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Judicial Review: A Comparative Analysis of the United Kingdom and India

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ABSTRACT

This paper examines the evolution, scope, and application of judicial review in the UK and India, tracing the historical development from English common law foundations to contemporary constitutional frameworks. The study employs a comparative legal analysis to explore how two jurisdictions with shared legal heritage have developed divergent approaches to judicial oversight of governmental action.

The research demonstrates that while India inherited its judicial review concepts from English common law, the scope and application of judicial review in both countries differ significantly due to fundamental constitutional distinctions. Parliamentary supremacy in Britain significantly limits the scope of judicial review available to the courts, limiting courts to examining secondary legislation and administrative actions while primary legislation remains largely immune from judicial scrutiny.

Conversely, India's written constitution and doctrine of constitutional supremacy enable broader judicial review powers. The study analyzes how Article 13 of the Indian Constitution empowers courts to review both pre-constitutional and post-constitutional laws, supported by the doctrines of eclipse and severability.

The analysis reveals that both systems apply similar principles in reviewing administrative actions, particularly the Wednesbury unreasonableness standard and natural justice principles. However, India's constitutional framework permits judicial invalidation of legislation that violates fundamental rights, a power unavailable to UK courts except in limited circumstances involving European human rights law.

The paper concludes that India's judicial review system operates with broader scope and stronger constitutional foundation compared to the UK's more constrained approach. While the UK system prioritizes democratic legitimacy through parliamentary sovereignty, India's model emphasizes constitutional supremacy and fundamental rights protection. This comparative analysis illustrates how similar legal principles can evolve differently within distinct constitutional frameworks, reflecting varying approaches to balancing democratic governance with judicial oversight.

The study contributes to comparative constitutional law scholarship by examining how colonial legal transplantation has produced divergent institutional outcomes, highlighting the significance of constitutional design in shaping judicial power and the rule of law.

Keywords: Judicial review, Constitutional supremacy, Fundamental rights, Wednesbury principle, Natural justice

INTRODUCTION

To ensure the separation of powers, judicial review serves as a check and balance. It is this that gives rights enforcement, liberty protection, and sustaining the rule of law principle. Sir Edward Coke, the Chief Justice of England, is credited with origination of the concept of the Rule of Law. A.V. Dicey later refined the idea and outlined its tenets in his book, which includes the supremacy of law.[1] This concept therefore originated in Britain and is given supreme importance in the Indian constitution. India also borrowed the parliamentary form of government from the United Kingdom (UK). With regard to UK, we have the notion of "Parliament Sovereignty," according to which the Court cannot review a legislative act. It dominates constitutional supremacy. A secondary legislation, however, is subject to judicial review.[1] In India the essence of rule of law lies in judicial review. "Judicial Review of Constitutional Amendments," "Judicial Review of Legislative Actions," and "Judicial Review of Administrative Actions" are the three main categories on which judicial review in India is based.

Lord Diplock summed up the three traditional grounds for judicial review of an administrative action in *CCSU v Minister for Civil Services*[1] as:

a. Illegality: requires that the decision-maker possess a correct comprehension of the legal framework governing their decisional authority and act in accordance with those legal parameters.

b. Irrationality: denotes administrative determinations exhibiting such extreme unreasonableness that no sensible person could conceivably have arrived at the decision, given its flagrant contradiction of logical principles or ethical norms.

c. Procedural impropriety: A fair, reasonable, and just method must be followed while making administrative decisions and taking action or else it would lead to procedural impropriety.

These grounds are also applied in Indian cases. In "*Tata Cellular v Union of India*[1]" and *West "Bengal Central School Service Commission v Abdul Halim*[1]" the courts have observed that:

"Administrative decisions are subject to a circumscribed form of judicial scrutiny. Courts may only intervene in administrative determinations under specific circumstances: where the administrative authority has misinterpreted the legal framework governing its discretionary powers; where the decision exhibits such irrationality as to satisfy the threshold established in *Wednesbury* principles; or where procedural fairness has been compromised during the decision-making process. The established jurisprudence confirms that judicial intervention in administrative decision-making is strictly constrained to these grounds. Furthermore, it is well-established that courts are precluded from substituting their judgment regarding the substantive merits of an administrative decision; rather, judicial scrutiny is confined to examining whether the procedural framework and decision-making methodology employed by the administrative body was legally sound."[1]

JUDICIAL REVIEW IN UNITED KINGDOM

The case of *Dr. Bonham v Cambridge University*[1], which Lord Coke decided in 1610, laid the foundation for judicial review in England. Nonetheless, Chief Justice Holt stated in *City of London v Wood*[1] that "An Act of Parliament can do no wrong, though it may do several things that look pretty odd". The statement reflects the principle of legislative sovereignty, under which judicial institutions possess no jurisdiction to scrutinize the legitimacy of statutes enacted by Parliament

Parliamentary supremacy

Dicey defined supremacy of parliament as "the right to make or unmake any law whatever; and further, that no person or body is recognised by the law of England as having a right to override or set aside the legislation of Parliament".[1]

A system based on the legislative supremacy and the parliamentary sovereignty exists in the UK. Judicial review there must be analysed in light of legislative supremacy. "What Parliament doth, no power on earth can undo"; quoted by William Blackstone. This assertion is based on two unspoken assumptions: the first being Parliament is "omnipotent", and

secondly, the successor is omnipotent which means the predecessor cannot bind it. The judiciary may be overridden at any time by Parliament.[1] The issue in *Liversidge v Anderson*[1] case was whether the judiciary can use an objective criterion in order to determine the "reasonableness" of the conclusion of the home secretary. The majority of judges were of the opinion that if anything was done in good faith, the court cannot examine the reasonableness of his beliefs. This idea of "reasonableness of his belief," according to Lord Atkin's dissenting opinion will further obstruct the judicial scrutiny. Lord Atkin stressed on the deadly effect on individual liberty.

Primary and secondary legislations

In the UK, judicial review of legislative Acts is not permitted. There are 2 variations of Parliamentary legislations. One is Primary Legislation, which refers to a legislative Act of Parliament and Parliament's delegation to the Executive with its sufficient legislative guidance is secondary legislation. The Secondary Legislation provides rules, regulations, directives, and acts of Ministries, so, secondary legislations in the UK are administrative in character and are therefore open to judicial review. Judicial Review however, cannot touch primary legislations except in rare instances where such a legislation breaches European Community law. Since the establishment of the ECHR and the Human Rights Act of 1998, primary legislations, in certain cases are subject to judicial review. Secondary legislation doesn't have any exceptions like the primary ones. Every executive and administrative action, rule, and regulation is subject to judicial examination and may be deemed ultra vires and illegal.[1]

"The UK's membership of the European Community has brought with it significant changes to the English legal system and the UK constitution. In the Administrative Court:

- Claimants may challenge actions and omissions by English public authorities, and even provisions of an Act of Parliament, on the ground of breach of Community law.
- Mostly, claims for judicial review may also be on the validity of administrative decisions and legislations made by the institutions of the European Union."[1]

In *R v Secretary of State for Transport*[1], it was observed by the Court that "by relying upon the direct effect of Community law, the individual may be able to challenge national measures and can declare them unlawful. Further, it was observed that all national measures can be subject to judicial review on the grounds of incompatibility with Community law, i.e. primary legislation, secondary regulations and administrative decisions."

In *Les Verts v European Parliament*[1], it was held that "the European Union is a community based on the Rule of law, in as much as neither its member states nor its institutions can avoid a review of the

question whether the measures adopted by them are in conformity with the basic constitutional character."

Natural Justice Doctrine in Judicial review

Natural justice comes from Roman law's concept of 'Jus Natural'. It includes a requirement for procedural fairness. The domain of administrative law emphasizes the importance of the natural justice principles. Its principles are uncodified. The doctrine of natural justice, though lacking precise conceptual delineation, has established fundamental principles that courts acknowledge and uphold. Judges, attorneys, and scholars, all define it differently. Definition given in *Vionet v Barrett*[1] by Lord Esher MR, is "the natural sense of what is right and wrong." He changed it in Hopkins v Smethwick Local Board of Health as "fundamental justice."

"The principles of natural justice, originated from common law in England are based on two Latin maxims:

1. Nemo Judex in causa sua or Rule against bias (No man shall be a judge in his own cause).
2. Audi Alteram partem or the rule of fair hearing (no one shall be condemned unheard)"

Natural justice is therefore, concerned with procedural impropriety which is a ground for judicial review.

Wednesbury principle

It was in the landmark case of *Associated Provincial Picture House v Wednesbury Corporation*[1], where Wednesbury principle was established. Wednesbury test is used to determine whether an executive decision is inappropriate and illogical in order to have it examined appropriately. Courts will invalidate administrative determinations solely where they demonstrate Wednesbury unreasonableness, requiring that the impugned decision be so manifestly irrational that no rational individual could regard it as within the bounds of the administrative body's lawful authority.[1] Lord Diplock provided a compelling articulation of Wednesbury unreasonableness, describing it as governing decisions so strikingly at odds with rational thought or accepted ethical standards that no sensible individual, properly addressing the question at hand, could have formulated such a result.This framework operates as a secondary form of judicial scrutiny.[1]

The proper interpretation of the Wednesbury standard establishes that an administrative determination constitutes unreasonableness where:

(i) the decision relies upon considerations that are entirely extraneous or inappropriate to the matter at hand,

(ii) the decision-maker has failed to account for materially significant factors that ought to have informed the determination, or

(iii) the outcome demonstrates such manifest irrationality that no

reasonable individual could have formulated such a conclusion.[1]

Wednesbury principle finds its relevance in the "irrationality" ground of judicial review.

ENGLISH INFLUENCE AND INDIAN JUDICIAL REVIEW

In *Marbury v Madison*[1], the Supreme Court's authority was found by proclaiming legislation of Congress unconstitutional. Hence in US, judicial review came into life after this case. Before this ruling, the Supreme Court in the US had not used its complete judicial authority under the US Constitution to declare any act of Congress unlawful. The Indian constitution leans more towards United States in this very prospect of judicial review than UK because no UK court can invalidate a statute passed by the UK Parliament.

Judicial review: the express power

The Rule of Law serves as the foundation for judicial review in India. In India, prior to Independence, there was no explicit judicial review provision. Although there were some restrictions on the government's power, there was no specific provision like the one our Indian constitution has since independence. *Emperor v Burrah*[1] was the first case in which the court in India, in 1877, interpreted and created the idea of judicial review. The court ruled that the person who had been wronged had the right to challenge a statute's constitutionality if the power exercised is beyond the power given by 'Imperial Parliament'. The high court and the governor general council accepted the stance that Indian courts have review authority with some limitations, during this case.

By passing the Government of India Act in 1935, the British Parliament implemented the Federal System in India. Court was established under this Act with the authority to carefully examine any violations of the constitutional provisions governing the division of powers from the moment federalism was implemented in India. Although the constitutional right to review was not expressly granted, the court was impliedly given the authority to interpret constitution and decide whether or not legislative actions were constitutional. Upon the inauguration of the Indian constitution, The Supreme Court succeeded the Federal Court and took over the traditions that it had established. India's constitution provides for a healthy strong system of judicial review, and it is up to the country's judges to act in the best interests of democracy. Before the Indian Republic was founded, India's constitutional scholars framers were of the view that the constitution of a free India needed to include provisions for a supreme court with the authority to review both legislative and executive activities.

The Constitution establishes judicial review for both pre-constitutional and post-constitutional laws in Article 13[1] of

the Constitution. The HC and the Indian SC have the authority of Judicial Review under Articles 226[1]and 32[1] respectively, and can declare a statute unconstitutional if it violates Part III. In India, all actions, administrative, executive and legislative can be judicially reviewed. In fact, judicial review was declared to be part of basic structure in *Minerva Mills v UOI*.[1]

Article 13 contains the following doctrines:

Doctrine of Eclipse

The case of a pre-constitutional statute is covered by this doctrine. According to Article 13(1), all Pre-Constitutional laws that are in conflict with Part III become invalid and unconstitutional after the Constitution is enacted. When such statutes were passed, they were totally lawful and in effect. When Article 13 came into being, they lost their legal standing and were eclipsed. The doctrine of eclipse refers to this. The statute is no longer subject to eclipse and is once again enforceable if the constitutional prohibition is lifted.[1]

Severability doctrine

The doctrine of severability is based on the phrase "to the extent of contravention" in Article 13 of the Constitution. According to this approach, the court can declare only that violative portion of the challenged provision to be unconstitutional and leave the rest of it alone. If it is possible, other provisions of the law must continue to be applicable. The entire provision is deemed void if the valid and the invalid portions are intertwined in a way that makes it impossible to separate them.[1]

Judicial Review of Administrative Actions

Perhaps the most significant advancement in public law was Judicial Review of Administrative Action, which originated in Britain. The goal of administrative action's judicial review is to safeguard citizens against the abuse of authority. When the legislature gives a court of law or an administrative authority discretion, it also places obligation on them to use that discretion in an ethical, legal, and reasonable manner. Administrative discretion should be exercised carefully and sensibly. So, the judiciary must review the abuse of discretionary power of an administrative authority. The courts must uphold its duty of maintaining checks and balances whenever it discovers any evidence that an administrative action is illegal. In general, courts lack the authority to impede the acts of administrative authorities acting within the scope of their discretion. But this does not imply that the court has no authority to look for instances of abuse of authority. The UK exercises judicial review of an administrative action on three grounds as discussed in Chapter 1 i.e ---illegality, irrationality, and procedural impropriety. So, these grounds are also applicable in India.

Application of Wednesbury principle

The Indian judicial system is deeply embedded with Wednesbury unreasonableness principle. The House of Lords' ruling in Wednesbury continues to

be the focus of judicial review in India, among other things. According to Indian courts, judicial review is "the touchstone and essence of the rule of law," and their jurisprudence has developed around it based on the fundamental ideas developed in this Wednesbury case. It has been utilised to supplement important articles of the Constitution, Constitution's significant articles such like Article 14 to the extent as determined in the *E.P. Royappa* case[1] that an administrative authority's arbitrary action is one which is 'irrational and unreasonable'.

Natural Justice

While the Indian Constitution does not explicitly articulate natural justice principles, these concepts are nevertheless regarded as fundamental to the proper administration of justice. As a doctrine rooted in common law tradition, India has adopted the natural justice framework established through English jurisprudence. Justice Bhagwati in *Maneka Gandhi v UOI*[1] favoured the natural justice's definition given by Harman L.J in *Ridge v Baldwin*[1] i.e, "fair play in action".

CONCLUSION

In UK, Parliament may pass laws on any subject, and the Constitution places no restrictions on what laws may be passed. No matter how wrong it may be, no authority can challenge a Parliamentary Act. The UK Parliament has unrestricted power. The concept of legislative supremacy, though substantially transformed from Dicey's original conception, remains fundamental to the United Kingdom's constitutional structure. Parliamentary enactments are insulated from judicial scrutiny in any forum, demonstrating the primacy of parliamentary authority within the constitutional order. No matter what laws are passed by Parliament, whether they are fair or unfair, they cannot be held accountable to any body. Because of ECHR and Human rights Act, UK has now widened its judicial review. If a legislation is found to be falling short of ECHR norms, it can be declared as incompatible. This is an exception for primary legislations.

When compared with UK, in India, judicial review's scope is wider. The absence of a codified constitution in the United Kingdom significantly limits the extent of judicial review available within its legal system. In India, Article 13 allows for "Judicial Review of Pre-Constitutional as well as Post-Constitutional Laws," whereas the UK does not have a similar option for pre-constitutional legislation. Courts in India developed a number of principles, such as the law of severability and the doctrine of eclipse, but these are inapplicable in UK because legislative acts there cannot be judicially reviewed. Administrative acts are open to court review in both UK and all executive decisions are subject to judicial review to determine whether they are unlawful, unreasonable, or malicious. The idea of

ultra vires is present in both countries, and it allows for the challenge of any administrative acts and any ministerial acts that go beyond their authority. Even though India follows grounds laid down by the English, but India's judicial review is not as limited as theirs. The exception that has been incorporated later is something that India has been following for a long time i.e. safeguarding fundamental rights.

The Indian SC has the power to examine decisions made by the legislative, executive, and judicial branches of government. To make sure that any authority does not misuse its power and that a person is treated justly and fairly is the immediate goal of judicial review. This is the essence of judicial review. The purpose of judicial review is upholding some purported right of one of the litigants and so provide remedy to the party who has been wronged by invalidating an enactment if the court determines that it is unconstitutional under the law. The real objective, however, is more ambitious: no constitution-infringing measure should be upheld by a court of law.

References

Associated Provincial Picture Houses v Wednesbury Corporation, [1948] 1 KB 223 (England).

City of London v Wood, (1702) 88 Eng Rep 1592 (England).

Constitution of India. (1950). Government of India.

Council of Civil Service Unions v Minister for Civil Services, [1984] UKHL 9, [1985] AC 374 (England).

Dr Bonham v Cambridge University, (1610) 8 Co Rep 107 (England).

Elliott, M. (2004). United Kingdom: Parliamentary sovereignty under pressure. *International Journal of Constitutional Law*, 2(3), 545-627.

Emperor v Burah, (1877) 3 ILR 63 (Cal) (India).

EP Royappa v State of Tamil Nadu, AIR 1974 SC 555 (India).

Government of India Act. (1935). British Parliament.

Human Rights Act. (1998). UK Parliament.

Jain, M. P. (2004). *Indian constitutional law* (5th ed.). LexisNexis Butterworths.

Kini, A. (2019, September 17). Courts can interfere with administrative actions only if it suffers from vice of illegality, irrationality or procedural impropriety. *Live Law*. https://www.livelaw.in/top-stories/judicial-review-of-administrative-decisions-148169

Les Verts v European Parliament, (1986) 1 ECR 1339 (European Court of Justice).

Liversidge v Anderson, [1942] AC 206 (England).

Mahajan, B. (2014, December 7). Article 12 and 13 of the Constitution of India. *Academike*. https://www.lawctopus.com/academike/article-12-and-13-of-the-constitution-of-india/

Maneka Gandhi v Union of India, (1978) 1 SCC 248 (India).

Marbury v Madison, (1803) 5 US 137 (United States).

Minerva Mills v Union of India, AIR 1980 SC 1789 (India).

R v Secretary of State for Transport, [1990] 2 AC 85 (England).

Rathore, R. (2021). Approach to rule of law with adherence to UK law. *International Journal of Law Management and Human Rights*, 4(2), 1847-1862. https://www.ijlmh.com/paper/approach-to-rule-of-law-with-adherence-to-uk-law/

Ridge v Baldwin, [1964] AC 40 (England).

Sinha, P. (2021). A comparative study of significance of judicial review in United Kingdom, United States of America and India. *International Journal of Humanities and Social Science Invention*, 10(5), 45-52.

Stone de Montpensier, R. (1966). The British doctrine of parliamentary sovereignty: A critical inquiry. *Louisiana Law Review*, 26(4), 751-789. https://digitalcommons.law.lsu.edu/cgi/viewcontent.cgi?article=3417&context=lalrev

Tata Cellular v Union of India, (1994) 6 SCC 651 (India).

Vionet v Barrett, (1885) 55 LJQB 39 (England).

West Bengal Central School Service Commission v Abdul Halim, CA 5824 of 2019 (India).