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A COMPARATIVE ANALYSIS OF THE RULE OF LAW IN INDIA AND THE UNITED KINGDOM: CONSTITUTIONAL PRINCIPLES AND JUDICIAL APPROACHES

***¹Seerat Aziz, ²Dr. Chetan Trivedi**

¹Comparative Public Law, ²Criminal Law

Amity Institute of Advanced Legal Studies Amity University Noida, Uttar Pradesh.

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***Corresponding Author: Seerat Aziz**

Comparative Public Law, Amity Institute of Advanced Legal Studies Amity University Noida, Uttar Pradesh.

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ABSTRACT

The rule of law is the foundation of constitutional government, ensuring that state power is exercised under legal restraint rather than arbitrary will. This article examines how the rule of law is conceived, structured and enforced in the United Kingdom, whose constitution is uncodified and built on parliamentary sovereignty, and in India, whose written Constitution places the rule of law within its basic structure. The study asks whether the British reliance on parliamentary sovereignty adequately protects liberty in the absence of review of primary legislation, and whether India's expansive substantive jurisprudence risks judicial overreach. Using a doctrinal and comparative methodology, it analyses constitutional and statutory texts, landmark decisions and secondary scholarship. The major findings are that the United Kingdom relies on interpretive and political checks, notably the Human Rights Act 1998, while Indian courts exercise plenary review and invalidate legislation, thereby giving the rule of law substantive content. The article argues that neither model is complete: British restraint depends on political willingness to respond to judicial signals, while Indian activism suffers from unpredictability and institutional delay. It concludes with reform proposals for both systems and lessons for India.

KEYWORDS: Rule of Law, Parliamentary Sovereignty, Constitutionalism, Judicial Review, Basic Structure Doctrine, Comparative Public Law.

1. INTRODUCTION

Background

The rule of law is widely regarded as the hallmark of a civilised polity and the feature that distinguishes constitutional democracy from autocracy. In its classical modern form, articulated by A.V. Dicey, it postulates the supremacy of regular law over arbitrary power, the equal subjection of all persons to the ordinary law administered by ordinary courts, and the derivation of constitutional rights from judicial decisions rather than from a declaration of rights.¹ Yet the institutional expression of this ideal differs sharply across jurisdictions, depending on their history and constitutional design.

In the United Kingdom the rule of law evolved within an uncoded constitution shaped by the Magna Carta (1215), the Bill of Rights (1689) and modern constitutional statutes such as the Human Rights Act 1998 and the Constitutional Reform Act 2005. India inherited the common law tradition from colonial rule but, in 1950, adopted a comprehensive written Constitution. The Supreme Court of India has since treated the rule of law as part of the “basic structure” that even constitutional amendments cannot destroy.²

Importance of the Topic

A comparison of the two systems is valuable because both face rising executive dominance, emergency powers and administrative expansion, and both have had to decide how far courts may police the other branches. The United Kingdom shows how far liberty can be secured when courts lack the power to invalidate statutes; India shows what follows when courts possess that power and use it expansively. Together they illuminate the resilience of democratic institutions under pressure.

Legal Problem and Research Gap

Extensive scholarship examines Dicey’s classical model and its reformulation by Tom Bingham, and the formal and substantive conceptions of the rule of law have been debated at length.³ Less attention has been paid to how the absence of a codified constitution in the United Kingdom shapes judicial enforcement when set beside India’s rights-expansive jurisprudence under Articles 14, 19 and 21, and to what each system can learn from the other’s weaknesses.

Scope and Approach

The study is confined to comparative public law: constitutional principles, legislative supremacy and judicial review in India and the United Kingdom, drawing on landmark pronouncements from 1950 onwards. The United Kingdom is chosen because it is the source

of India's common law heritage and of the Diceyan model, and yet has taken a divergent constitutional path, which makes the comparison analytically productive. The approach is doctrinal and comparative, and follows the sequence of similarities, differences, reasons for difference, practical consequences and lessons for India.

2. STATEMENT OF PROBLEM

The core problem is the tension between formal legislative supremacy and substantive constitutionalism in upholding the rule of law. The article examines whether the United Kingdom's reliance on parliamentary sovereignty adequately protects fundamental liberties where courts cannot review primary legislation, and, conversely, whether India's expansive substantive rule of law jurisprudence risks judicial overreach and friction between the legislature, the executive and the judiciary.

3. RESEARCH QUESTIONS

1. To what extent do the structural differences between an uncoded constitution (the United Kingdom) and a written, rigid constitution (India) influence the theoretical and practical application of the rule of law?
2. How do Indian and British courts diverge in reviewing executive action and legislative enactments alleged to violate the rule of law?
3. What are the legal and practical consequences of India's Basic Structure doctrine, as compared with the British doctrine of parliamentary sovereignty, for checks and balances?

4. RESEARCH OBJECTIVES

1. To analyse the constitutional principles underpinning the rule of law in India and the United Kingdom (Research Question 1).
2. To evaluate the evolution of judicial approaches to executive discretion and legislative action in both systems (Research Question 2).
3. To contrast the efficacy of statutory human rights protection under the Human Rights Act 1998 with entrenched fundamental rights and judicial review in India (Research Question).

5. RESEARCH METHODOLOGY

The study is doctrinal and comparative. It is doctrinal in that it analyses primary sources: the Constitution of India, 1950; UK statutes, including the Human Rights Act 1998 and the Constitutional Reform Act 2005; and decisions of the Supreme Court of India, the House of Lords and the UK Supreme Court. Secondary sources include textbooks, journal articles,

commentaries and Law Commission reports. It is comparative in that it identifies similarities and differences, explains why they arise, assesses their consequences and draws lessons for reform. No empirical component is undertaken, since the questions are constitutional and interpretive and are answered by analysis of authorities rather than by survey or interview data.

6. RESEARCH HYPOTHESIS

The absence of a codified constitution and the doctrine of parliamentary sovereignty in the United Kingdom confine judicial review to a formal, interpretive model, whereas India's codified, rights-entrenched framework and the Basic Structure doctrine enable its judiciary to adopt a substantive conception of the rule of law, which offers stronger protection against legislative and executive arbitrariness but carries a greater risk of judicial overreach.

7. LITERATURE REVIEW

Scholarship on the rule of law has moved from Dicey's formal tripartite formulation towards substantive theories of constitutionalism. Dicey's account, first published in 1885, stressed the absence of arbitrary power, equality before the ordinary law and judge-made constitutional rights. Joseph Raz countered that the rule of law is a set of formal virtues, such as clear, prospective and stable laws and independent courts, which does not by itself guarantee a just legal system.⁴ Lord Bingham's later account added substance by including accessibility, legal certainty and the protection of human rights among the rule's core principles.⁵ Craig's framework helpfully separates formal from substantive conceptions and shows that the difference matters most when courts must decide what content the law itself may lawfully carry.

In the Indian context, H.M. Seervai and M.P. Jain trace the constitutional text and its judicial elaboration, while Upendra Baxi and P.N. Bhagwati document how Public Interest Litigation (PIL) and the expansion of Article 21 turned the Supreme Court into an instrument of social justice.⁶ S.P. Sathe's study of judicial activism offers a critical counterpoint, questioning the Court's institutional capacity and consistency.⁷ For the United Kingdom, Wade and Forsyth explain how parliamentary supremacy has been qualified by human rights obligations and by common law principles of legality.⁸

What has been studied, therefore, is each system's own trajectory and the theoretical contest between formal and substantive conceptions. What remains unresolved is how the structural setting, codified or uncoded, determines the practical reach of each conception, and whether the perceived defects of each model (deference in the United Kingdom, overreach in India) can

be addressed by cross-jurisdictional learning. The present article addresses that gap by comparing the two systems against the same analytical yardstick.

8. CONCEPTUAL FRAMEWORK: THEORETICAL FOUNDATIONS OF THE RULE OF LAW

The Diceyan Legacy and British Constitutionalism

The rule of law in the United Kingdom is historically bound up with parliamentary sovereignty, also articulated by Dicey. His rule of law comprises three ideas. First, no person is punishable except for a distinct breach of law established in the ordinary legal manner before the ordinary courts, so that wide discretionary power is excluded. Second, all classes are equally subject to the ordinary law administered by the ordinary courts, which for Dicey excluded a separate system of administrative law on the French model. Third, the general principles of the constitution, such as personal liberty, are the result of judicial decisions determining the rights of private persons in particular cases, rather than the source of those rights.⁹ The classic vindication of the third idea is *Entick v. Carrington*, where executive officers could not justify a trespass without legal authority.¹⁰

Modern British constitutionalism has nevertheless changed. The Human Rights Act 1998 gives domestic effect to the European Convention on Human Rights, requires courts to read legislation compatibly with Convention rights so far as possible, and empowers higher courts to issue a declaration of incompatibility where that is impossible.¹¹ The Constitutional Reform Act 2005 removed the judicial functions of the House of Lords and established an independent Supreme Court, which began work in 2009, reinforcing the separation of powers and judicial independence.¹²

The Indian Constitutional Matrix: Codification and Substantive Review

India's Constitution is written and supreme, and expressly rejects parliamentary omnipotence. Article 13 declares void any law inconsistent with fundamental rights. Article 14 guarantees equality before the law and the equal protection of the laws. Article 21 provides that no person shall be deprived of life or personal liberty except according to procedure established by law. Articles 32 and 226 empower the Supreme Court and the High Courts to issue writs for the enforcement of fundamental rights, and Article 32 is itself a fundamental right.¹³ Article 21 was at first read narrowly, as requiring only that a procedure be enacted by a competent legislature.¹⁴ That reading was displaced in *Maneka Gandhi v. Union of India*, discussed below. In *Kesavananda Bharati v. State of Kerala*, a thirteen-judge bench held that Parliament's

amending power under Article 368 does not extend to altering the basic structure of the Constitution.¹⁵ The rule of law was identified as part of that structure in later decisions, so that it constrains not only ordinary legislation but also constitutional amendments.

9. COMPARATIVE LEGAL AND JUDICIAL ANALYSIS

9.1 Constitutional Foundations

The United Kingdom has no single entrenched constitutional document. Its constitution rests on constitutional statutes, conventions and common law principles, and the orthodox position remains that legislation enacted by the Crown-in-Parliament cannot be set aside by any court. Wade and Forsyth observe that this supremacy, though still the theoretical cornerstone, has been reshaped by human rights obligations and by devolution.¹⁶ India, by contrast, adopted a written and rigid Constitution whose supremacy is secured by Article 13 and enforced by judicial review. The framers deliberately rejected British-style parliamentary omnipotence in favour of checks and balances anchored in an independent judiciary.¹⁷ The first point of comparison is thus a shared common law inheritance that has been channelled into two different constitutional architectures.

9.2 Review of Legislation: Interpretation versus Invalidity

Because of parliamentary sovereignty, British courts cannot strike down primary statutes. The Human Rights Act nonetheless gave them a powerful interpretive tool. Under section 3(1) legislation must, so far as it is possible to do so, be read and given effect compatibly with Convention rights, and the House of Lords has accepted that this may require departing from the natural meaning of the words.¹⁸ Where compatible interpretation is impossible, a court may declare the provision incompatible under section 4, which does not affect the validity of the statute and leaves the response to Parliament and the government. In *R (Anderson) v. Secretary of State for the Home Department*, the House of Lords declared incompatible with Article 6 of the Convention the statutory arrangement under which the Home Secretary fixed the minimum term of mandatory life prisoners, holding that sentencing was a judicial rather than an executive function.¹⁹ In *A v. Secretary of State for the Home Department* (the Belmarsh case), the House of Lords declared the indefinite detention of foreign terror suspects without trial incompatible with the Convention, and the government then replaced the scheme.²⁰

The possibility of a deeper limit was raised in *R (Jackson) v. Attorney General*, where Lord Steyn and Lord Hope suggested, obiter, that the courts might refuse to give effect to legislation that sought to abolish judicial review or the rule of law itself, and Baroness Hale expressed

reservations of a similar kind.²¹ These dicta point towards a common law constitutionalism, but they remain untested. Bingham's extra-judicial writing accepts that Parliament is legally sovereign while insisting that the courts are the guardians of legal certainty, accessibility and human rights.²²

Indian courts, in sharp contrast, exercise plenary judicial review. Under Articles 32 and 226 they may declare any law void to the extent it contravenes Part III, and under *Kesavananda Bharati* they may invalidate constitutional amendments that damage the basic structure. In *Maneka Gandhi v. Union of India*, the Supreme Court held that the "procedure" in Article 21 must be fair, just and reasonable, and that Articles 14, 19 and 21 are to be read together, so that arbitrariness is itself a violation of equality.²³ This reading, in effect, brought a substantive due process standard into Indian law even though the framers had avoided the phrase. Upendra Baxi has described the effect of the basic structure jurisprudence as moving the Court from a cautious arbiter to an active protector of constitutional identity.²⁴

9.3 Review of Executive Action and Administrative Discretion

Both systems have developed rigorous tools for controlling executive power, but through different doctrines. In the United Kingdom, the grounds of judicial review were consolidated in *Council of Civil Service Unions v. Minister for the Civil Service* (the GCHQ case) as illegality, irrationality and procedural impropriety, with Lord Diplock foreshadowing proportionality as a possible future ground.²⁵ In *R v. Secretary of State for the Home Department, ex parte Brind*, the House of Lords declined to treat proportionality as a free-standing ground in a case involving freedom of expression, but the case exposed the tension between administrative discretion and fundamental freedoms that the Human Rights Act later resolved in favour of a more intensive scrutiny where Convention rights are engaged.²⁶ The Supreme Court has also affirmed that the executive cannot use prerogative power to frustrate the rule of law or parliamentary sovereignty.²⁷

In India, executive action is examined both under administrative law and directly under the Constitution. Arbitrariness is treated as inconsistent with Article 14, which lends administrative review a constitutional edge that British courts lack. In *Indira Nehru Gandhi v. Raj Narain*, the Supreme Court struck down a constitutional amendment that had sought to place the Prime Minister's election beyond judicial scrutiny, treating the exercise of judicial power to decide a dispute by settled legal norms as integral to the rule of law and the basic structure.²⁸ The Court's record is not uniform, however. During the Emergency, *ADM Jabalpur v. Shivkant Shukla* held that the right to seek habeas corpus was suspended along with the Article 21 right, a decision

now widely regarded as a low point for the rule of law and expressly disapproved in *K.S. Puttaswamy v. Union of India*.²⁹ The episode shows that even entrenched review depends on judicial courage, a point that is often overlooked in accounts of Indian activism.

Public Interest Litigation is the most distinctive Indian innovation. Led by Justices P.N. Bhagwati and V.R. Krishna Iyer from the late 1970s, the Court relaxed the rules of standing, allowed letters to be treated as petitions, and used continuing mandamus to supervise the implementation of socio-economic rights.³⁰ PIL widened access to justice for marginalised groups, but it also drew the Court into policy fields such as resource allocation, which has provoked sustained criticism about the separation of powers.³¹

10. COMPARATIVE SYNTHESIS: SIMILARITIES, DIFFERENCES, REASONS AND LESSONS

Similarities. Both systems descend from the common law and share Dicey's core commitments: government according to law, equality before the law and independent courts to enforce both. In each, courts have used interpretation and common law principles of legality to restrain executive power, and each has had to confront the pressure of national security and emergency.

Differences. The United Kingdom treats the rule of law as a principle that operates within parliamentary sovereignty, and its courts reach legislation only through interpretation and declaration. India treats the rule of law as a constitutional limit on all three organs of the state, and its courts may invalidate. The British conception has remained closer to the formal, while the Indian has become substantive, encompassing fairness, non-arbitrariness and socio-economic entitlements.

Reasons for divergence. The divergence is explained less by legal doctrine than by constitutional origin. Britain's constitution grew incrementally, and legitimacy rests on the political accountability of a sovereign Parliament. India's Constitution was a deliberate post-colonial settlement, framed by people who had experienced the abuse of executive power under colonial law and who therefore chose to entrench rights and empower courts as a check on the majority. The Emergency of 1975–77 later reinforced the judicial determination to protect the constitutional core.

Practical consequences. Where British courts issue declarations, the remedy depends on the political branches, and the speed of response varies. Indian courts can give immediate and binding relief and supervise its implementation, but their power to decide what the rule of law requires is broad and correspondingly open to accusations of subjectivity. Neither system is

therefore free from the perennial tension between state power and legal restraint.

Lessons for India. India can learn from the British experience three things: the value of dialogue, since a declaration of incompatibility invites legislative reconsideration rather than confrontation; the discipline of structured proportionality analysis, which gives reasoned limits to rights review; and the importance of a strong parliamentary scrutiny culture, which reduces the need for courts to act as the only safeguard.

11. CRITICAL ANALYSIS AND ORIGINAL CONTRIBUTION

Why the Law Operates Differently: Beyond the Binary

A superficial reading presents the United Kingdom as representing absolute parliamentary sovereignty and India as absolute constitutional supremacy. A closer look shows a more nuanced reality. The United Kingdom's incorporation of the Convention and the creation of the Supreme Court have produced what may be called constitutional realism. Courts do not simply yield to executive or legislative will; through section 3 of the Human Rights Act they routinely strain statutory language to protect rights, and they operate as a functional constitutional brake even though they cannot strike down statutes. The practical difference between "declaring" and "invalidating" is narrower than doctrine suggests, because governments seldom leave declarations unanswered, although nothing in law compels a response.

Conversely, India's judicial power is immense, but the absence of self-imposed and consistent standards has sometimes produced unpredictable jurisprudence, in which enforcement of the rule of law depends on the philosophy of the sitting bench. The contrast between *Maneka Gandhi* and *ADM Jabalpur*, decided within a few years, illustrates that entrenchment alone does not guarantee substantive protection.

Inconsistencies, Ambiguities and Practical Difficulties

Both jurisdictions face structural ambiguities. First, in the United Kingdom, power has concentrated in the executive, which often legislates through secondary legislation and broad delegated powers, sometimes called Henry VIII clauses, that bypass meaningful parliamentary scrutiny. The rule of law is weakened where the legislature has little real control over what the executive enacts. Second, in India, the judiciary guards the rule of law against legislative amendments but is itself burdened by serious arrears and delay.³² This produces a paradox: a court that champions expansive substantive rights often fails to deliver timely procedural justice, undermining the Diceyan idea that legal remedies must be accessible and effective.

Speedy trial is itself part of Article 21.

Original Argument

This article argues that the future of the rule of law in both jurisdictions depends on a balance between political and legal constitutionalism, rather than on the dominance of either courts or legislatures. Britain shows that political restraint can work only when institutions convert judicial signals into legislative action. India shows that legal constitutionalism can protect liberty at the cost of institutional strain when the courts are the only active guardian. The article therefore contends that a mature rule of law needs a structured dialogue between courts and legislatures in both systems.

12. FINDINGS

1. *Divergent theoretical foundations (Research Question 1)*. The British rule of law operates within a political and constitutional framework balanced by parliamentary restraint and common law tradition, whereas India anchors the rule of law in a codified document backed by express constitutional remedies.
2. *Efficacy of judicial review (Research Question 2)*. British courts are barred from invalidating primary legislation and act through interpretation and declaration, while Indian courts exercise plenary review and serve as active guardians against legislative and executive excess. Both systems have shown lapses, notably deference in security cases in the United Kingdom and *ADM Jabalpur* in India.
3. *Substantive expansion (Research Question 3)*. Indian jurisprudence embraces a substantive conception of the rule of law, incorporating fairness, socio-economic rights and non-arbitrariness, whereas British courts have traditionally adhered to a formal conception modified incrementally by the Human Rights Act. The Basic Structure doctrine gives India stronger protection against legislative arbitrariness, but with a higher risk of overreach, which supports the hypothesis.

13. RECOMMENDATIONS

1. *United Kingdom*. Parliament should formalise a convention, or a statutory reporting requirement, under which a declaration of incompatibility triggers a time-bound government response and expedited parliamentary consideration, in place of open-ended discretion.
2. *India*. The Supreme Court should adopt structured guidelines for the admission and conduct of PIL, focusing on genuine public injury and on remedies that respect institutional competence, so as to reduce docket inflation and policy encroachment and to free capacity for

speedy trial and core constitutional enforcement.

3. *Both jurisdictions.* Each should strengthen statutory controls over delegated legislation and emergency powers, including sunset clauses and effective legislative scrutiny, to limit unchecked executive discretion.

4. *India, judicial administration.* Effective implementation of the Law Commission's recommendations on arrears is essential, so that expansive substantive rights are matched by timely procedural remedies.

14. CONCLUSION

The comparison shows two sophisticated systems responding to different historical and structural realities. The United Kingdom relies on political constitutionalism, parliamentary conventions and incremental statutory reform, while India champions legal constitutionalism through an entrenched charter of rights and an empowered judiciary. The research establishes that the hypothesis is largely borne out: India's framework gives the rule of law greater substantive protection, but at the cost of vulnerability to judicial overreach and delay, whereas the British framework preserves democratic legitimacy but depends heavily on political goodwill. Neither approach is superior in every respect. The rule of law is not a static doctrine but a dynamic commitment to restrain arbitrary power and secure human dignity, and each system can strengthen it by borrowing the other's strengths.

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