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JUDICIAL REVIEW VS. PARLIAMENTARY SOVEREIGNTY: A COMPARATIVE STUDY OF THE UK AND INDIAN CONSTITUTIONAL FRAMEWORK

Aradhya Gupta[1]

I. ABSTRACT

Constitutional supremacy and parliamentary sovereignty offer two different answers to a question common to every constitutional democracy: which organ should exercise final control over the making and validity of law? This paper examines how the United Kingdom and India answer that question through the relationship between legislative power and judicial review. The research problem is whether a sovereign Parliament and a constitutionally limited Parliament differ in kind or only in degree when courts review legislative and executive action. The study adopts a doctrinal and comparative method and analyses constitutional and statutory texts and the leading judgments of both jurisdictions, supported by secondary literature. On the UK side, it examines the Diceyan doctrine, the Human Rights Act 1998, R (Factortame Ltd) v Secretary of State for Transport, R (Jackson) v Attorney General and the post-Brexit restoration of legislative supremacy. On the Indian side, it examines Kesavananda Bharati v State of Kerala, Indira Nehru Gandhi v Raj Narain, Minerva Mills Ltd v Union of India and SR Bommai v Union of India. The paper finds that the two systems differ in the remedy available against legislation rather than in the presence of legal limits. Indian courts may invalidate statutes, and even constitutional amendments that damage the basic structure, whereas UK courts may only interpret primary legislation compatibly with Convention rights, declare it incompatible or, during EU membership, disapply it. Both systems nonetheless subject executive power to searching review of legality. The paper concludes that the two models are moving towards a shared constitutionalism of legality expressed through different institutional forms. A closing section considers how each model responds to automated decision-making and to emergency governance.

[1] Student at Amity Law School, Noida (India). Email: aradhyag397@gmail.com

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II. KEYWORDS

Judicial Review, Parliamentary Sovereignty, Basic Structure Doctrine, Rule of Law, Division of Powers.

III. INTRODUCTION

The development of constitutional governance has been significantly influenced by the distribution and use of public power. In a democratic society, the judiciary holds a distinct authority because it interprets and enforces the law, whereas the legislature derives its authority from its representative role. The relationship between these two institutions becomes even more crucial when legislative or other governmental action raises questions about legal limits and individual rights.

An intriguing example of a constitutional system that has always maintained parliamentary dominance in lawmaking is the United Kingdom. The history, laws, customs, and the court rulings all contributed to the creation of the constitutional system. In that regard, the courts have largely acknowledged the primacy of parliamentary acts while simultaneously gaining considerable authority over the legitimacy of executive measures. This results in an intriguing equilibrium between judicial control and legislative supremacy.[2]

India is another case where governmental bodies operate within the framework of a written constitution. At the same time, the judiciary plays a significant role in interpreting constitutional rules and evaluating the legality of governmental action. Indian constitutional law also raises an important question about the extent to which Parliament can change the constitutional framework itself.

A comparison between the United Kingdom and India is important because the two countries reconcile democratic law-making with legal constraints in distinct ways. The comparison lies not only in the powers that Parliament and the courts possess, but also in the conditions, relationships and processes through which those powers have

[2] AV Dicey, *Introduction to the Study of the Law of the Constitution* (10th edn, Macmillan 1959) 39–40.

developed.

The research problem that this paper addresses is whether the difference between a sovereign Parliament and a constitutionally limited Parliament is one of kind or one of degree, and how that difference shapes judicial review of legislative and executive action in each system.

The study examines the historical growth of parliamentary sovereignty in the United Kingdom and of judicial review in India. It compares the two systems on the rule of law, separation of powers, constitutional amendment, judicial authority and parliamentary competence. Selected judgments illustrate how these principles operate in practice, and the later sections consider the application of judicial review to emerging technologies and to exceptional situations, including global crises.

A. Research Objectives

1. To trace the development of parliamentary sovereignty in the United Kingdom and of judicial review under the Constitution of India.
2. To compare the legal limits that each system places on legislative and executive power, including the power to amend the constitution.
3. To assess whether the two models are converging, with particular reference to emerging technologies and emergency governance.

B. Research Questions

1. How does each system limit legislative power, and what remedy do its courts possess against primary legislation?
2. How does each system review executive action, including action taken during emergencies or through automated systems?
3. Are the UK and Indian models converging towards a common standard of legality?

C. Research Methodology

This study is doctrinal and comparative.

Its primary sources are the Constitution of India, UK statutes of constitutional

significance, and the judgments of the Supreme Court of India, the House of Lords, the UK Supreme Court, the Court of Appeal of England and Wales and the Court of Justice of the European Union.

Its secondary sources comprise treatises, journal articles and parliamentary committee reports. The study covers developments from the seventeenth century to October 2026 and states the law as at that date.

IV. HISTORICAL DEVELOPMENT OF THE UK'S PARLIAMENTARY SOVEREIGNTY

Parliamentary sovereignty in the United Kingdom emerged gradually through the struggle for power between the Crown and Parliament. Initially, the monarch controlled most governmental powers. Over time, Parliament acquired increasing control, particularly over taxation and legislation.

The common law courts initially claimed a role in restraining both the Crown and Parliament. In *Dr Bonham's Case*, Coke CJ suggested that the common law would control an Act of Parliament that was 'against common right and reason'.[3] In the *Case of Proclamations*, the judges held that the King could not create new offences by proclamation and possessed only such prerogative as the law allowed him.[4] Coke's dictum in *Bonham* did not survive the constitutional settlement that followed, and the claimed authority of the courts over Acts of Parliament gave way to the supremacy of Parliament itself.

The Glorious Revolution of 1688 placed further restrictions on the powers of the monarch and strengthened Parliament. The Bill of Rights 1689 curtailed the royal prerogative, prohibited the suspension of laws and the levying of taxes without parliamentary consent, and confirmed the central role of Parliament in legislation.[5]

A.V. Dicey gave the doctrine its classic formulation in *Introduction to the Study of the Law of the Constitution*, first published in 1885. According to Dicey, Parliament has the

[3] *Dr Bonham's Case* (1610) 8 Co Rep 113b, 118a.
[4] *Case of Proclamations* (1610) 12 Co Rep 74.
[5] Bill of Rights 1689, art 1, art 4.

right to make or unmake any law, and no person or body, including the courts, may override or set aside its legislation.[6] This perspective is known as the Diceyan or orthodox theory of parliamentary sovereignty.

Two common law rules give practical effect to this theory. First, under the 'enrolled bill' rule, courts will not look behind an Act of Parliament to examine the procedure by which it was passed. In *British Railways Board v Pickin*, the House of Lords refused to investigate an allegation that Parliament had been misled during the passage of a private Act.[7] Second, under the doctrine of implied repeal, a later Act prevails over an earlier inconsistent Act, so that one Parliament cannot bind its successors as to the content of future legislation.[8]

The orthodox doctrine has since been refined. In *Thoburn v Sunderland City Council*, Laws LJ distinguished ordinary statutes from 'constitutional statutes', such as the Bill of Rights 1689, the European Communities Act 1972 and the Human Rights Act 1998, and held that a constitutional statute may be repealed only by express words or necessary implication, not by implied repeal.[9] The distinction shows that courts now read Parliament's legislative supremacy against a background of constitutional principle.

As constitutional circumstances have changed, the doctrine has acquired new dimensions. The United Kingdom's membership of the European Union, the Human Rights Act 1998[10] and the growing importance of the rule of law and human rights have qualified the conventional idea of unlimited parliamentary sovereignty. Although Parliament retains a central role in the UK's constitutional framework, these developments have generated a vigorous debate about the limits of its authority.

V. CURRENT TRENDS IN UK JUDICIAL REVIEW AND PARLIAMENTARY SOVEREIGNTY

[6] Dicey (n 1) 39–40.
[7] *British Railways Board v Pickin* [1974] AC 765 (HL).
[8] *Ellen Street Estates Ltd v Minister of Health* [1934] 1 KB 590 (CA).
[9] *Thoburn v Sunderland City Council* [2002] EWHC 195 (Admin), [2003] QB 151.
[10] Human Rights Act 1998, ss 3–4.

Despite significant constitutional change, parliamentary sovereignty continues to operate in the United Kingdom. Section 3 of the Human Rights Act 1998 has strengthened the judiciary's role in protecting Convention rights by requiring courts to read and give effect to legislation compatibly with those rights so far as it is possible to do so. Where such an interpretation is not possible, section 4 permits a higher court only to declare the provision incompatible, and the declaration does not affect the validity or continuing operation of the provision. Parliamentary sovereignty therefore remains in place.[11]

The Constitutional Reform Act 2005, which established the Supreme Court of the United Kingdom, has also shaped the relationship between Parliament and the judiciary.[12] Devolution of authority to Scotland, Wales and Northern Ireland has made the constitution more complex, yet the Westminster Parliament retains ultimate control over legislation.

Membership of the European Union tested the practical operation of parliamentary sovereignty. Section 2 of the European Communities Act 1972 gave directly effective EU law priority over inconsistent domestic legislation, and in *Factortame* the courts disapplied provisions of an Act of Parliament on that basis.[13] The European Union (Withdrawal) Act 2018 repealed the 1972 Act but, as amended, preserved the supremacy of EU law over domestic enactments passed before the end of the implementation period.[14] The Retained EU Law (Revocation and Reform) Act 2023 then removed the principle of supremacy from domestic law with effect from 1 January 2024 and renamed retained EU law 'assimilated law'.[15] Parliament's sovereignty has therefore been fully restored at the legislative level, and courts must now read assimilated law compatibly with domestic enactments and treat it as subject

[11] Human Rights Act 1998, ss 3(2)(b), 4(6).
[12] Constitutional Reform Act 2005, pt 3 (ss 23–60).
[13] European Communities Act 1972, s 2(1), (4); *R v Secretary of State for Transport, ex p Factortame Ltd (No 2)* [1991] 1 AC 603 (HL).
[14] European Union (Withdrawal) Act 2018, ss 1, 5(1)–(2).
[15] Retained EU Law (Revocation and Reform) Act 2023, ss 3, 5; Retained EU Law (Revocation and Reform) Act 2023 (Commencement No 1) Regulations 2023, SI 2023/1363, reg 3.

to them.

Several recent decisions highlight the significance of judicial oversight of executive power. In *R (Miller) v Secretary of State for Exiting the European Union*, the Supreme Court held that the Government could not give notice of withdrawal under Article 50 of the Treaty on European Union by use of the prerogative alone.[16] In *R (Miller) v Prime Minister*, the Court held the prorogation of Parliament unlawful, which confirms that judicial scrutiny of executive action remains effective.[17]

A. Contemporary Tests of Sovereignty

Since 2016, the courts and Parliament have tested the limits of each other's authority in several cases. In *R (UNISON) v Lord Chancellor*, the Supreme Court quashed the employment tribunal fees order because it effectively prevented access to justice, and it recognised a constitutional right of access to the courts that only clear statutory authority can curtail.[18] In *R (Privacy International) v Investigatory Powers Tribunal*, a majority held that section 67(8) of the Regulation of Investigatory Powers Act 2000 did not oust judicial review of the Tribunal for error of law, and Lord Carnwath suggested obiter that the rule of law may not permit a complete exclusion of the High Court's supervisory jurisdiction.[19] Parliament responded in part through section 2 of the Judicial Review and Courts Act 2022, which uses carefully drafted words to exclude judicial review of most Upper Tribunal decisions refusing permission to appeal.[20]

The Rwanda sequence offers the clearest recent example. In *R (AAA) v Secretary of State for the Home Department*, the Supreme Court unanimously held the policy of removing asylum seekers to Rwanda unlawful because of a real risk of refoulement.[21] Parliament then enacted the Safety of Rwanda (Asylum and Immigration) Act 2024,

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[16] *R (Miller) v Secretary of State for Exiting the European Union* [2017] UKSC 5, [2018] AC 61; Treaty on European Union, art 50.
[17] *R (Miller) v Prime Minister; Cherry v Advocate General for Scotland* [2019] UKSC 41, [2020] AC 373.
[18] *R (UNISON) v Lord Chancellor* [2017] UKSC 51, [2020] AC 869.
[19] *R (Privacy International) v Investigatory Powers Tribunal* [2019] UKSC 22, [2020] AC 491; Regulation of Investigatory Powers Act 2000, s 67(8).
[20] Judicial Review and Courts Act 2022, s 2, inserting s 11A into the Tribunals, Courts and Enforcement Act 2007.
[21] *R (AAA) v Secretary of State for the Home Department* [2023] UKSC 42.

which required every decision-maker to treat Rwanda conclusively as a safe country and restricted challenges on that ground, in effect overriding the Court's finding of fact.[22] No enforced removal took place under the Act, and the Border Security, Asylum and Immigration Act 2025, which received Royal Assent on 2 December 2025, repealed it.[23] The sequence shows both the legal reach of parliamentary sovereignty and its political limits, and it returns attention to the obiter remarks in *Jackson*, considered below, on whether courts would apply legislation that abolished judicial review.

These developments highlight a crucial distinction. Although the traditional rule that courts may not invalidate primary legislation continues to uphold Parliament's constitutional position, UK courts conduct significant scrutiny of the legality of executive action.

B. Judicial Review and Constitutional Supremacy in India

In India's constitutional system, governmental institutions derive their authority from the written Constitution. The Constitution provides standards for judging the activities of the legislative, executive and judicial organs of government. This structure distinguishes the Indian model from the traditional British understanding of parliamentary sovereignty.

Judicial review is an essential component of this constitutional framework. It allows judges to assess whether executive and legislative actions comply with constitutional mandates. Its importance goes beyond declaring laws unconstitutional; courts also review administrative action, interpret constitutional provisions and grant remedies when constitutionally protected rights are violated.[24]

The development of judicial review in India has been closely linked to the preservation of constitutional institutions and the protection of individual rights. As a result, the judiciary has assumed responsibility for maintaining the balance between governmental authority and constitutional requirements. Judicial review does not,

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[22] Safety of Rwanda (Asylum and Immigration) Act 2024, s 2 (repealed).
[23] Border Security, Asylum and Immigration Act 2025.
[24] *L Chandra Kumar v Union of India* (1997) 3 SCC 261; see also *State of Rajasthan v Union of India* (1977) 3 SCC 592 (review of proclamations under Article 356).

however, displace the legislature's power to enact laws, and the legislature retains wide legislative authority within the limits that the Constitution prescribes.

This system differs markedly from the classic Diceyan view. Legislative power is wide, but it operates within a constitutional setting that permits the judiciary to examine its exercise. This arrangement has generated controversy about the extent of judicial review and the respective responsibilities of elected lawmakers and courts, which is most evident in relation to constitutional amendments.[25]

C. Constitutional Provisions Related to Judicial Review in India

1. **Article 13:** This provision serves as an important foundation for judicial review of laws affecting the Fundamental Rights. It declares that any law which takes away or abridges those rights shall be void to the extent of the contravention.[26]

2. **Article 32:** This provision guarantees the right to move the Supreme Court for the enforcement of the Fundamental Rights, and empowers the Court to issue writs in the nature of habeas corpus, mandamus, prohibition, certiorari and quo warranto. Because Article 32 is itself a fundamental right, it occupies a central place in the scheme of judicial review. Dr B.R. Ambedkar described it as the article without which the Constitution 'would be a nullity', calling it 'the very soul of the Constitution and the very heart of it'.[27]

3. **Article 226:** Article 226(1) provides that, 'notwithstanding anything in article 32', every High Court may issue writs 'for the enforcement of any of the rights conferred by Part III and for any other purpose'. Because the High Courts may enforce both fundamental and other legal rights, the scope of Article 226 is wider than that of Article 32. Article 226 ensures access to legal

[25] *IC Golaknath v State of Punjab* AIR 1967 SC 1643; *Kesavananda Bharati v State of Kerala* (1973) 4 SCC 225.
[26] Constitution of India, art 13(2).
[27] Constitution of India, art 32; Constituent Assembly Debates, vol VII (9 December 1948), para 7.70.172 (online edition).

remedies at the State level and is a crucial instrument for judicial review of administrative and governmental action. The power of judicial review vested in the High Courts under Article 226 and in the Supreme Court under Article 32 forms part of the basic structure of the Constitution.[28]

4. **Article 136:** Subject to the limits that the Constitution prescribes, the Supreme Court has discretionary power to grant special leave to appeal from any judgment, decree, determination, sentence or order passed by any court or tribunal in India, other than a court or tribunal constituted under a law relating to the Armed Forces.[29] The provision confers a discretionary power rather than a general right of appeal, and the Supreme Court has used it to correct legal and constitutional errors.

5. **Article 131:** The Supreme Court has original jurisdiction over any dispute between the Government of India and one or more States, or between two or more States, in so far as the dispute involves a question on which the existence or extent of a legal right depends.[30] Although its main purpose is not judicial review, Article 131 is a crucial component of constitutional governance because it settles disputes over the legal authority of different governmental units.

6. **Article 141:** The law declared by the Supreme Court is binding on all courts within the territory of India.

7. **Article 142:** The Supreme Court may pass any decree or make any order necessary for doing complete justice in any cause or matter pending before it. Although Article 142 confers broad judicial power, its exercise remains subject to the legal and constitutional framework of judicial authority.[31]

D. Parliamentary Sovereignty vs the Rule of Law

[28] Constitution of India, art 226(1); *L Chandra Kumar* (n 23).
[29] Constitution of India, art 136; *Pritam Singh v State* AIR 1950 SC 169.
[30] Constitution of India, art 131; *State of Karnataka v Union of India* (1977) 4 SCC 608.
[31] Constitution of India, art 142; *Supreme Court Bar Association v Union of India* (1998) 4 SCC 409.

The relationship between parliamentary sovereignty and the rule of law raises the question of how far legislative power can be subjected to legal control. In the traditional British understanding, Parliament makes or unmakes laws, and the role of the courts is to interpret Acts of Parliament rather than to declare them invalid.[32] The rule of law nevertheless requires public officials to exercise their authority within the bounds of the law and of their lawful jurisdiction.[33]

The distinction is important because parliamentary sovereignty does not preclude judicial review of the exercise of governmental power. UK courts have developed basic standards of administrative legality to prevent public officials from abusing their legal powers. Consequently, the main focus of judicial review in the United Kingdom is control over the use of public power.[34]

In India, by contrast, the Constitution establishes a standard against which laws themselves may be evaluated. The judiciary can therefore assess whether a law complies with constitutional provisions. In this sense, the relationship between the legislative and judicial branches differs markedly from that in the United Kingdom.

The rule of law therefore operates differently in each system. In the United Kingdom, judicial oversight concentrates on executive and administrative power; in India, constitutional review extends to legislation itself.

E. India's Basic Structure Doctrine and Parliamentary Supremacy

The relationship between the basic structure doctrine and parliamentary sovereignty shows how the Constitution blends constitutional stability with democratic change. Article 368 empowers Parliament to amend the Constitution.[35] However, an amendment that alters the basic structure of the Constitution is open to judicial invalidation. India therefore follows the principle of constitutional supremacy, in contrast to the United Kingdom, which has always treated parliamentary sovereignty

[32] Dicey (n 1) 39–40.
[33] *Entick v Carrington* (1765) 19 St Tr 1029; Dicey (n 1) 188–203.
[34] *Council of Civil Service Unions v Minister for the Civil Service* [1985] AC 374 (HL); Human Rights Act 1998, s 6.
[35] Constitution of India, art 368; *Kesavananda Bharati* (n 37).

as the core of its constitution.

The Supreme Court upheld Parliament's power to amend the Fundamental Rights in *Sankari Prasad Singh Deo v Union of India* and *Sajjan Singh v State of Rajasthan*.[36] In *IC Golaknath v State of Punjab* (1967), however, the Court held that Parliament lacked the power to amend the Fundamental Rights.[37] The Court revisited the issue in *Kesavananda Bharati v State of Kerala*, holding that Parliament's amending power is wide but cannot be used to alter the basic structure of the Constitution.[38]

This doctrine allows Parliament to respond to changing social and political circumstances while setting a constitutional limit on the amending power. Decisions such as *Indira Nehru Gandhi v Raj Narain*[39] and *Minerva Mills Ltd v Union of India*,[40] in which the Supreme Court invalidated constitutional amendments that violated the basic structure, established the significance of the principle. The doctrine serves to preserve democracy, judicial review, constitutional continuity and the rule of law. India's constitutional history shows that democratic legislative authority operates within constitutional limits and is subject to judicial scrutiny where it exceeds them.

F. The Doctrine after Kesavananda

Later decisions show how the doctrine operates against legislative power today. In *IR Coelho v State of Tamil Nadu*, a nine-judge bench unanimously held that laws placed in the Ninth Schedule after 24 April 1973 enjoy no blanket immunity and may be tested against the Fundamental Rights and the basic structure through a 'rights test' that examines the effect of the law on those rights.[41] In *Supreme Court Advocates-on-Record Association v Union of India*, decided on 16 October 2015, a five-judge bench by a majority of four to one struck down the Constitution (Ninety-ninth Amendment) Act 2014 and the National Judicial Appointments Commission Act 2014 for violating the

[36] *Sankari Prasad Singh Deo v Union of India* AIR 1951 SC 458; *Sajjan Singh v State of Rajasthan* AIR 1965 SC 845.
[37] *IC Golaknath v State of Punjab* AIR 1967 SC 1643.
[38] *Kesavananda Bharati v State of Kerala* (1973) 4 SCC 225, AIR 1973 SC 1461.
[39] *Indira Nehru Gandhi v Raj Narain* 1975 Supp SCC 1, AIR 1975 SC 2299.
[40] *Minerva Mills Ltd v Union of India* (1980) 3 SCC 625, AIR 1980 SC 1789.
[41] *IR Coelho v State of Tamil Nadu* (2007) 2 SCC 1.

independence of the judiciary. The decision remains the clearest modern instance of a constitutional amendment held invalid.[42]

The doctrine also has a counterweight in judicial self-restraint. On 20 November 2025, a five-judge bench answered Special Reference No 1 of 2025 and advised that courts cannot prescribe timelines for the Governor or the President to act on Bills under Articles 200 and 201, nor declare 'deemed assent' when such timelines expire, although a court may issue a limited direction where inaction is prolonged and unexplained.[43] The opinion shows that the Supreme Court also recognises limits on its own power over the legislature and the executive.

VI. CASE STUDIES: IMPORTANT JUDGMENTS

A. UK: R (Factortame Ltd) v Secretary of State for Transport

The Merchant Shipping Act 1988 imposed nationality, residence and control conditions on the registration of fishing vessels in the United Kingdom. Factortame Ltd and other companies, largely owned by Spanish nationals, challenged these conditions as contrary to their rights under Community law.[44] The issue was whether a national court could suspend the operation of an Act of Parliament pending a ruling on its compatibility with Community law.

The Divisional Court granted interim relief, but the Court of Appeal reversed that order. In *Factortame (No 1)*, the House of Lords held that English law gave the courts no power to grant interim relief against the Crown suspending an Act of Parliament, and referred the question to the European Court of Justice. On 19 June 1990, the Court of Justice ruled that a national court must set aside a rule of national law that alone prevents it from granting interim relief to protect rights claimed under Community

[42] *Supreme Court Advocates-on-Record Association v Union of India* (2016) 5 SCC 1; Constitution (Ninety-ninth Amendment) Act 2014; National Judicial Appointments Commission Act 2014.
[43] *In re Assent, Withholding or Reservation of Bills by the Governor and the President of India* 2025 INSC 1333 (Special Reference No 1 of 2025, opinion of 20 November 2025); Constitution of India, arts 200, 201.
[44] Merchant Shipping Act 1988, pt II; *R v Secretary of State for Transport, ex p Factortame Ltd* [1990] 2 AC 85 (HL).

law.[45] The House of Lords then granted interim relief in *Factortame (No 2)* by disapplying the relevant provisions of the 1988 Act; it announced its decision on 9 July 1990 and gave its reasons on 11 October 1990.[46]

The ruling showed that, while the United Kingdom remained a member of the European Union, courts could disapply, though not strike down, primary legislation that conflicted with directly effective EU law on the authority of the European Communities Act 1972. Parliament's later decision to leave the European Union, itself an exercise of sovereignty, removed the legal basis for that disapplication and altered the constitutional framework after Brexit.[47]

B. UK: R (Jackson) v Attorney General

R (Jackson) v Attorney General is a landmark case on parliamentary sovereignty, the validity of legislation and the role of the judiciary in the UK constitution.[48] The claimants challenged the Hunting Act 2004, which had been passed without the consent of the House of Lords under the procedure in the Parliament Act 1911, as amended by the Parliament Act 1949. They contended that the 1949 Act was invalid and that the 2004 Act therefore could not have been validly passed.

The House of Lords dismissed the challenge and upheld the validity of both Acts. Several judges nonetheless made significant observations on the nature of parliamentary sovereignty. Lord Steyn and Lord Hope suggested obiter that the courts might have to reconsider the doctrine if Parliament attempted to abolish judicial review or the ordinary role of the courts. The case did not, however, establish that the judiciary could declare an Act of Parliament invalid.

The case is important because it shows that UK courts can examine the legal boundaries of the legislative process without disregarding Parliament's enactments.

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[45] Case C-213/89 *R v Secretary of State for Transport, ex p Factortame Ltd* [1990] ECR I-2433.
[46] *R v Secretary of State for Transport, ex p Factortame Ltd (No 2)* [1991] 1 AC 603 (HL); European Communities Act 1972, s 2(1), (4).
[47] European Union (Withdrawal) Act 2018 (n 13); Retained EU Law (Revocation and Reform) Act 2023 (n 14).
[48] *R (Jackson) v Attorney General* [2005] UKHL 56, [2006] 1 AC 262; Parliament Act 1911; Parliament Act 1949; Hunting Act 2004.

At the same time, the ruling did not create any judicial power to invalidate Acts of Parliament.

C. India: Kesavananda Bharati v State of Kerala

Kesavananda Bharati v State of Kerala defined the limits of Parliament's amending power under Article 368 and gave rise to the basic structure doctrine.[49] Swami Kesavananda Bharati, the head of the Edneer Mutt, challenged Kerala land reform legislation that restricted the management of the Mutt's property. While the case was pending, Parliament enacted the Twenty-fourth, Twenty-fifth and Twenty-ninth Amendments, and the petition was enlarged to challenge them.

On 24 April 1973, a thirteen-judge bench decided the case by a majority of seven to six. The majority overruled *Golaknath* and held that Parliament may amend any provision of the Constitution, including the Fundamental Rights, but that the amending power does not extend to altering the basic structure of the Constitution. The Court upheld the Twenty-fourth and Twenty-ninth Amendments and the first part of Article 31C inserted by the Twenty-fifth Amendment, but struck down the part of Article 31C that excluded judicial review of a legislative declaration that a law gave effect to the Directive Principles.

The judges did not agree on a single list of basic features. Sikri CJ, for example, identified the supremacy of the Constitution, the republican and democratic form of government, its secular character, the separation of powers and its federal character, while other judges in the majority framed their lists differently. Later decisions added features such as judicial review, the rule of law and the independence of the judiciary.

The narrow majority of seven to six shows how contested the doctrine was at its birth. The ruling nonetheless remains the foundation of constitutional supremacy and judicial review in India.

D. India: Indira Nehru Gandhi v Raj Narain

[49] *Kesavananda Bharati* (n 37); Constitution (Twenty-fourth Amendment) Act 1971; Constitution (Twenty-fifth Amendment) Act 1971; Constitution (Twenty-ninth Amendment) Act 1972.

Indira Nehru Gandhi v Raj Narain is an important decision on democracy, free and fair elections and judicial review.[50] Raj Narain challenged the election of Mrs Indira Gandhi from the Rae Bareli constituency in the 1971 Lok Sabha elections, alleging corrupt practices under the Representation of the People Act 1951. On 12 June 1975, the Allahabad High Court set aside her election, and she appealed to the Supreme Court.

While the appeal was pending, and after the proclamation of emergency in June 1975, Parliament enacted the Constitution (Thirty-ninth Amendment) Act 1975 in August 1975. The Amendment inserted Article 329A, which placed disputes concerning the election of the Prime Minister and the Speaker outside the ordinary election law. Clause (4) of that Article declared that the existing election law would not apply to such an election and that the election would remain valid notwithstanding any court order. The Supreme Court heard a challenge to the validity of this clause.

On 7 November 1975, the Court struck down clause (4) of Article 329A because it validated a disputed election without any adjudication and thereby destroyed free and fair elections, equality and judicial review, which the Court treated as part of the basic structure. The Court nevertheless allowed the appeal and upheld her election under the election laws as amended in 1974 and 1975. The decision affirmed the supremacy of the Constitution, the rule of law and electoral democracy in India.

E. India: Minerva Mills Ltd v Union of India

Minerva Mills Ltd v Union of India is a seminal decision on the relationship between Parliament's amending power and constitutional supremacy.[51] The case arose from the Government's takeover of Minerva Mills, a textile undertaking in Karnataka, under the Sick Textile Undertakings (Nationalisation) Act 1974.

Section 55 of the Constitution (Forty-second Amendment) Act 1976 had inserted clauses (4) and (5) in Article 368 to bar judicial review of constitutional amendments

[50] *Indira Nehru Gandhi* (n 38); Constitution (Thirty-ninth Amendment) Act 1975, s 4; Representation of the People Act 1951.
[51] *Minerva Mills* (n 39); Constitution (Forty-second Amendment) Act 1976, ss 4, 55; Sick Textile Undertakings (Nationalisation) Act 1974.

and to declare Parliament's constituent power unlimited. Section 4 of the same Amendment had extended the protection of Article 31C to laws implementing any of the Directive Principles. On 31 July 1980, the Court unanimously struck down clauses (4) and (5), holding that a limited amending power cannot be converted into an unlimited one. By a majority of four to one, with Bhagwati J dissenting, it also struck down section 4, thereby restoring the original Article 31C, which protects laws giving effect to Article 39(b) and (c).

The Court recognised the limited amending power and judicial review as essential features of the basic structure. Its holding on Article 31C rests on the principle that the Fundamental Rights and the Directive Principles must be kept in harmony, as both are complementary features of the Constitution.

F. India: SR Bommai v Union of India

The Union Government dismissed the Janata Dal government of Karnataka, led by S.R. Bommai, in April 1989 without allowing it to prove its majority on the floor of the Legislative Assembly. Governments in Nagaland (1988), Meghalaya (1991), and Madhya Pradesh, Himachal Pradesh and Rajasthan (1992) were also dismissed under Article 356.[52] These dismissals were challenged before the Supreme Court.

The principal issue was whether the President's satisfaction under Article 356 is open to judicial review and, if so, on what grounds.

On 11 March 1994, a nine-judge bench held that the President's satisfaction under Article 356 is subject to judicial review and is not absolute. Courts may examine whether the proclamation rested on relevant material or whether the power was exercised mala fide. Article 74(2) bars inquiry into the advice tendered by the Council of Ministers, but not into the material on which that advice was based. The Court reaffirmed that the existence of a majority should ordinarily be tested on the floor of the Assembly, not by the subjective opinion of the Governor. It recognised federalism and secularism as part of the basic structure and held that a State government acting

[52] *SR Bommai v Union of India* (1994) 3 SCC 1; Constitution of India, arts 74(2), 356.

against secularism may be dismissed. The Assembly may not be dissolved until both Houses of Parliament approve the proclamation, and where the Court finds a proclamation unlawful, it may restore the dismissed government and the Assembly.

The judgment considerably strengthened constitutional constraints on the arbitrary use of President's Rule and reaffirmed federalism, democratic accountability and judicial review.

G. Comparative Analysis of the UK and Indian Models

UK	**INDIA**
Parliamentary sovereignty	Constitutional supremacy
Uncodified constitution	Written Constitution
Courts cannot invalidate primary legislation	Courts can invalidate unconstitutional laws
Strong parliamentary authority	Parliament subject to constitutional limits
Courts review the legality of executive action; primary legislation is reviewed only for Convention compatibility	Judicial review extends to both legislative and executive acts
EU law took priority over Acts of Parliament from 1973; that priority ended on 1 January 2024	Amending power cannot alter the basic structure

1. **Source and nature of limits:** In India, the limits on legislative power derive from a written Constitution that the Supreme Court interprets with final authority. In the United Kingdom, the limits on executive power derive from common law principles and statutes of constitutional character, while primary legislation remains legally unlimited.

2. **Remedies:** An Indian court may declare a statute, or even a constitutional amendment, void. A UK court may interpret legislation compatibly with Convention rights, issue a declaration of incompatibility under section 4 of the Human Rights Act 1998, or, during EU membership, disapply a statute as in *Factortame*. A declaration of incompatibility leaves the statute in force and returns the final decision to Parliament.

3. **Amending power:** Article 368 confers a constituent power limited by the basic structure. In the United Kingdom, *Jackson* confirms that Parliament may alter even its own legislative procedure, and no statute is entrenched against later repeal, although the obiter remarks in that case leave open whether courts would accept the abolition of judicial review.

4. **Executive review:** *Council of Civil Service Unions v Minister for the Civil Service* and the two *Miller* cases show the intensity of UK review of prerogative power, which parallels the review of Article 356 proclamations in *Bommai*. Scholars describe the UK arrangement as a 'weak-form' or 'new Commonwealth' model of rights review, in which courts and the legislature share the final word, and the Indian arrangement as 'strong-form' review, in which judicial rulings on constitutionality are final.[53]

H. Implications for the Rule of Law and the Division of Powers

This set of cases reflects the role of judicial review in shaping the allocation of constitutional powers without eliminating the role of the legislature. In *Kesavananda Bharati*, the Supreme Court determined the extent of Parliament's power to amend the Constitution. The case is important for the separation of powers because it recognised that the amending power is not absolute.

Indira Nehru Gandhi v Raj Narain emphasised the link between constitutional review and democratic institutions by considering the effect of excluding judicial review of

[53] Stephen Gardbaum, 'The New Commonwealth Model of Constitutionalism' (2001) 49 Am J Comp L 707; Mark Tushnet, *Weak Courts, Strong Rights: Judicial Review and Social Welfare Rights in Comparative Constitutional Law* (Princeton University Press 2008).

an electoral dispute. It shows that institutional powers cannot be arranged so as to remove basic constitutional procedures from legal examination.[54]

Minerva Mills extended this line of reasoning when it considered an attempt to expand the amending power. The judgment makes clear that the amending power remains subject to constitutional limits. It also emphasises the need to preserve a balance between competing constitutional objectives so that no part of the Constitution wholly overshadows another.[55]

These cases show that the separation of powers in India does not require the isolation of institutions; it entails a framework of shared responsibilities and mutual restraints.

The Indian constitutional framework therefore reflects an institutional relationship in which democratic law-making and judicial review operate within a common constitutional framework.[56]

VII. JUDICIAL REVIEW IN THE ERA OF EMERGING TECHNOLOGIES

Technology has changed the way in which the public sector gathers information, delivers services, conducts surveillance and administers itself. The use of artificial intelligence, algorithmic decision-making, facial recognition and biometrics may improve administrative efficiency, but it also raises new concerns about legality, accountability and individual rights. The rise of algorithmic governance poses a current question for judicial review: how should courts analyse decisions that rely on automation in their reasoning process?[57]

In the United Kingdom, judicial review of technology rests on administrative legality, the protection of Convention rights under the Human Rights Act 1998 and the rule of

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[54] *Indira Nehru Gandhi* (n 38); Constitution (Thirty-ninth Amendment) Act 1975.
[55] *Minerva Mills* (n 39).
[56] *L Chandra Kumar* (n 23).
[57] Department for Science, Innovation and Technology, Centre for Data Ethics and Innovation, Cabinet Office and Office for Artificial Intelligence, 'Ethics, Transparency and Accountability Framework for Automated Decision-Making' (first published 13 May 2021, updated 29 November 2023) https://www.gov.uk/government/publications/ethics-transparency-and-accountability-framework-for-automated-decision-making accessed 31 October 2026.

law.[58] Courts may examine whether a public authority's use of technology has a proper legal basis, whether its procedures are fair and whether it respects human rights. Transparency and reasons become crucial where an automated decision is difficult to understand and contest.

R (Bridges) v Chief Constable of South Wales Police illustrates this approach. On 11 August 2020, the Court of Appeal held the police's use of automated facial recognition unlawful. It found that local policies left officers too wide a discretion over who was placed on watchlists and where the technology was deployed, so that the interference with Article 8 rights was not in accordance with law; that the data protection impact assessment was deficient; and that the force had breached the public sector equality duty by failing to verify whether the software was biased on grounds of race or sex.[59] The Court nonetheless accepted that the interference was proportionate, which shows that the decisive defects lay in legality and process rather than in the technology itself.

In India, the same issues arise under a constitution that permits judicial review of both legislation and executive decisions. Courts can assess whether the use of automated technology conforms to the Fundamental Rights, particularly equality, privacy and personal liberty.[60] In *KS Puttaswamy (Aadhaar) v Union of India*, the Supreme Court applied the proportionality test to the Aadhaar biometric identification scheme, upholding its core while striking down provisions such as section 57 of the Aadhaar Act 2016 in so far as it permitted private entities to use Aadhaar for authentication.[61] In *Anuradha Bhasin v Union of India*, the Court held that orders suspending internet services must be published, must satisfy the test of proportionality and are open to judicial review.[62]

Legislatures in both jurisdictions have since responded. India's Digital Personal Data Protection Act 2023 and the Digital Personal Data Protection Rules 2025, notified on

[58] Human Rights Act 1998, ss 3, 4, 6; *Council of Civil Service Unions* (n 33).
[59] *R (Bridges) v Chief Constable of South Wales Police* [2020] EWCA Civ 1058.
[60] *KS Puttaswamy v Union of India* (2017) 10 SCC 1; Constitution of India, arts 14, 19, 21.
[61] *KS Puttaswamy (Aadhaar) v Union of India* (2019) 1 SCC 1; Aadhaar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Act 2016, s 57.
[62] *Anuradha Bhasin v Union of India* (2020) 3 SCC 637.

13 November 2025 and commencing in phases, establish a statutory framework for the processing of digital personal data.[63] In the United Kingdom, the Data (Use and Access) Act 2025, which received Royal Assent on 19 June 2025, replaced the earlier restriction on solely automated decisions with a more permissive framework that requires safeguards, including information about such decisions, an opportunity to make representations and access to human intervention.[64] Once Parliament legislates in this way, the role of the courts shifts towards enforcing these statutory safeguards and, in India, towards testing the statutes themselves against the Fundamental Rights.

Each system therefore applies its own constitutional framework to technological governance. While the UK constitution traditionally focuses on the legality of executive action rather than on invalidating primary legislation, Indian courts possess wider powers of review. Both systems nonetheless face similar challenges relating to privacy, equality, transparency, accountability and human oversight.

Judicial review does not require courts to substitute their own judgment for the technological decisions or policies of public authorities; it concerns their compliance with the law and the adequacy of safeguards. As algorithmic governance develops, both legal frameworks will need to balance innovation with the constitutional accountability of public authorities.

VIII. JUDICIAL REVIEW DURING EMERGENCIES AND GLOBAL CRISES

Emergencies test the relationship between state authority and personal liberty. During pandemics, war, terrorism or other emergencies, governments often need to act quickly and restrict ordinary liberties. The constitutional question is therefore not whether the government can respond to emergencies, but whether its use of extraordinary powers remains within constitutional bounds. India and the United Kingdom offer two distinct approaches to that question.

[63] Digital Personal Data Protection Act 2023; Digital Personal Data Protection Rules 2025, r 1.
[64] Data (Use and Access) Act 2025, s 80, inserting arts 22A–22D into the UK GDPR.

In India, emergency governance operates within a written Constitution. Article 352 permits a proclamation of emergency, and Articles 358 and 359 suspend Article 19 and permit the suspension of the enforcement of other Fundamental Rights while the proclamation operates. In *ADM Jabalpur v Shivkant Shukla*, decided during the 1975 emergency, the Supreme Court held by a majority that no person could seek habeas corpus to enforce the right to life and personal liberty while a presidential order under Article 359 was in force.[65] The Constitution (Forty-fourth Amendment) Act 1978 replaced 'internal disturbance' with 'armed rebellion' in Article 352, required the Union Cabinet's decision to be communicated to the President in writing, and provided that the enforcement of Articles 20 and 21 cannot be suspended under Article 359.[66] In *KS Puttaswamy v Union of India*, the nine-judge bench expressly overruled *ADM Jabalpur*.[67]

Judicial review therefore continues to apply in India even during public health emergencies that involve no proclamation under Article 352. During the COVID-19 pandemic, the Supreme Court acknowledged executive expertise and the exigencies of the situation, but it did not treat judicial review as suspended. In *Reepak Kansal v Union of India*, heard with *Gaurav Kumar Bansal v Union of India*, the Court held on 30 June 2021 that section 12(iii) of the Disaster Management Act 2005 imposed a mandatory duty on the National Disaster Management Authority to recommend guidelines for ex gratia assistance to the families of persons who died of COVID-19, and directed it to do so, while leaving the amount of assistance to the executive.[68]

In *Jacob Puliyel v Union of India*, decided on 2 May 2022, the Court accepted that public health policy rests on scientific and expert opinion, but held that restrictions on unvaccinated persons in public places were disproportionate in the absence of supporting data, and confirmed that courts may review such policy for reasonableness

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[65] *ADM Jabalpur v Shivkant Shukla* (1976) 2 SCC 521.
[66] Constitution of India, arts 352, 358, 359; Constitution (Forty-fourth Amendment) Act 1978.
[67] *KS Puttaswamy* (n 59).
[68] *Reepak Kansal v Union of India* (2021) 9 SCC 251 (decided with *Gaurav Kumar Bansal v Union of India*, WP (C) 539 of 2021, 30 June 2021, Ashok Bhushan and MR Shah JJ); Disaster Management Act 2005, s 12(iii).

and manifest arbitrariness.[69] Earlier, in *Anuradha Bhasin*, the Court had applied the proportionality test to the internet restrictions imposed in Jammu and Kashmir in August 2019.[70]

Emergency governance in the United Kingdom operates through an arrangement centred on parliamentary sovereignty, legislation and constitutional convention. During the COVID-19 pandemic, the Government relied on the Coronavirus Act 2020 and on regulations made under the Public Health (Control of Disease) Act 1984. Most temporary provisions of the 2020 Act expired on 24 March 2022, and the last of them on 24 September 2022.[71] The House of Lords Constitution Committee observed that the most significant restrictions were imposed through delegated legislation and expressed concern about the adequacy of parliamentary scrutiny.[72]

In *R (Dolan) v Secretary of State for Health and Social Care*, the Court of Appeal held that the lockdown regulations fell within the powers conferred by the 1984 Act.[73] In *A v Secretary of State for the Home Department*, by contrast, the House of Lords quashed a derogation order and declared section 23 of the Anti-terrorism, Crime and Security Act 2001, which permitted the indefinite detention of foreign terrorist suspects, incompatible with Articles 5 and 14 of the Convention.[74] Even then, the declaration did not invalidate the Act; Parliament itself repealed the provision. Unlike Indian courts, UK courts do not strike down Acts of Parliament.

This contrast highlights a vital constitutional distinction. India addresses emergencies through a written Constitution under which courts may review laws and executive action against constitutional provisions. The United Kingdom relies on Parliament to scrutinise emergency laws and executive action, while its courts review the legality of

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[69] *Jacob Puliyel v Union of India* 2022 SCC OnLine SC 533 (WP (C) 607 of 2021, 2 May 2022, L Nageswara Rao and BR Gavai JJ).
[70] *Anuradha Bhasin* (n 61).
[71] Coronavirus Act 2020, s 89.
[72] House of Lords Select Committee on the Constitution, *COVID-19 and the Use and Scrutiny of Emergency Powers* (HL 2021–22, 15).
[73] *R (Dolan) v Secretary of State for Health and Social Care* [2020] EWCA Civ 1605; Public Health (Control of Disease) Act 1984, pt 2A.
[74] *A v Secretary of State for the Home Department* [2004] UKHL 56, [2005] 2 AC 68; Anti-terrorism, Crime and Security Act 2001, s 23.

delegated measures and may declare primary legislation incompatible. Both systems nonetheless continue to require legality, accountability and review during emergencies. Judicial review thus serves as a constitutional check while recognising that democratically elected governments need room to act in a crisis.[75]

IX. SUGGESTIONS AND RECOMMENDATIONS

The findings of this study support the following recommendations, each addressed to a specific institution.

First, the UK Parliament should refrain from enacting ouster clauses that wholly exclude judicial review and should adopt a clear practice for identifying constitutional statutes. This responds to the finding, drawn from *Privacy International* and the Rwanda legislation, that disputes over ousters strain the balance between sovereignty and the rule of law.

Second, the Supreme Court of India should articulate clearer and more consistent standards for identifying basic features and for applying the rights test in *Coelho*, so that review of constitutional amendments remains principled and predictable.

Third, the legislatures of both countries should require sunset clauses, periodic reporting and prompt parliamentary approval for emergency powers and for regulations made under them. This responds to the finding that delegated emergency measures received limited scrutiny during the COVID-19 pandemic.

Fourth, Parliament in each country should impose statutory duties on public authorities that use automated decision-making, including impact assessments, disclosure of the use of automated systems, reasons for individual decisions and a right to human review, building on the Data (Use and Access) Act 2025 and the Digital Personal Data Protection Act 2023.[76] This responds to the finding in *Bridges* that the

[75] House of Lords Select Committee on the Constitution (n 71) paras 22–26, 47, 80–83; Human Rights Act 1998, ss 3–4.
[76] Government Digital Service, 'Data and AI Ethics Framework' (18 December 2025) https://www.gov.uk/government/publications/data-ethics-framework/data-and-ai-ethics-framework accessed 31 October 2026; *KS Puttaswamy* (n 59).

decisive defects in automated governance lie in legality and process.

Fifth, the legislature, the executive and the judiciary in both systems should strengthen institutional dialogue through parliamentary committees, independent oversight bodies and reasoned responses to declarations of incompatibility, so that efficiency in governance does not displace constitutional accountability.

X. CONCLUSION

This study asked how the United Kingdom and India limit legislative power, how each reviews executive action, and whether the two models are converging. On the first question, the comparison shows that the character of legislative authority depends on its constitutional context. Parliament in the United Kingdom remains legally sovereign: after *Factortame*, *Jackson* and the end of EU law supremacy on 1 January 2024, UK courts may interpret legislation, declare it incompatible or, in the past, disapply it, but they cannot invalidate it. In India, *Kesavananda Bharati*, *Indira Nehru Gandhi* and *Minerva Mills* establish that even constitutional amendments fail if they damage the basic structure.

On the second question, both systems subject executive power to searching review of legality, whether of the prerogative in the *Miller* cases or of President's Rule in *Bommai*. The differences between them arise from two distinct constitutional histories, a common law tradition of legislative supremacy and a founding written Constitution, rather than from different degrees of commitment to legality.

On the third question, recent developments in automated decision-making and emergency governance show that both systems now rely on proportionality, transparency and statutory safeguards to discipline public power. The paper therefore concludes that the United Kingdom and India are moving towards a shared constitutionalism of legality expressed through different institutional forms: a weak-form model that leaves the final word with Parliament, and a strong-form model that leaves it with the Constitution as interpreted by the courts.

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