Council in violation of the authority granted to him by the Imperial Parliament. In this decision, the High Court and Privy Council agreed that Indian courts had limited judicial review jurisdiction.

Similarly, in "Secretary of State vs. Moment"[27], Lord Haldane said that "the Government of India cannot by law take away the rights of the Indian subject given by the Parliament Act, i.e. the Government of India Act of 1858." Though there is no express framework for Judicial Review in the Government of India Act, 1935, the legal issues that have arisen before the court have forced the establishment of Judicial Review in a broader sense.

7. Chapter 2

[24] The Government of India Act, 1858
[25] The Indian Act, 1861
[26] Emperor v Burah, 1877 3 ILR 63 (Cal)
[27] Secretary of State v Moment, 1913 40, ILR 391 (Cal)

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Judicial Review during Covid-19: A Comparative Analysis of India and U.S.A.

The COVID-19 epidemic has caused unprecedented damage in every industry around the planet. The COVD-19 epidemic has had a negative impact on people's life, as well as on several structures, including political, social, legal, or cultural**.** During the COVID-19 epidemic, both India and the United States of America approved the virtual hearing mode. The Supreme Court of India and other High Courts have begun to deal with select important matters digitally. The similar thing had happened in the case of the United States of America. Many difficulties and disagreements occurred that could only be addressed by judicial review. In India, the court has played a critical role in numerous instances throughout the epidemic, including as when it took action on behalf of migrant workers and when it ruled for free COVID testing, among other things. Criminal courts in the United States of America began to operate electronically**.**

Judicial Review during Covid-19 in India

Because the courts were closed due to the COVID-19 worldwide outbreak, the Honorable Supreme Court of India has decided to hear emergency matters via virtual hearings, so that in this instance, the adv. and petitioners do not need to stand up personally in the hearing. Furthermore, the Honorable Supreme Court of India has asked the various Bars to conduct virtual proceedings and e-filing. "Since March 2020, the Supreme Court has received inquiries on the consequences of Covid-19 from a wide spectrum of persons and organizations. Many of the petitions are ridiculous, such as a prayer for the declaration of an economic catastrophe. Others have requests that need a great level of medical or other skills"[28].

"On April 3, 2020, the Karnataka High Court issued an order asking the District Legal Services Authority to visit many migrant homes from around state and provide a review. On May 12, the Court directed the State of Karnataka to reimburse the migrants' fee who are unable to pay for oneself. On May 15, 2020, the Madras High Court and the Andhra Pradesh High Court both directed the corresponding state governments to provide medical care, food, as well as water to migrants at particular checkpoints"[29].

Judicial Review during Covid-19

"Judicial review is one of the distinctive features of US constitutional law. The judiciary has also taken specific efforts to preserve the right to health of those participating in processes, while simultaneously offering services to enable accessibility to justice in a crisis. The proclamation of states of emergency as well

[28] NITIN VERMA, Impact of Covid-19 on Indian Judicial System, Vol. 3 Iss 4; 271 & 275, IJLMH (2020)
[29] Mihir Desai, Covid-19 And The Indian Supreme Court, BLOOMBERG QUINT, May 28 2020

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as the deployment of crisis procedures across Latin America and the Caribbean in reaction to the COVID-19 epidemic has had a considerable impact on the actual functioning of the courts."[30]

"These COVID-19 cases covered a wide range of fundamental rights and liberties, from voting processes to reproductive care to immigration concerns to jail circumstances and required the justices to confront the nation's difficult health as well as safety challenges. In certain situations, the judges took no action, in others, they issued a brief order, and in a few instances, they issued lengthy decisions. Some acts were consensual, while others divided the court"[31].

8. Chapter 3

Global Expansion of Judicial Review

Once a written constitution has been established as the ultimate law of the state, the challenge of how to secure that its commitments are fulfilled emerges. The question is one of policy making: what type of political and legal mechanisms should be put in place to ensure that the requirements of the constitution are really implemented, avoiding or reducing violations of such articles, and establishing appropriate consequences for such violations.

Two well-known kinds of constitutional judicial review have emerged in the recent world background of constitutionalism. They are the American version of 'decentralized' examination by regular courts and also the Continental European version of 'centralized' examination by a specialist constitutional court. There are also blended or hybrid systems that combine elements of both the American and European versions. Constitutional judicial review systems also range in the degree to which they allow for a greater or lighter type of judicial review. The European paradigm of constitutional judicial review by a specialist constitutional court may be tracked back to the "Austrian constitution of 1920", which created a constitutional court under the inspiration of Hans Kelsen's jurisprudence. The greatest type of constitutional judicial review exists when the court has – or has effectively asserted – the ability to evaluate whether a constitutional modification itself is constitutional and legitimate in the ultimate section. Constitutional judicial review, in most of its historical and modern forms, entails the exclusion of stipulations in Acts of Parliament by a court (including the supreme court in a decentralized framework of constitutional review or the constitutional court) on the grounds that the regulations are unlawful.

[30] Shireen Seema Sadiq, Judicial Review during Covid-19, Vol-4, IJLMH
[31] Stephen Wermiel, SCOTUS for law students: COVID-19 and Supreme Court emergencies, SCOTUSBLOG, May. 19, 2020

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9. Conclusion

In India, the extent of judicial review is broader than in the United States and the United Kingdom. The United States Constitution is succinct, and the phrases and expressions utilized are imprecise and generic in character. It has the world's most stringent Constitution. The Indian Constitution, on the other hand, is both strict and adaptable in character, since it contains comprehensive provisions and is the world's sturdiest constitution. The language and terms employed in the Indian Constitution are precise and precise. In the United Kingdom, there is no written Constitution, thus the concept of judicial review is quite constrained. Constitutional Courts have been viewed as the most competent body of authority to undertake this role, and hence they now have a constitutional exclusivity to proclaim what the constitution has to be. Despite obvious disparities, courts in India, the United States, the United Kingdom, and a few other nations have played an essential role in preserving personal freedom. The necessity for an adequate balance on legislative powers appears to be the driving factor driving many legal systems to grant their courts-constitutional or not-the authority to consider legislation that violates the constitution.

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Statute

- The Government of India Act, 1858
- The Indian Act, 1861
- The Constitution of India, 1949
- The Government of India Act, 1935
- The Companies Act, 1956