

## **“Exploring Judicial Review Across Borders: A Comprehensive Comparative Analysis of the Indian and United Kingdom’s Legal Systems”**

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### **ABSTRACT**

Judicial review, a cornerstone of administrative law, grants the judiciary the authority to scrutinize the actions of the legislative and executive branches, ensuring adherence to legal principles & protection of individual rights. In India, the Constitution mandates judicial review, empowering courts to assess the constitutionality and legitimacy of legislative and executive actions. The Indian judiciary has played an influential role in defending fundamental rights, promoting good governance, and ensuring governmental accountability. However, challenges such as case backlogs, delays in adjudication, and difficulties in addressing the legality of cases have hindered the system's effectiveness. In contrast, the United Kingdom (UK)'s judicial review has developed through a blend of statutory law and common law principles, granting courts broad discretion to assess administrative decisions for fairness, legality, and rationality. The UK's approach is characterized by flexibility and pragmatism, shaped by its tradition of parliamentary sovereignty & absence of a codified constitution. This system emphasizes respect for administrative expertise while still ensuring robust oversight of government actions. Despite the differences, both systems share the common goal of upholding the rule of law, protecting individual rights, and providing judicial scrutiny of government actions. This research aims to contribute to ongoing debates on judicial governance and administrative law, offering a critical evaluation of the strengths and weaknesses of both systems and proposing recommendations to enhance the effectiveness of judicial review in both India & UK. This research critically examines and contrasts the judicial review systems in the UK and India, offering a detailed analysis of their procedural mechanisms, legal structures, and practical implications.

**Keywords:** Judicial Review, Administrative Law, UK, India, Rule of Law, Executive Actions, Parliamentary Sovereignty

### **INTRODUCTION**

The principle of judicial review stands as a fundamental mechanism within administrative law, serving as a cornerstone for maintaining the rule of law, ensuring public accountability, and safeguarding individual rights against potential overreach by governmental authorities. Judicial review, in its essence, provides the judiciary with the power to scrutinize the actions of the executive and legislative branches, ensuring that they remain within their constitutional boundaries and do not infringe upon the rights and freedoms of individuals. In this context, judicial review plays an indispensable role in balancing the powers between the different branches of government, thereby preventing any one branch from becoming too dominant or acting beyond its authority. This delicate balance is crucial in any democracy, but the

manifestation of judicial review differs notably between two prominent democracies, India & UK, each possessing distinct legal traditions and constitutional frameworks.<sup>1</sup>

India, as a country with a written constitution, has established a robust and evolved system of judicial review. The Indian judiciary exercises the power of judicial review with a particular focus on ensuring that both legislative and executive actions are in conformity with the Constitution of India. This power is not merely a passive mechanism but a proactive tool that allows the judiciary to intervene in cases where governmental actions violate constitutional provisions or encroach upon the fundamental rights of citizens. The Indian Constitution, with its detailed and expansive catalog of fundamental rights, provides a clear framework for the judiciary to protect individual freedoms against excessive governmental action. The judiciary's proactive role in judicial review has been instrumental in shaping the legal landscape of India, as it has, over the years, been a critical safeguard against executive overreach and legislative excess. By invoking judicial review, the Indian courts have not only protected civil and political rights but have also played a significant role in advancing social justice, addressing issues such as poverty, caste discrimination, and gender inequality.<sup>2</sup>

The Indian judiciary, empowered by Article 32 and Article 226 of the Indian Constitution, has exercised an expansive approach towards judicial review. In landmark cases such as *Kesavananda Bharati v. State of Kerala*<sup>3</sup> and *Maneka Gandhi v. Union of India*,<sup>4</sup> the Supreme Court of India has reinforced the notion that the Constitution's provisions, particularly those relating to fundamental rights, cannot be easily overridden by legislative or executive action. The judiciary's role in interpreting and expanding these rights has contributed to a dynamic and evolving understanding of constitutional provisions, significantly shaping the governance framework in India. Moreover, the Indian judiciary's ability to engage with socio-economic issues, as seen in the development of the concept of "judicial activism," reflects a broader vision of judicial review, one that extends beyond the mere interpretation of law to actively shaping national policy and governance to align with constitutional principles.

In contrast, the UK operates within a distinct legal tradition, one characterized by the absence of a written constitution & primacy of parliamentary sovereignty. The UK's system of judicial review is shaped by its historical commitment to the supremacy of Parliament, which asserts that Parliament is the ultimate legislative authority, & judiciary must exercise deference to its decisions. This principle of parliamentary sovereignty restricts the scope of judicial review in the UK to some extent, as courts are reluctant to strike down laws passed by Parliament. However, judicial review in the UK remains a critical mechanism for ensuring that the

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<sup>1</sup> Pratibha Sahu, *Judicial Review: A Comparative Study between India and U.K.*, 4 INDIAN J.L. & LEGAL RSCH. 1(2022-2023)

<sup>2</sup> Ayushi Laxmi Verma, *Cruelty as a Ground for Divorce Trends through Ages: A Study*, 1 INT'L J.L. MGMT. & HUMAN. 237 (August-September 2018).

<sup>3</sup> AIR 1973 SC 1461.

<sup>4</sup> (1978) 1 SCC 248.

executive and administrative branches of government do not exceed their legal authority or violate fundamental rights.<sup>5</sup>

In the UK, judicial review primarily operates through the common law tradition, with its foundation lying in ensuring that government actions conform to the principles of procedural fairness, natural justice, and reasonableness. The judiciary in the UK has, over time, developed a sophisticated framework of review that focuses on ensuring the legality, rationality, and procedural fairness of administrative decisions. Key principles such as "illegality," "irrationality," and "procedural impropriety" serve as the cornerstones for judicial review of administrative actions in the UK. Moreover, while the UK's system places great emphasis on the separation of powers, there is a marked respect for the expertise of the executive in administrative matters, with the judiciary often deferring to governmental decision-making in areas requiring specialist knowledge or discretion. This difference is especially notable in matters relating to public policy, where the courts are cautious about intervening unless there is a clear breach of legal norms or gross injustice.

The Human Rights Act, 1998, which incorporated the European Convention on Human Rights into UK domestic law, has further expanded the scope of judicial review in the country. It enables the judiciary to scrutinize governmental actions for their compatibility with human rights standards, providing an important avenue for individuals to challenge decisions that may infringe upon their rights. However, the overarching principle of parliamentary sovereignty continues to act as a limiting factor on the judiciary's ability to strike down laws, as the UK Parliament retains the final authority to make and amend laws.<sup>6</sup>

Hence, while both India & UK embrace judicial review as a means of ensuring governmental accountability & protection of individual rights, the scope and nature of this mechanism differ substantially due to their distinct legal and constitutional traditions. India's approach to judicial review is more assertive, with a clear constitutional framework that empowers the judiciary to actively shape governance and protect fundamental rights. On the other hand, the UK's framework of judicial review is marked by a more cautious, deferential approach to parliamentary sovereignty, with a focus on procedural fairness & reasonableness of administrative decisions. Both systems, however, share the common objective of ensuring that government actions remain within legal bounds, thus reinforcing the democratic principles upon which each country is founded.

## CONCEPTUAL FRAMEWORK AND HISTORICAL CONTEXT

### *India*

India's judicial review system is deeply rooted in its Constitution, specifically within Part III, which enshrines the fundamental rights of citizens. The Constitution of India guarantees certain

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<sup>5</sup> Tarishi Agrawal, *Judicial Review: A Comparative Study between USA, UK and India*, 5 INT'L J.L. MGMT. & HUMAN 890 (2022).

<sup>6</sup> *Id.*

inalienable rights that are essential to the preservation of individual liberty and justice. These rights, safeguarded under Articles 14 to 32, form the backbone of judicial review in India. The role of the judiciary in this regard is paramount, as it acts as the guardian of these rights, ensuring that no law or government action violates the constitutional provisions.<sup>7</sup>

The power of judicial review in India is explicitly conferred under Articles 226 and 32 of the Constitution, which provide the High Courts & Supreme Court, respectively, with the authority to engage in judicial scrutiny. While Article 32 offers an avenue for citizens to approach the Supreme Court directly in cases of violation of fundamental rights, Article 226 empowers High Courts to issue writs, orders, and directions for the enforcement of rights & review of governmental actions. This dual mechanism of judicial review ensures that every action of the executive or legislature can be challenged on constitutional grounds.<sup>8</sup>

Over the years, the scope of judicial review in India has expanded significantly, particularly through judicial activism and an evolving interpretation of constitutional provisions. The Indian judiciary has broadened its review to encompass not only legislative actions but also the policies and actions of the executive. This expansion has included a rigorous examination of public policies, administrative decisions, and governmental actions. Through a liberal interpretation of constitutional provisions, Indian courts have enabled themselves to review actions that might affect the public interest, as seen through the vehicle of PIL. PIL has empowered the courts to intervene in *Suo motu* (on their own initiative) in matters affecting public welfare, even in the absence of a direct petition from an affected party.<sup>9</sup>

A pivotal development in Indian judicial review was the adoption of the "basic structure doctrine." This doctrine, established by the Supreme Court in *Kesavananda Bharati's* case, allows courts to review constitutional amendments and annul those that are inconsistent with the core principles or 'basic structure' of the Constitution. This doctrine ensures that even the Parliament cannot alter the fundamental nature of the Constitution through amendments. It is a testament to the judiciary's role as a check on the powers of the legislature and executive, reinforcing the primacy of constitutional values over transient political considerations.

The authority of Indian courts extends to reviewing the proportionality of government actions. This concept has gained traction over recent years, with courts evaluating whether the measures taken by the government are balanced and not excessively intrusive in relation to the intended objective. Additionally, the judiciary has shown a marked interest in addressing issues such as illegality, irrationality, and procedural fairness, which are grounds for intervention in administrative decisions.<sup>10</sup>

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<sup>7</sup> T. Sita Kumari & M. Sreekar, *An Outlook of Judicial Review in India*, 5 INDIAN J.L. & LEGAL RSCH. 1 (2023).

<sup>8</sup> *Id.*

<sup>9</sup> Preeti Birla, *Judicial Review: Meaning, Scope, and Applicability in India*, 3 JUS CORPUS L.J. 478 (August 2022).

<sup>10</sup> Garima Raisinghani, *Tenet of Judicial Review in India*, 24 SUPREMO AMICUS [596] (2021).

Indian courts have a wide range of remedies at their disposal, including the issuance of writs such as *certiorari*, *prohibition*, *habeas corpus*, *mandamus*, and *quo warranto*. These writs serve as powerful tools for ensuring that executive actions remain within the limits of the law. Beyond these writs, courts have the authority to award compensation, issue declaratory judgments, and grant restitution to aggrieved parties, offering a broad spectrum of relief to those whose rights are infringed upon.

### ***United Kingdom***

In contrast to India, the judicial review system in UK is characterized by the doctrine of parliamentary sovereignty, which holds that Parliament is the supreme legislative body, capable of making or changing laws. Judicial review in the UK, therefore, is constrained by this principle, meaning that courts generally cannot question the validity of Acts of Parliament. However, judicial review still plays an essential role in ensuring that executive actions are lawful and consistent with established legal standards.

The authority to conduct judicial reviews in the UK is vested in several courts, including the High Court, the Court of Appeal, & Supreme Court. These courts have the power to review the legality of administrative actions and to issue orders that prevent or correct unlawful conduct by public authorities. The evolution of judicial review in the UK has been significantly influenced by the passage of key statutes, such as the Constitutional Reform Act of 2005 & Human Rights Act, 1998. The latter, in particular, has had a profound impact on judicial review by incorporating the European Convention on Human Rights into domestic law, thereby allowing courts to examine the compatibility of public decisions with human rights obligations.<sup>11</sup>

The UK system of judicial review is grounded in several principles, such as proportionality, Wednesbury unreasonableness, & concept of ultra vires (acts beyond the authority of the decision-maker). These principles help guide the courts in assessing the legality and reasonableness of administrative actions. Proportionality, a principle that weighs the balance between the means used & objectives pursued by government action, has become more prominent in recent years, especially in cases involving human rights. Similarly, the Wednesbury test of unreasonableness, which allows courts to intervene when a decision is so unreasonable that no reasonable authority could have made it, remains a cornerstone of judicial review in the UK.

While judicial review in the UK is broad in its ability to assess the legality of administrative actions, it is more restrictive than in India in terms of its scrutiny of the merits of those actions. UK courts typically refrain from engaging in a detailed analysis of the merits of a decision, focusing instead on whether the decision-making process was lawful, rational, and fair. This

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<sup>11</sup> Gordon Anthony, *Civil Rights and the Reach of Judicial Review in UK Public Law*, 53 ANNALES U.SCI. BUDAPESTINENSIS ROLANDO EOTVOS NOMINATAE 7 (2012).

restrained approach reflects the country's respect for parliamentary sovereignty & notion that courts should not substitute their judgment for that of elected officials in political matters.<sup>12</sup>

In terms of remedies, UK courts can issue quashing orders, prohibitory orders, and mandatory orders, compelling public authorities to act within the law. In some cases, courts may also issue declarations of unlawfulness or incompatibility, particularly in cases involving human rights violations or conflicts between domestic law and international obligations. Additionally, the UK courts have the authority to award damages and injunctions where appropriate, providing a robust framework for individuals seeking redress for unlawful actions.

In conclusion, while the UK judiciary plays a crucial role in maintaining the rule of law and ensuring that public authorities act within the bounds of their legal powers, it operates within a framework that respects the principle of parliamentary sovereignty. The approach is more cautious compared to India, particularly in its deference to political decision-making, but it remains a vital component of the legal system in ensuring that executive actions are both lawful and just.

### *Comparative Insights*

In comparing the judicial review systems of India & UK, several key differences and similarities emerge. India's judicial review is characterized by a proactive, expansive approach, wherein courts not only evaluate the legality of government actions but also actively safeguard fundamental rights, challenge constitutional amendments, and engage in social justice through mechanisms like Public Interest Litigation. This reflects the Indian judiciary's role as a constitutional watchdog, seeking to protect individual rights & democratic framework against potential excesses of government power.

Conversely, the UK judicial review system is more restrained, with courts typically deferring to the principle of parliamentary sovereignty. The scope of judicial review in the UK is largely focused on ensuring that executive actions comply with legal and procedural standards, particularly with regard to human rights and legality. While the UK judiciary is influential in maintaining the rule of law, it avoids intervening in the merits of political decisions, emphasizing a more limited role in scrutinizing the content of governmental policies.<sup>13</sup>

Both systems, however, share a common purpose: to uphold the rule of law, ensure fairness, and provide remedies for individuals whose rights are infringed upon by unlawful actions of public authorities. Judicial review in both countries, although framed differently within their respective legal traditions, remains an essential mechanism for maintaining governmental accountability and safeguarding democratic principles.

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<sup>12</sup> Li Shida, *Defending Deference: Judicial Review in the UK, Singapore, and China*, 2021 SING. COMP. L. REV. 79 (2021).

<sup>13</sup> *Id.*



## CONCLUSION

The judicial review processes in India & UK offers a comprehensive and nuanced understanding of the legal mechanisms through which both nations ensure governmental accountability and protect individual rights. Through an in-depth analysis of these distinct systems, the study unravels the strengths, weaknesses, and subtle differences that characterize the judicial review frameworks of the two countries. It brings to light several critical insights that inform our understanding of the evolving role of the judiciary in shaping governance and public policy, not only in India & UK but potentially across other jurisdictions as well.

One of the key findings of this study is the notable divergence in how judicial review is applied in India & UK. Both nations acknowledge the importance of judicial review as a means of safeguarding against arbitrary governance and protecting citizens' rights. However, the methods by which judicial review is carried out differ significantly due to the distinct constitutional frameworks, judicial philosophies, and political contexts in each country. In India, judicial review is characterized by an active and often interventionist judiciary, which plays a pivotal role in shaping public policy, interpreting the Constitution, and even influencing legislative and executive actions. This proactive judicial involvement is a defining feature of India's legal system, where the courts frequently intervene in matters of public interest, such as environmental protection, social justice, and human rights, thereby contributing significantly to the development of public policy. By contrast, the judicial review system in the UK is traditionally more restrained. The principle of parliamentary sovereignty remains a cornerstone of the British legal system, and as such, the judiciary refrains from engaging in an active review of parliamentary legislation unless there are clear constitutional or human rights violations. The UK judiciary, therefore, operates with a focus on preserving the separation of powers and maintaining deference to the decisions made by the elected representatives of the people.

Furthermore, the scope of judicial review in India is broader than that in the UK, with the Indian judiciary possessing a wider remit to scrutinize government actions across various domains. This includes not only the review of administrative decisions but also legislative acts, executive orders, and matters of constitutional validity. India's judicial review system reflects the country's strong commitment to safeguarding fundamental rights, as enshrined in the Constitution, and ensuring that government actions do not infringe upon these rights. This expansive scope allows Indian courts to address a wide range of issues, including cases involving economic policies, public health, environmental regulations, and social justice. However, this broad scope is not without its challenges. It raises concerns about judicial overreach, as the judiciary's intervention in matters traditionally within the executive and legislative domains may be perceived as encroaching on the separation of powers. Critics argue that such overreach could undermine the democratic principle of elected representatives making decisions on behalf of the people, leading to potential conflicts between the judiciary and other branches of government.

The procedural components of judicial review also reveal distinct differences between India & UK. One significant area of contrast lies in the rules governing locus standi, or the standing required to bring a case before the court. In India, the doctrine of locus standi has been interpreted expansively, allowing individuals or groups with a legitimate interest in a matter to challenge government actions, even if they are not directly affected by those actions. This inclusive approach is especially evident in PIL, a legal mechanism that has allowed the Indian judiciary to address a wide array of issues, ranging from environmental protection to the rights of marginalized communities. The UK, on the other hand, generally adheres to a more restrictive approach to standing, where only individuals or entities with a direct and substantial interest in a case are permitted to bring judicial review proceedings. This difference in standing rules reflects the divergent philosophies of judicial intervention in the two countries.

Despite these differences, both India & UK share the common goal of upholding the rule of law, ensuring governmental accountability, and protecting individual rights through the judicial review process. Both systems have evolved over time in response to changing societal needs, legal developments, and shifts in constitutional interpretation. In India, judicial review has played a key role in the expansion of fundamental rights, including the right to life, freedom of expression, and protection from discrimination, with the courts often acting as a safeguard against violations of these rights. In the UK, judicial review has been instrumental in protecting citizens from unlawful government actions, ensuring that public authorities act within their legal powers and in accordance with established legal principles. In both countries, judicial review has adapted to meet the challenges posed by an ever-evolving society, & judiciary in each nation has demonstrated a capacity for flexibility and responsiveness to emerging issues.

The comparative analysis of the judicial review systems in India & UK highlights the importance of fostering dialogue and mutual learning between legal systems. While the specific approaches to judicial review may differ, both nations can benefit from sharing ideas and experiences to refine their respective systems. In India, for example, the increasing concern over judicial overreach could be mitigated through greater judicial restraint and clearer boundaries for intervention. In the UK, the expansion of standing in judicial review cases, particularly in matters of public interest, could promote greater accessibility to justice for vulnerable groups and marginalized communities. By learning from each other, both legal systems can work towards enhancing the administration of justice and further strengthening the practice of judicial review.