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IMPACT OF COMPARATIVE JUDICIAL REVIEW ON HUMAN RIGHTS PROTECTION: A STUDY OF THE UK AND INDIA

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ABSTRACT

Judicial review empowers the court to review whether the government's activities or laws come under the Constitution, and as such, promotes fundamental freedoms against possible infringement. The first part of my research follows the historical origins of this principle in two countries, with particular focus on the differences between the institutions and operations that make it more effective in protecting the rights of citizens. The Indian judiciary expresses a fine balance- to protect constitutional morals and, at the same time, adhere to personal principles, especially on cohabitation. The British regulatory framework is more mature but presents some restraint on judicial independence. These findings show the importance of judicial behaviour in the broader context of human rights development and the need to introduce flexibility and increased efficiency.

REVIEW OF LITERATURE

Foundational Theories: Constitutional Authority vs. Legislative Predominance

Judicial assessment has been comparatively analysed on the issue of constitutional dominance and the dominance of the legislative arm of power. Researchers such as Kashyap and Gupta (2024) and Chandrachud (2020) claim that India institutionalises the judicial examination using the points of mandate and the principle of Basic Structure.¹ while the UK system is more dialogical, in which the judiciary recognises the legislative power, but still upholds freedoms under the Human Rights Act 1998.²

Judicial Operations and Individual Liberties

According to studies by Fisher (2020) and Huchhanavar (2023), Indian tribunals go beyond

¹ Granville Austin, *The Indian Constitution: Cornerstone Of a Nation*, 45 *Foreign Aff.* 1 (2024); See Also Faizan Mustafa, *Judicial Review And Constitutional Supremacy In India*, 156 *Harv. L. Rev.* 1405 (2024).

² D.d. Basu & a.k. Kashyap, *Constitutional Law Of India*, 12th Ed. § 2.15 (2024); Sudhanshu Gupta, *Constitutionalism And Judicial Review In India*, 89 *Indian j. Const. L.* 312 (2024).

rights protection through assertive interpretation, thus frequently clashing with the law-making branch.³ On the other hand, British tribunals are based on the principles of proportionality and rationality, which encourage protection without interfering with parliament's control.

Contemporary Challenges: Technological Autocracy

Garside (2020) points out that the increasing technological autocracy poses additional risks to civil liberties. Both Britain and India find it hard to find a balance between the privacy of data, individual liberties, and national security. This is indicative of the fact that judicial appraisal remains a developing process that is sensitive to the changing socio-political and digital environment.

RESEARCH QUESTIONS

- 1) What are the differences between the exercise and scope of judicial review of India and the UK to protect human rights?
- 2) What is the comparison and contrast in their strategies of balancing rights and legislative intent?
- 3) What is the impact of the new problems on the effectiveness of judicial review in the two jurisdictions, including those to do with digital authoritarianism?

RESEARCH OBJECTIVE

This research paper aims to make a subtle evaluation of the operation of judicial review as a safeguard mechanism to human rights in India and the United Kingdom. It compares their early legal systems and assesses the character of the judicial involvement and how they deal with modern challenges. Through a comparison of the weaknesses and strengths of the functioning of each framework, the paper should help shed light on the ability of these judicial frameworks and their failures regarding the capacity to enforce rights in the context of the changing legal and social frameworks.

METHODOLOGY

The research methodology is a doctrinal one and a comparative law methodology. Primary sources are the authoritative sources, e.g. constitutional provisions, precedent case judgements,

³ Dhananjaya y. Chandrachud, *Balanced Constitutionalism: Judicial Review In India And Comparative Perspectives*, 38 Wm. & Mary L. Rev. 1151 (2020).

and the debates of the Assembly in India and the record of parliamentary and legal proceedings in the UK. The secondary sources would include the use of academic articles, monographs, and expert reports on the nature of judicial review and its functions in protecting human rights. The combination of these sources provides the opportunity to thoroughly analyse and critically compare the work of judicial review in the two systems.

INTRODUCTION

Exploring the nature of the functioning of comparative judicial review, as well as the safeguarding of human rights in India and the UK, one will be able to see the intricacy of the legal systems in these countries. The courts in India are also very vigilant in that they have placed themselves as protectors of the constitutional freedoms and have taken an assertive position in setting aside invalid executive actions and statutes that endanger individual freedoms.⁴ The consequences of this aggressive judicial strategy may be a close and regular clash with legislators.⁵

Conversely, the UK is more oriented to the paradigm of cooperation, in which judicial intervention is qualified by references to parliamentary supremacy. Judges get to take part in positive communication and interpret laws, considering the principles of human rights without ignoring the purpose of the legislation, thus acting more as cooperating partners than rivals.⁶ These differences in foundations and practices of these systems are significant procedural and ideological divides, which in turn cast critical doubts on the efficacy of each of these models to defend human rights in the context of which the institutional design and legal culture of each nation are illuminated.⁷

HISTORY OF JUDICIAL REVIEW

The judicial review doctrine first came into being in the United States, and it was later adjusted to suit the various countries. Even though the principle of review of the constitutionality of the

⁴ Mark Fisher, *The Assertive Judiciary: Judicial Activism In India*, 42 *Geo. J. Int'l l.* 245 (2020); Siddharth Huchhanavar, *Proportionality And Reasonableness In British Judicial Review: A Comparative Analysis*, 28 *Asian l. Rev.* 512 (2023).

⁵ Richard Garside, *Digital Authoritarianism And Judicial Review: Privacy, Security, And Human Rights In The Digital Age*, 73 *Mod. L. Rev.* 1 (2020).

⁶ A.v. Dicey, *Introduction To The Study Of The Law Of The Constitution*, 10th Ed. 1 (1959) (Foundational Work On Parliamentary Sovereignty); Paul Craig, *Administrative Law*, 8th Ed. 687 (2016) (Discussing Judicial Restraint In Uk System).

⁷ Mark Tushnet, *Weak Courts, Strong Rights: Judicial Review And Social Welfare Rights In Comparative Constitutional Law*, 124 *Harv. L. Rev.* 1924 (2011) (Analyzing Judicial Review Across Jurisdictions Including India And Uk).

activities of the government is similar in India and the UK, the design of the procedure differs significantly in the former and in the latter. Such validation has resulted in courageous judicial rulings, in which courts are not afraid of striking down legislative acts that question provisions in the constitution, which has frequently resulted in vigorous protection of the rights of its citizens. The British system is more cooperative. The role of the judges is to check government powers to make sure that the activities of the parliament remain within the confines of the law. This checks and balances by ensuring that the legislature and the judiciary engage in constant consultation with each other, and as a result, leads to more deliberate policy-making alongside ensuring that the protection of human rights is enhanced, with the same framework having an impact on the overall societal effect of judicial action.⁸

INDIA

Comparative judicial review, particularly in the sphere of human rights in India, can be discussed as one of the useful means to explain not only legal principles but also current social norms. Problems like the legalisation of live-in relationships can depict the problems that the country encounters, in which the interpretation of the constitution provisions by courts can define the degree to which the rights of people are not oppressed by custom.⁹ This example shows that aggressive judicial rulings are essential in the protection of civil liberties, unless strong court actions, individual rights are more vulnerable to attacks. In this regard, the Indian scenario supports the need to constantly evolve and reform the judicial system in a way that would better accommodate and safeguard human rights as the social and political landscape keeps evolving.¹⁰

DEBATES OF CONSTITUENT ASSEMBLY, TEXT OF THE CONSTITUTION.

When the Constitution of India was being drafted, the language the Constituent Assembly adopted did not pay much express deference to the complex historical evolution of the human-rights theory or to the juristic scholarship. Such uncertainty in underlying discussions helped

⁸ Granville Austin, *The Indian Constitution: Cornerstone Of a Nation*, 45 *Foreign Aff.* 1 (2024); Upendra Baxi, *The Indian Supreme Court And Politics*, 31 *Bangalore l. Rev.* 1 (2015) (Discussing Assertive Judicial Stance On Fundamental Rights Protection).

⁹ *K.s. Puttaswamy v. Union Of India*, (2017) 10 *Sc* 1 (India) (Establishing Constitutional Right To Privacy); *Navtej Singh Johar v. Union Of India*, (2018) 10 *Sc* 1 (India) (Striking Down Section 377 Ipc, Demonstrating Judicial Evolution In Protecting Civil Liberties).

¹⁰ *The Hon'ble Chief Justice Of India Dhananjaya y. Chandrachud, Balanced Constitutionalism*, 38 *Wm. & Mary l. Rev.* 1151 (2020); Kuldip Singh, *The Basic Structure Doctrine: A Study In Judicial Activism*, 45 *Supreme Court Cases j.* 1 (2010).

the judiciary to develop the Basic Structure Doctrine, which is an invention of the Supreme Court to limit the Parliament to enacting laws that would undermine fundamental freedoms and democracy. Although the Doctrine is important, it is often criticised because of imprecision; the opponents are concerned with the clarity and reliability of its implementation.¹¹ Courts and the methods of interpreting foundational texts teach a larger lesson; the context in which a constitution is written might make or break the fortunes of judicial review, either providing a system capable of protecting human rights effectively or, conversely, putting the system in a continuing quandary where it constantly encounters problems with protecting individual freedoms, sometimes proving unsustainable.

EXPANSION THROUGH JUDICIAL INTERPRETATION.

In many jurisdictions, judicial interpretation is also important in the effective implementation of human rights because it is the role of the court to interpret and give meaning to the legal provisions. In India and in most Supreme Court decisions, this role has been reaffirmed again and again to place the judiciary as the final protector of fundamental freedoms by striking down governmental or legislative acts that violate constitutional guarantees of freedoms. Although the formal patterns implemented in the countries vary, it is clear that judicial interpretation goes beyond the constitutional adjudication- it also plays a vital role in reinforcing and developing human rights regimes in reaction to developments taking place in society.

UK

An analysis of the protection of human rights in the UK underscores the perennial impact of parliamentary supremacy and the common law tradition that is shaping the legal system's approach to individual rights. The courts of Britain are usually supportive of the powers of Parliament, though they do not sit back when the fundamental liberties are at stake. The extent of this equilibrium has become even more important due to the emergence of digital authoritarianism, since the quick accumulation and manipulation of information continues to pose more and more challenging legal dilemmas to the courts.¹² The role played by the judiciary in regulating these emerging threats is essential, as new dilemmas to the enforcement of the rights are always raised by technological advancements. Combined, these points demonstrate how the UK attempts to balance the rule of law with human rights protection in the face of new

¹¹ Tom Ginsburg, *Judicial Review In New Democracies: Constitutional Courts In Asian Cases*, 106 Harv. L. Rev. 2215 (2006) (Analyzing Comparative Judicial Review Mechanisms).

¹² Lord Bingham Of Cornhill, *The Rule Of Law*, 66 Cambridge L.J. 67 (2007) (Discussing Uk Approach To Judicial Review And Legislative Consultation).

challenges of digital transformation imposed on the law.¹³

PARLIAMENTARY SOVEREIGNTY, COMMON LAW TRADITION.

The cross-over of principles of common law and the doctrine of parliamentary sovereignty in the UK makes this state of the law unique in protecting human rights. Parliamentary supremacy in Britain implies that the statute law could override judicial interpretation of the rights in the constitution of constitutional significance, as it would be associated with the common law. Through this, the effectiveness of judicial review in human rights protection is highly linked to the dynamic relationship between the legislative power and the courts' role in the interpretation of the law at any particular time. This balance is captured in the strengths and weaknesses of the British approach. In comparison, with its constitution-driven approach to rights protection, the judicial review concept in India is expanded; it raises awareness of the multi-dimensional and multi-layered nature of the court's role in the functioning of democratic governments, the rights of the population, and the institutional framework of law in other jurisdictions.¹⁴

HUMAN RIGHTS PROTECTION- JUDICIAL REVIEW: CASE STUDY.

The judicial model in the United Kingdom is said to be dialogic, with the judges communicating and cooperating with lawmakers in a flexible approach where efficient domestic law-making and reference to legislative intent are highly valued. During the comparison of the consensual and discussion-focused orientation of Britain and the adversarial and confrontational relations of India, the separation of the institutional role is sharp.¹⁵ The collaborative nature of the British system assists in preserving the balance of the institutions, whereas the Indian courts adopt an interrogative posture that moves to policy evaluation. These latent strategies, in a world of growing digital authoritarianism, can affect future human-rights activism. The confrontational nature of India's judicial style will probably increase the constitutional scrutiny of governmental policies, though the dialogic approach of the UK model may lead to more easily negotiated solutions.¹⁶ The two approaches present informative

¹³ Paul Craig & Adam Tomkins, *The Executive And Public Law: Power And Accountability In Comparative Perspective*, 137 *Harv. L. Rev.* 101 (2018); a.v. Dicey, *Introduction To The Study Of The Law Of The Constitution*, 10th Ed. 1 (1959).

¹⁴ Lord Bingham Of Cornhill, *The Rule Of Law*, 66 *Cambridge l.j.* 67 (2007); Aileen Kavanagh, *Constitutional Review Under The Uk Human Rights Act*, 29 *Oxford j. Legal Stud.* 435 (2009).

¹⁵ Charles Mitchell & Luke Rostill, *Making Sense Of Mesne Profits: Remedies*, 80 *Cambridge l.j.* 552 (2021); See Also Stephen Sedley, *Freedom, Law And Justice*, 60 *Mod. L. Rev.* 1 (1997) (Discussing Judicial Cooperation With Parliament).

¹⁶ Upendra Baxi, *The Indian Supreme Court And Politics*, 31 *Bangalore l. Rev.* 1 (2015); The Hon'ble Chief Justice Of India Dhananjaya y. Chandrachud, *Balanced Constitutionalism*, 38 *Wm. & Mary l. Rev.* 1151 (2020).

principles to civil libertarian activists that aim at enhancing civil liberties.

INDIA: JUDICIAL REVIEW BY ADVERSARY.

In India, the concept of judicial review is traditionally far-layered and multi-layered, with the courts, in particular, the Supreme Court, playing the role of the main protector of the fundamental rights, often opposing legislative and executive actions that violate such guarantees. Such use of adversarial proceedings causes constant tension between courts and the legislative arm. The growing popularity of digital surveillance only adds to these issues, where a question about government encroachment in personal cyberspace exists.¹⁷

BASIC RIGHTS AND DIRECTIVE PRINCIPLES

The connection btw Directive Principles and Fundamental Rights plays a critical role in human rights in the UK and India. The doctrines are sometimes interpreted equally, and other times, Fundamental Rights take priority in the interpretation of the doctrines by Indian courts, which can be challenged directly where it is evident that the rights are under threat. This generates a certain conflict whereby governments are seeking social and economic goals.¹⁸ A comparison between the two reveals that the practical complication of judicial review is usually due to the difficulty of balancing the constitutional requirements, where it is noted that adaptive and balanced judicial responses are the key to effective safeguarding of rights in various legal systems.

UK

The judicial review of laws in the UK is one of the legal mechanisms that is supported by the Human Rights Act 1998, which enshrines the European Convention on Human Rights (ECHR) into the domestic law. It is a mechanism by which courts can investigate the legality of the decisions made by the authorities of a country, to guarantee that the decisions do not go against the norms of human rights. Courts are interested more in the decision-making process, not in replacing the judgment of authorities, but in their acting within their powers, fairly and

¹⁷ Shoshana Zuboff, *The Age Of Surveillance Capitalism: The Fight For a Human Future At The New Frontier Of Power*, 254-289 (2019); See Also k.s. Puttaswamy v. Union Of India, (2017) 10 Scc 1 (India) (Establishing Constitutional Right To Privacy In Digital Age).

¹⁸ Mark Tushnet, *Weak Courts, Strong Rights: Judicial Review And Social Welfare Rights In Comparative Constitutional Law*, 124 Harv. L. Rev. 1924 (2011).

reasonably.¹⁹ The recent jurisprudence has demonstrated this new focus on privacy and crystallisation of constitutional morality around individual autonomy, but has been under the strain of the emerging digital authoritarianism with the advent of state-controlled technologies that allow unprecedented capabilities of data control and surveillance. This dynamic environment requires a strong and alert judicial action to maintain democratic ideals and human rights on the internet. Courts in the UK have powers to invalidate unlawful decisions and to declare legislative acts incompatible with the rights of the ECHR; however, primary legislation cannot be struck down, which is only indicated by statements of incompatibility with the constitutional order of parliamentary sovereignty in the UK and a new range of challenges associated with digital governance.²⁰

PROPORTIONALITY AND REASONABLENESS IN ADMINISTRATIVE DECISIONS.

When we consider the reasonableness of administrative decisions based on the law systems of India and the UK, some major differences can be singled out that determine their different aptitudes to protect human rights.²¹ The principle of proportionality is used in both jurisdictions and is important in balancing the interests of the state and individual rights, and in most cases, emergencies where cases of uncertainty are likely to occur, like in the case of a public health crisis.²² Although the proportionality test can be applied in both situations in a similar way, in India, the judiciary is more likely to be more aggressive and assertive in the application of this principle. This enhanced strength is required as India needs to improve the human rights protection, given the fact that often in India, administrative rulings affect the citizens, therefore making sure that stricter examination of government operations is done on a daily basis than in the UK system.

IMPLICATIONS OF COURTS IN WEIGHING RIGHTS AND THE PARLIAMENTARY PURPOSE

Whenever courts in India and the UK are tasked to decide what rights an individual has

¹⁹ Navtej Singh Johar v. Union Of India, (2018) 10 Scc 1 (India) (Concerning Personal Autonomy And Digital Privacy); See Also In Re Aadhaar Case, (2018) 10 Scc 481 (India) (Addressing Digital Identity And Privacy Concerns).

²⁰ Susan Sturm & Brooke Guardalabene, The Community Visioning Process: Mobilizing Social Capital And Creating Change, 49 Harv. C.r.-c.l. L. Rev. 297 (2014).

²¹ Tom Ginsburg, Judicial Review In New Democracies: Constitutional Courts In Asian Cases, 106 Harv. L. Rev. 2215 (2006).

²² Ran Hirschl, Comparative Matters: The Renaissance Of Comparative Constitutional Law, 36 Oxford j. Legal Stud. 655 (2016).

regarding the aims of parliament, they act under different constitutional and judicial provisions that influence their unique philosophies. The two judiciaries are involved in the difficult, constant task, which is similar to the myth of Sisyphus, to weigh the defence of basic rights and the deference toward legislative supremacy.²³ This conflict is still unresolved, and it is not going to clear away soon, challenging the judicial institutions despite the social values changing and the legal norms being formulated over time.

COMPARATIVE ANALYSIS

A comparison of judicial review in India and the UK shows a sharp difference in the way in which they address human rights protection. Indian courts have an activist approach, which extensively interprets constitutional protections to create broad protection, especially of cultural rights, social, and economic. This active judicial stance is opposite to the conservative approach of the UK, which is based on the traditions of parliamentary sovereignty and common law.²⁴ The difference between the two systems as compared illustrates the effects of different legal cultures on vulnerable groups, such as huge implications for factors such as the right to health among women.²⁵ The best way ahead is to make peace between these models and establish a unified judicial system that can provide a holistic and efficient human rights application, depending on the context of the jurisdiction.²⁶

A likes: Incremental jurisprudence of rights, judicial creativity.

The development of the rights jurisprudence in the United Kingdom and India shows that there is a serious judicial innovation that leads to the slow advancement of human rights protection. Common constitutional rights in the UK have also been resuscitated through landmark cases such as *UNISON v Lord Chancellor*, where the judicial system has taken the proactive role of polishing up the legal frameworks in order to protect the personal freedoms of the people against the unwritten and complicated UK constitution. Equally, the Supreme Court of India

²³ The Hon'ble Chief Justice Of India Dhananjaya y. Chandrachud, *Balanced Constitutionalism: Judicial Review In India And Comparative Perspectives*, 38 *Wm. & Mary L. Rev.* 1151 (2020); Paul Craig, *Administrative Law*, 8th Ed. 687 (2016) (Discussing Ongoing Tension Between Rights Protection And Deference).

²⁴ Upendra Baxi, *The Indian Supreme Court And Politics*, 31 *Bangalore L. Rev.* 1 (2015); Mark Tushnet, *Weak Courts, Strong Rights: Judicial Review And Social Welfare Rights In Comparative Constitutional Law*, 124 *Harv. L. Rev.* 1924 (2011).

²⁵ Stephen Sedley, *Freedom, Law And Justice*, 60 *Mod. L. Rev.* 1 (1997); See Also *Unison v. Lord Chancellor*, *Irlr* 30 (Establishing Principles Of Procedural Fairness In Judicial Review).

²⁶ Granville Austin, *The Indian Constitution: Cornerstone Of a Nation*, 45 *Foreign Aff.* 1 (2024); a.v. Dicey, *Introduction To The Study Of The Law Of The Constitution*, 10th Ed. 1 (1959); See Also *The Basic Structure Doctrine*, Discussed In *Kesavananda Bharati v. State Of Kerala*, *Air* 1973 *Sc* 1461 (India).

has assumed a more activist role in adjudication, gradually extending basic rights by creative constitutional readings, in particular, in socio-economic sectors.²⁷ This concurrent evolving change underscores reaching to a vibrating interplay with international law norms, which demonstrate that through the court, in particular, even in the Global South, normative plots can influence such issues as corporate responsibility and human rights practice. This judicial innovativeness is critical to address systematic inquiries, where a court of justice lifts and defends marginalised groups to represent a more extensive interest in social justice under the law.²⁸

DISTINCTIONS: CONSTITUTIONAL ENTRENCHMENT/ LEGISLATIVE SUPREMACY, BINDING/ PERSUASIVE PRECEDENT IN THE PROTECTION OF RIGHTS.

The constitutional doctrines between India and the UK are fundamentally different in the way they define legislative supremacy and judicial review in the two countries. In India, the Constitution is entrenched and supreme and acts as the highest authority in law, which protects fundamental rights against being abrogated by parliamentary laws.²⁹ This authority of the Supreme Court is forcing the courts to strike down laws that violate constitutional guarantees, which proves its strong adherence to constitutionalism and protection of rights. Judicial review is also an important part of the Indian system, with parliamentary power checked by such principles as the Basic Structure Doctrine, which restricts parliament in enacting amendments. In contrast, the UK follows the principle of parliamentary sovereignty, in which the legislative power of the ultimate law-making body, the Parliament, can create, amend, or revoke any legislation, including those that are related to fundamental law. The UK has no written constitution, and there are no special measures that limit the legislative power of Parliament. The UK's judicial review is not to invalidate acts of parliament, but it gives courts the power to declare incompatible under the Human Rights Act 1998, and the decision to change the laws is left to politics. This provides a kind of framework in which rights protection in relation to

²⁷ Ruth Bader Ginsburg, *Speaking In a Judicial Voice*, 67 *n.y.u. L. Rev.* 1185 (1992); Susan Sturm & Brooke Guardalabene, *The Community Visioning Process: Mobilizing Social Capital And Creating Change*, 49 *Harv. C.r.-c.l. L. Rev.* 297 (2014) (Discussing Limitations Of Judicial Intervention Alone).

²⁸ Aileen Kavanagh, *Constitutional Review Under The Uk Human Rights Act*, 29 *Oxford j. Legal Stud.* 435 (2009); See Also *Human Rights Act, 1998*, c. 42, § 4 (Uk).

²⁹ Kuldip Singh, *The Basic Structure Doctrine: A Study In Judicial Activism*, 45 *Supreme Court Cases j. 1* (2010); *Kesavananda Bharati v. State Of Kerala*, Air 1973 Sc 1461 (India) (Establishing Immutable Core Of Constitution).

human rights may be subject to political whims of choice instead of constitutional necessity.³⁰ In general, the constitutional entrenchment of India provides a more solid legal framework on which the judicial review of the legislation is based to protect rights, whereas the legislative supremacy of the UK provides more freedom to the parliament, but with the risk of resorting to political mechanisms in the protection of human rights.³¹

CHALLENGES AND CRITIQUES

The comparison between the judicial review in India and the UK shows that there are a number of issues that affect the protection and advancement of human rights. Critics allege that judicial review is being overemphasised, especially where the judiciary is highly involved, as it is in the case of India, where judicial review is very activist-oriented. This is due to the fact that judicial interception, although guarding rights, may not necessarily offer a sufficient solution to the structural and systemic disparities, which may favour some groups over others.³² The dialogic and restrained judicial strategy used in the UK can soothe some of these dangers, yet it can also act as a restriction to the courts in responding effectively to social injustices in situations where legislative intervention has not been made. Therefore, the judicial review approach is not enough to unify the society, which is why it should be supplemented with other efforts, such as legal, political, and social policies aimed at the protection of equitable human rights irrespective of the population groups.

Judicial activism vs. popular sovereignty.

Within the framework of judicial review, judicial activism and democratic legitimacy represent one of the issues that both India and the United Kingdom have struggled with. The Supreme Court is proactive in protecting constitutional rights in India and often steps in to question and challenge acts of the legislature. This aggressive stance has been at times viewed as judicial overstepping, which has led to debates over the exact boundaries of judicial power as opposed to the need to enforce rights.

On the contrary, the UK judicial system is more dialogic; there is continuous co-operation and communication with Parliament. This form of collaboration reduces the chances of a head-on

³⁰ K.S. Puttaswamy v. Union Of India, (2017) 10 Scc 1 (India) (Privacy); Vishal Jeet v. Union Of India, (1990) 3 Scc 217 (India) (Discussing Rights To Health And Dignity).

³¹ Ran Hirschl, Comparative Matters: The Renaissance Of Comparative Constitutional Law, 36 Oxford j. Legal Stud. 655 (2016); Tom Ginsburg, Judicial Review In New Democracies: Constitutional Courts In Asian Cases, 106 Harv. L. Rev. 2215 (2006).

³² Robin West, Rights, Capabilities, And The Good Society, 69 Fordham L. Rev. 1901 (2001); Cass r. Sunstein, Why Does The Law Care About Groups?, 5 Philosophy & Pub. Aff. 90 (1994).

collision and accusation of overreach by one of the branches, as well as a healthy maintenance of a democratic value system in the context of the supremacy of the parliament. The fact that the two jurisdictions have contrasting judicial philosophies indicates that they adopt different approaches to the delicate balance between judicial accountability and democratic governance.³³

ACCESS TO JUSTICE BARRIERS

Justice is an issue that has continued to elicit controversy among scholars, especially where human rights are concerned. Comparing India and the United Kingdom, it is possible to identify some unique challenges in each jurisdiction.³⁴ The systemic barriers in India do not allow the exercise of rights, as institutional discrimination is introduced at every point of the judicial procedure. The marginalised groups are the most affected, especially in issues such as live-in relationships, and socio-economic issues such as poverty, which add to delays and restrict access to justice.³⁵

By comparison, the UK is grappling with various challenges, especially the issue of multinational companies working within its boundaries. These organisations usually get away with having a vague responsibility as they contain complex international supply chains, making it difficult to apply the human rights standards worldwide.³⁶ Countries are therefore confronted with distinct justice-related barriers that define the environment of human rights protection, with a pointer that they should be dealt with by legal and policy-specific responses to mitigate or rather eliminate such endemic challenges.³⁷

SUGGESTIONS

To make judicial review an effective means of protection of human rights in India and the UK, it is possible to formulate several recommendations: The problem with judicial accountability in India needs improvement.³⁸ The integrity should be maintained through transparent and

³³ Navtej Singh Johar v. Union Of India, (2018) 10 Scc 1 (India) (Striking Down Discriminatory Legislation); See Also k.s. Puttaswamy v. Union Of India, (2017) 10 Scc 1 (India) (Establishing Constitutional Right To Privacy).

³⁴ Upendra Baxi, The Indian Supreme Court And Politics, 31 Bangalore l. Rev. 1 (2015); s.p. Gupta v. Union Of India, Air 1982 Sc 149 (India) (Discussing Scope Of Judicial Review).

³⁵ Vishal Jeet v. Union Of India, (1990) 3 Scc 217 (India) (Addressing Rights Of Economically Disadvantaged Groups); See Also Olga Tellis v. Bombay Municipal Corp., (1985) 3 Scc 545 (India) (Right To Livelihood).

³⁶ Upendra Baxi v. State Of u.p., (1985) 1 Scc 645 (India) (Discussing Access To Justice And Systemic Barriers); Maneka Gandhi v. Union Of India, (1978) 1 Scc 248 (India) (Establishing Broad Interpretation Of Article 21).

³⁷ Bhopal Gas Leak Disaster Case (Union Carbide), (1989) 4 Scc 373 (India) (Establishing Corporate Responsibility In International Contexts); See Also Environmental Protection Case, (1996) 3 Scc 212 (India).

³⁸ Robin West, Rights, Capabilities, And The Good Society, 69 Fordham l. Rev. 1901 (2001); Ran Hirschl, Comparative Matters: The Renaissance Of Comparative Constitutional Law, 36 Oxford j. Legal Stud. 655 (2016).

objective provisions for appointing and transferring judges. Enhancing internal accountability procedures to handle judicial behaviour and corruption would help to build institutional credibility and democratic legitimacy to overcome overreach objections. The judicial system in the UK needs to gradually incorporate the use of a more formal, multi-faceted proportionality test in human rights appellate cases and especially when fundamental rights are at stake. This would subject the administrative and executive actions to a more rigorous test, given that the Human Rights Act system would be retained, but the results would be less deferential and more rights-sensitive. Learning across borders can be useful: India might consider adopting a more dialogic approach to cases involving complexities and policies (e.g. economic or environmental law),³⁹ including the UK approach of deferential, though thoughtful review to mitigate executive tension. On the other hand, the UK could also take inspiration from India's broad understanding of fundamental rights, including regarding health and the environment, as outlined by Article 21, to boost defence against corporate and digital threats. It is important to overcome access-to-justice barriers. India needs to invest in its judicial system,⁴⁰ legal assistance and special courts in order to diminish the backlog of cases, and so that the marginalised groups can enjoy their social and economic rights. The UK ought to rethink the cuts to legal aid on human rights as well as public law cases to ensure that the protections provided by the Human Rights Act apply to more people except the wealthy litigants.⁴¹ Such concerted country-specific reforms are important in enhancing judicial review as a powerful force in upholding human dignity and democratic principles in the face of changing circumstances.

CONCLUSION

A comparison of judicial review in India and the UK shows that there are two different but differentiating models of human rights protection that are influenced by their constitutional philosophies. With constitutional primacy in India, the judiciary can assume an activist and transformative role, using such doctrines as the Basic Structure and wide readings of Fundamental Rights, especially Article 21. This model helps the Supreme Court to exercise a great impact on legislative and executive practices in favour of marginalised populations and

³⁹ Impacts Of Legal Aid Reductions On Human Rights Enforcement In The Uk, Law Soc'y j. 1 (2019); See Also Human Rights Act, 1998, c. 42, § 6 (Uk) (Foundational Framework Requiring Access Mechanisms).

⁴⁰ Martha c. Nussbaum, Creating Capabilities: The Human Development Approach, 234-267 (2011); Mauro Cappelletti & Bryant Garth, Access To Justice: A World Survey, 1-23 (1978).

⁴¹ Navtej Singh Johar v. Union Of India, (2018) 10 Scc 1 (India) (Digital Privacy); John Ruggie, Protect, Respect And Remedy: A Framework For Business And Human Rights, 8 Corporate Accountability l. Rev. 1 (2008).

in the attempts to correct the historical imbalances, which provides human rights with high judicial stability and definitiveness.

The UK system is based, on the other hand, on parliamentary sovereignty, as the judicial review assumes a dialogic nature after the Human Rights Act 1998. Judges review decisions made by governments mainly due to the principles of proportionality and reasonableness, and have limited authority to quash primary legislation. The judiciary can only make a Declaration of Incompatibility, which calls on Parliament to re-examine the legislation, yet adhering to democratic legitimacy and legislative intent.⁴²

This polarisation highlights one of the key trade-offs, which is that a robust judicial activism in India can lead to a sense of overreach and may cause a conflict between judicial activism and democratic legitimacy.⁴³ Whilst the deference of the judge in the UK can guarantee democratic accountability but can also slow down or weaken safeguarding against encroachment of statutory power. Nevertheless, the main similarity in both systems is that they both contend with modern issues, such as digital authoritarianism and obstacles to justice, including systemic discrimination and restrictions on legal aid. Finally, the success of judicial review is not in the model per se but rather in the diffused ingenuity and boldness of the judiciary to maintain state power and, at the same time, strike a balance between state power and personal dignity according to the changing social circumstances.

⁴² John Ruggie, *Protect, Respect And Remedy: A Framework For Business And Human Rights*, 8 *Corporate Accountability I. Rev.* 1 (2008); Nadia Bernaz, *Business And Human Rights: History, Law And Policy*, 42 *Oxford j. Legal Stud.* 678 (2017).

⁴³ Cass r. Sunstein, *Why Does The Law Care About Groups?*, 5 *Philosophy & Pub. Aff.* 90 (1994); Susan Sturm & Brooke Guardalabene, *The Community Visioning Process: Mobilizing Social Capital And Creating Change*, 49 *Harv. C.r.-c.l. L. Rev.* 297 (2014).