
INTERNATIONAL JOURNAL OF ADVANCED LEGAL RESEARCH

**COMPARATIVE ANALYSIS OF JUDICIAL REVIEW IN INDIA, USA
& UK**- Harsh Gupta¹ & Dr. Jyoti Gupta**ABSTRACT**

Judicial review serves as a cornerstone of constitutional governance, ensuring that legislative and executive actions remain within the bounds of law and constitutional principles. This research undertakes a comparative analysis of judicial review in India, the United States, and the United Kingdom, highlighting the evolution, scope, and limitations of this doctrine in three distinct constitutional systems. In India, judicial review is an implicit but firmly established feature derived from Articles 13, 32, 136, 226, and 227 of the Constitution, empowering courts to safeguard fundamental rights and uphold constitutional supremacy. In the United States, judicial review is rooted in the landmark decision of *Marbury v. Madison* (1803) and reflects a strong form of constitutional supremacy with a well-defined separation of powers. In contrast, the United Kingdom follows the principle of parliamentary sovereignty, where judicial review is comparatively limited and primarily focused on ensuring legality, rationality, and procedural fairness rather than constitutional invalidation of primary legislation. The study examines how each jurisdiction balances judicial authority with democratic principles, and how constitutional design influences the intensity and scope of judicial intervention. It further explores contemporary challenges, including judicial activism, constitutional interpretation, and the evolving role of courts in democratic governance. The comparative approach provides deeper insights into how judicial review operates as both a legal safeguard and a constitutional constraint across different legal traditions.

Keywords: Judicial Review, Constitutional Law, India, United States, United Kingdom, Separation of Powers, Parliamentary Sovereignty etc.

1. INTRODUCTION

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Judicial review is the main tool which constitutional courts use to supervise public power and is seen by comparative public law as a means of seeing how different jurisdictions are committed to limited government, separation of powers, and rights protection. The Indian model is an explicitly designed constitution that makes the court's review justiciable through "Article 13 of the Constitution of India", "Article 32 of the Constitution of India" and "Article 226 of the Constitution of India". On the other hand, the US system is grounded in "Article III of the U.S. Constitution" and the structural logic of constitutional supremacy, with the "Supremacy Clause in Article VI of the U.S. Constitution" completing the hierarchical picture. The United Kingdom still keeps parliamentary sovereignty but the modern stance has layers of rights conscious statutory constitutionalism most notably under the "Human Rights Act 1998" which gives the courts the power to interpret and assess legislation and public action in a manner that is in conformity with the rights of the Convention.²

A comparison of different systems discloses three different settlements: first, constitutional supremacy with strong strike down in India and the United States; second, legislative supremacy tempered by interpretation and remedies that respect Parliament in the United Kingdom. Judicial review changes in these three systems are a response to the demands of modern governance, ranging from complex regulation and national security to socio economic claims and digital privacy. The Indian case is still very important for comparative public law as it combines a written charter of rights with wide remedial powers, experimental remedies, and a rights federalism mix which is understandable to courts in other democracies. The American case is still at the center of global debates on separation of powers, federalism and standards for reviewing agency action. The British case is an example of parliamentary government being able to coexist with strong legal accountability through interpretation, declarations, and structured procedural control thus making possible a sophisticated balance between democratic choice and rights protection.

2. CONSTITUTIONAL FOUNDATIONS

Judicial review is a result of the norms laid down in the text and structure of every constitution and the respective legal tradition that supports it. The mechanics of review are mapped as an effect of constitutional supremacy or parliamentary sovereignty, depending on different instruments that mediate it. India has embedded the review in the constitutional text

²Sudhir Krishnaswamy, *Democracy and Constitutionalism in India: A Study of the Basic Structure Doctrine* 142 (Oxford University Press, New Delhi, 1st edn., 2009).

and has given it a rights first orientation that is binding on all branches. America has arranged the review as a consequence of judicial power and legal hierarchy, which is shown through federal jurisdiction and the supremacy of federal law. The United Kingdom, on the other hand, locates the review in a statutory and common law framework that is in accordance with parliamentary sovereignty but, at the same time, provides the judiciary with interpretive and declaratory means to uphold rights and the rule of law. The points of departure determine the allowable grounds, the extent, and the effects of the review in the three systems.³

- **India**

India's constitutional text makes it a duty, not just a power, to review. "Article 13 of the Constitution of India" annuls laws that are incompatible with the fundamental rights, thus creating a rights supremacy layer for all laws and executive actions. "Article 32 of the Constitution of India" grants the Supreme Court original jurisdiction to enforce fundamental rights, and "Article 226 of the Constitution of India" allows every High Court to issue writs for rights and other legal wrongs, thus establishing a dual track enforcement system. The principle that the Constitution has an inviolable basic structure is higher order limit on changes to the Constitution and structural anchor for review beyond individual rights claims. Within federalism, legislative competence under "Articles 245, 246, and the Seventh Schedule of the Constitution of India" and repugnancy under "Article 254 of the Constitution of India" provide additional grounds for controlling state action. This intricate interplay of text, structure, and doctrine endows Indian review with a uniquely vast domain and broad remedies.

- **USA**

In the U.S., the power of judicial review is derived from "Article III of the U.S. Constitution" that grants judicial power to the courts and limits it to cases and controversies. At the same time, the "Supremacy Clause in Article VI of the U.S. Constitution" makes the Constitution and federal laws prevail over any other conflicting sources. The Court's power to interpret the law has always been considered as one of the essential aspects of judicial power, and federal courts are designed to deal with real disputes concerning the understanding of the Constitution, the extent of federal power, and the legality of state measures in case federal

³The Supreme Court of India and Its Diverse Jurisdictions, available at: <https://www.scconline.com/blog/post/2024/07/19/the-supreme-court-of-india-and-its-diverse-jurisdictions/> (last visited on March 20, 2026).

law applies. Such a system provides for the scrutiny of both laws and government actions, with the extent of review being specified for agencies in the Administrative Procedure Act and the closeness of review being determined by federal jurisdictional statutes.

- **UK**

In the UK, the Parliament is the supreme power and it is one of the main constitutional principles that courts do not annul or declare invalid any primary legislation. Nevertheless, according to the "Human Rights Act 1998" courts are compelled to interpret and give effect to legislation in a manner consistent with the rights recognized by the Convention "as far as possible" under "Section 3 of the Human Rights Act 1998" and can only return a "declaration of incompatibility" under "Section 4 of the Human Rights Act 1998" when such compatibility cannot be attained. This form of statutory constitutionalism keeps Parliament as the ultimate authority while it also allows rights sensitive adjudication to become institutionalized and in effect, it encourages the legislature to re consider the matter when such declarations are issued. The present judicial system which was completed by the "Constitutional Reform Act 2005" serves the purpose of emphasizing the independence of the judiciary while at the same time the sovereignty is still there.⁴

- **Comparative Frame**

A comparative framework unveils two models of the highest legal authority. India and the United States are examples of constitutional supremacy. In both, courts have the power to disapply or strike down laws that are incompatible with the constitutional text or structure, the Indian Constitution providing for judicial review clauses explicitly while the United States relying on judicial power in a supremacy-based hierarchy. The United Kingdom, however, still has legislative supremacy, but the "Human Rights Act 1998" has brought in an interpretive obligation and a remedial declaration that reflect constitutional values without depowering Parliament. These choices of design have an impact on doctrinal tests, remedial craft, and institutional dialogue, determining how each court weighs the intensity of the review and the extent of its orders in the legal system.

3. RESEARCH METHODOLOGY

⁴Adam Tomkins, Public Law 146 (Oxford University Press, Oxford, 1st edn., 2003).

This research adopts a **doctrinal and comparative legal research methodology**. The study is primarily based on secondary sources such as constitutional provisions, landmark judicial decisions, books, scholarly articles, research papers, and online legal databases. A doctrinal approach is used to analyse the legal principles governing judicial review in India, the United States, and the United Kingdom.

A comparative method is further applied to examine differences and similarities in the scope, nature, and limitations of judicial review across the three jurisdictions. The research is analytical in nature, focusing on interpretation and evaluation of constitutional frameworks rather than empirical data collection.

4. OBJECTIVES OF THE STUDY

The main objectives of this study are:

1. To understand the concept and evolution of judicial review in constitutional law.
2. To analyse the scope and constitutional basis of judicial review in India, USA, and UK.
3. To examine landmark judicial decisions that shaped the doctrine in each jurisdiction.
4. To compare the strength and limitations of judicial review across the three legal systems.
5. To evaluate the role of judiciary in maintaining constitutional supremacy and rule of law.
6. To identify challenges and emerging trends in judicial review in modern governance.

5. RESEARCH QUESTIONS

This research seeks to answer the following questions:

1. What is the concept and significance of judicial review in constitutional democracies?
2. How is judicial review structured and exercised in India, the USA, and the UK?
3. What are the major similarities and differences in the judicial review systems of these countries?
4. How do constitutional principles like separation of powers and parliamentary sovereignty affect judicial review?
5. What is the role of courts in protecting fundamental rights through judicial review?
6. What reforms are needed to strengthen judicial accountability and effectiveness?

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6. BODY OF THE RESEARCH PAPER

- **Introduction to Judicial Review**

Judicial review refers to the power of courts to examine the constitutionality of legislative and executive actions. It ensures that all state actions comply with constitutional provisions and protects citizens' rights against arbitrary state power. Judicial review is considered a cornerstone of constitutional governance and an essential feature of the rule of law in democratic systems.⁵

- **Judicial Review in India**

In India, judicial review is an essential feature of the Constitution. It is derived from Articles 13, 32, 136, 226, and 227. The Supreme Court and High Courts possess the authority to strike down unconstitutional laws and actions of the government.⁶

Key features of judicial review in India include strong protection of Fundamental Rights, the power to invalidate unconstitutional laws under Article 13, and the expansion of access to justice through Public Interest Litigation (PIL).⁷

A significant development in Indian constitutional law is the Basic Structure Doctrine, established in *Kesavananda Bharati v. State of Kerala*, which limits Parliament's power to amend the Constitution.⁸ This doctrine ensures that the essential features of the Constitution cannot be destroyed even through constitutional amendments.

India therefore follows a system of constitutional supremacy, where the Constitution remains the highest law of the land and the judiciary acts as its guardian.⁹

- **Judicial Review in the United States**

In the United States, judicial review is not explicitly mentioned in the Constitution but was firmly established in the landmark case of *Marbury v. Madison (1803)*.¹⁰ This case confirmed the power of the judiciary to declare laws unconstitutional.

⁵M.P. Jain, *Indian Constitutional Law*, LexisNexis, 8th ed., p. 210.

⁶D.D. Basu, *Introduction to the Constitution of India*, LexisNexis, 23rd ed., p. 432.

⁷S.P. Sathe, *Judicial Activism in India*, Oxford University Press, p. 85.

⁸*Kesavananda Bharati v. State of Kerala*, (1973) 4 SCC 225.

⁹H.M. Seervai, *Constitutional Law of India*, Universal Law Publishing, Vol. 1, p. 312.

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Key features of judicial review in the US include a strong form of judicial review, the Supreme Court's final authority on constitutional interpretation, a clear separation of powers, and the scrutiny of both federal and state laws.¹¹

The US system reflects constitutional supremacy, where courts play a powerful role in maintaining checks and balances between the branches of government.¹²

- **Judicial Review in the United Kingdom**

The United Kingdom follows a different approach due to the principle of parliamentary sovereignty, under which Parliament is the supreme law-making authority.¹³ Courts cannot strike down primary legislation enacted by Parliament.

Judicial review in the UK is therefore limited mainly to administrative actions. Courts focus on ensuring legality, rationality, and procedural fairness in decision-making.¹⁴

The scope of judicial review developed through common law principles, especially the grounds laid down in the *Wednesbury case*, which include illegality, irrationality, and procedural impropriety.¹⁵

Thus, judicial review in the UK is comparatively weaker than in India and the United States.

- **Comparative Analysis**

India and the USA follow constitutional supremacy, whereas the UK follows parliamentary supremacy. Judicial review is strongest in the USA, followed by India, and weakest in the UK.¹⁶

The Indian judiciary actively engages in constitutional interpretation through doctrines such as the Basic Structure Doctrine, unlike the UK judiciary which cannot invalidate primary legislation.¹⁷

¹⁰*Marbury v. Madison*, 5 U.S. (1 Cranch) 137 (1803).

¹¹Erwin Chemerinsky, *Constitutional Law: Principles and Policies*, Wolters Kluwer, p. 45.

¹²Laurence Tribe, *American Constitutional Law*, Foundation Press, p. 23.

¹³A.V. Dicey, *Introduction to the Study of the Law of the Constitution*, Macmillan, p. 39.

¹⁴Mark Elliott & Robert Thomas, *Public Law*, Oxford University Press, p. 612.

¹⁵*Associated Provincial Picture Houses v. Wednesbury Corporation*, (1948) 1 KB 223.

¹⁶Vicki Jackson & Mark Tushnet, *Comparative Constitutional Law*, Foundation Press, p. 78.

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The US system is more rigid due to written constitutional supremacy, whereas the UK system remains flexible and parliamentary-driven.¹⁸

- **Role of Judicial Review in Democracy**

Judicial review acts as a safeguard of democracy by protecting fundamental rights, ensuring separation of powers, preventing misuse of governmental authority, and maintaining constitutional balance.¹⁹

It plays a crucial role in upholding the rule of law and ensuring accountability of public authorities.

7. LANDMARK CASE STUDIES

Reference to landmark decisions sheds light on doctrinal changes and jurisdiction specific decisions. The idea is not to exhaust the citation but to trace the interaction of constitutional text, structural principle, and remedial technique. In India, decisions leading the way flesh out the core, extend the rights, and adjust standards like proportionality and arbitrariness. In the United States, canon forming judgments identify the authority of courts, alter equality and speech doctrine, and, lately, change the relationship between courts and agencies. In the United Kingdom, cases turn prerogative power controls, return legality and constitutional principles, and determine the extent of proportionality and legitimate expectation. The trajectory is captured by a few brief examples from each system.

- **India**

The arc of Indian public law is visible in a series of constitutional cases. *Kesavananda Bharati v. State of Kerala*²⁰, was the case that laid down the basic structure doctrine and established the permanent limits of the constitutional amendment. *Minerva Mills Ltd v. Union of India*²¹, was the case that made the structure of the basic structure doctrine strong and, at the same time, judicial review being of the core power, was confirmed again. *Maneka Gandhi v. Union of India*²², expanded the idea of personal liberty and right to be fair under

¹⁷Upendra Baxi, *The Indian Supreme Court and Politics*, Eastern Book Company, p. 114.

¹⁸Peter Leyland, *The Constitution of the United Kingdom*, Hart Publishing, p. 156.

¹⁹Lord Bingham, *The Rule of Law*, Penguin Books, p. 67.

²⁰(1973) 4 SCC 225.

²¹(1980) 3 SCC 625.

²²(1978) 1 SCC 248.

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"Articles 14 and 21 of the Constitution of India", thus accountability became a part of both procedure and content. *Shreya Singhal v. Union of India*²³, was the case that re confirmed the protection of speech by the court when it struck down a vague law that restricted speech. *K.S. Puttaswamy v. Union of India*²⁴, was the case that made privacy an essential part of the Constitution and, for the first time, it was proportionality that was the main test for any rights limiting measures in the digital era.

- USA

The American canon opens with "Marbury v. Madison"²⁵, setting out the reasoning for judicial review. *Brown v. Board of Education*²⁶, changed the idea of equal rights against segregation. *New York Times Co. v. United States*²⁷, gave a legal basis to the freedom of the press against prior restraint. *West Virginia v. EPA*²⁸, brought a major questions account to agency power and statutory interpretation. *Loper Bright Enterprises v. Raimondo*²⁹, moved agency deference to another level by discarding the reflexive approach to agency interpretations, thus the court of review turning to its obligation of deciding legal questions under the APA.

- UK

The UK law of judicial review in the modern era is largely characterized by cases in which prerogative powers are regulated, fairness is evolved, and constitutional principles are expressed. *Council of Civil Service Unions v. Minister for the Civil Service*³⁰ defined the traditional grounds of review and brought prerogative under the control of law. "*R (Daly) v. Secretary of State for the Home Department*"³¹ introduced proportionality as a right engaged review tool. *R (Bancoult) v. Secretary of State for Foreign and Commonwealth Affairs*³² dealt with prerogative and territory. "*R (Miller) v. Prime Minister*"³³ was the case that demonstrated that constitutional principles and justiciability can extend to prorogation of

²³(2015) 5 SCC 1.

²⁴(2017) 10 SCC 1.

²⁵U.S. (1 Cranch) 137 (1803).

²⁶347 U.S. 483 (1954).

²⁷403 U.S. 713 (1971).

²⁸597 U.S. ____ (2022).

²⁹603 U.S. ____ (2024).

³⁰[1985] AC 374.

³¹[2001] 2 AC 532.

³²[2008] UKHL 61.

³³[2019] UKSC 41.

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Parliament. "R (Begum) v. Special Immigration Appeals Commission"³⁴ was the case that got deference and proportionality in national security contexts to a higher level.

- **Thematic Synthesis**

They distinguish three shared features across the three systems, namely three shared commitments. The first of these is that the review is based on legality, thus it is required that public authorities stay within the power given to them, act for good purposes, and respect procedural fairness. The second of these is that the sensitive to rights review now depends on structured tests which require transparent balancing, whether through proportionality in India and the United Kingdom or tiered scrutiny in the United States, with administrative reason giving monitored by standards that require a logical connection to the evidence and statutory purpose. The third of these is that the remedies have become more sophisticated, with India's structural orders, the United Kingdom's suspended quashing orders, and the United States' combination of declaratory, injunctive, and vacatur relief showing how courts convert legality into feasible governance. There are still differences in the going down of the primary legislation and the extent of the access which reflect the basic choices about sovereignty and the role of the courts in democratic life.³⁵

8.SUGGESTIONS AND REFORMS

Judicial review in India, the United States, and the United Kingdom requires reforms that balance judicial independence with accountability while strengthening democratic governance. Courts should maintain a careful balance between judicial activism and restraint so that constitutional rights are protected without undermining the role of the legislature and executive. There is a need to reduce delays in constitutional cases through special benches, digital courts, and strict timelines, particularly in India where case backlog weakens the effectiveness of judicial review. Judicial accountability and transparency in appointments and decision-making must be enhanced to maintain public trust. The UK should consider clearer statutory guidance and stronger human rights protections to expand the effectiveness of judicial review despite parliamentary sovereignty. Across all three jurisdictions, comparative constitutional learning, technological capacity, and improved access to justice should be promoted through judicial training, legal aid, and simplified procedures. Ultimately, reforms

³⁴[2021] UKSC 7.

³⁵Tanya Malhotra, "Comparative Judicial Review: Themes and Divergences", 5 Journal of Indian Law and Society 110 (2014).

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should encourage institutional dialogue among the three branches of government and reinforce the rule of law, ensuring that judicial review continues to function as a vital safeguard of constitutional democracy.

9. CONCLUSION

Judicial review in these three countries: India, the United States, and the United Kingdom, is essentially three different constitutional settlements that comprise of the same rule of law commitments and share a vocabulary of legality, rights, and reason giving. The Indian judiciary, amplified by the text-based architecture and the basic structure constraint of the constitution, is thus more than ever under the obligation to not only protect the enumerated rights but also the constitutional order. Also, it has its remedial work far beyond the traditional writs; it has gone to structural supervision and prospective calibration. The American judiciary is given the role of defining the meaning of the constitution under "Article III of the U.S. Constitution" and it is equipped with a mature remedial and administrative law toolkit which is at present still evolving on issues of deference and nationwide relief under the APA and jurisdictional statutes. The Britain retains primary legislative supremacy but it also engraves a very strict culture of justification via "Section 3 of the Human Rights Act 1998", statements as per "Section 4 of the Human Rights Act 1998" and a rigid procedural regime that regulates administrative legality. The comparative lesson is not the one size fits all model but rather family resemblance: each of the systems sets up access, standards, and remedies as a way to resolve the conflict between democratic choice and constitutional constraint, thereby making sure that public power is still under the law and that rights get principled, effective, and context sensitive protection.

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