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JUDICIAL REVIEW OF EXECUTIVE ACTION AND RESTRICTIONS ON LIBERTY: A COMPARATIVE STUDY OF THE UNITED KINGDOM, UNITED STATES AND INDIA

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ABSTRACT

Judicial review of executive action is considered as central mechanism of public law because executive power directly affects the liberty of individuals. This paper examines comparative study of the United Kingdom, the United States and India, with restrictions on liberty as the common context. The comparison shows that judicial control does not operate in the same constitutional setting in the three jurisdictions.

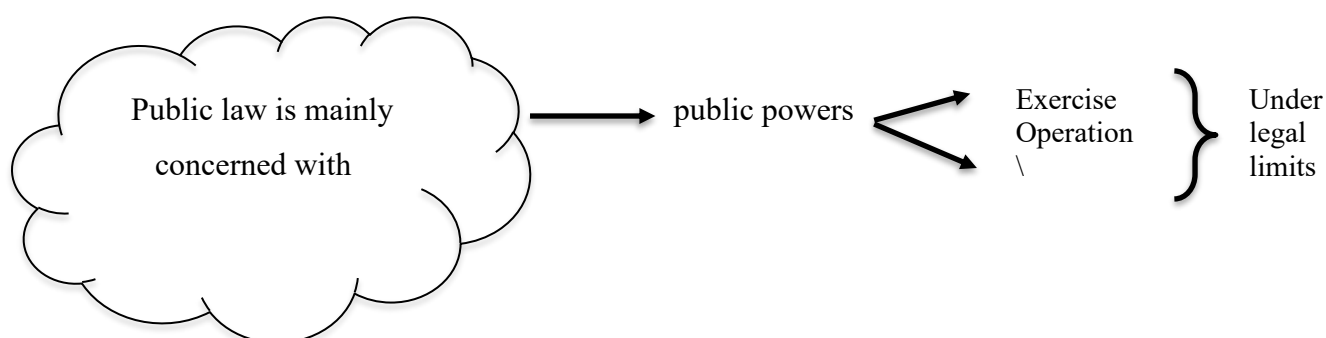
In the United Kingdom, review of executive action developed primarily through common law and operates within a constitutional order marked by parliamentary sovereignty. In the United States, judicial review is associated with a written Constitution, separation of powers and the authority of courts. Whereas, India combines the common-law tradition with a written Constitution where both fundamental rights and constitutional remedies are enforceable.

This paper analyses Council of Civil Service Unions v Minister for the Civil Service in the United Kingdom, Youngstown Sheet & Tube Co v Sawyer in the United States and Maneka Gandhi v Union of India in India. The comparison indicates that restrictions on liberty bring questions of legality and procedural fairness. India's position reflects its common-law inheritance, but its rights-based constitutional structure substantially shapes the power and form of judicial control.

KEYWORDS

Judicial Review; Executive Action; Restrictions on Liberty; Rule of Law; Parliamentary Sovereignty; Separation of Powers; Fundamental Rights.

1. INTRODUCTION: RESTRICTIONS ON LIBERTY AS A PUBLIC LAW ISSUE



Restrictions on liberty is one among the crucial public-law issue. Decisions of the executive concerning surveillance, movement, national security, detention, administrative restrictions or other measures affecting personal freedom are not merely matters of administration but they can also alter the legal position and practical freedom of individuals. The question is consequently whether the authority has acted within the power granted to it, followed the required procedure and respected the legal principles protecting liberty.¹

The problem is significant as the executive action is often taken through discretionary powers. A modern administration requires discretion to respond to changing circumstances, but discretion does not mean unrestricted power. The judicial review plays a supervisory role over the executive actions

The selected issue is a matter of public law because it concerns -

- a) *Relationship between the state and the individual*
- b) *Allocation of institutional power*
- c) *And legal accountability of executive authorities.*

The United Kingdom operates without a single written constitutional document and is strongly associated with parliamentary sovereignty. The United States operates under a written Constitution in which constitutional supremacy and a more rigid separation of powers are central. Whereas, India adopts a written Constitution with fundamental rights and constitutional remedies while retaining significant common-law and parliamentary features.³

RESEARCH QUESTION:

How do the constitutional structures and legal traditions of the UK, USA and India shape judicial review of executive action when executive

measures restrict individual liberty, and what position does India hold in judicial review approach?

2. COMPARATIVE METHOD AND LEGAL BASIS OF JUDICIAL REVIEW

A comparative approach does not assume that similar institutions perform identical functions. Comparative public law studies differences and similarities between legal systems in order to understand how constitutional structures influence legal problems.⁴

*In the present study the comparison is
'Functional'*

*The common problem is executive action affecting
'Liberty'*

*While the institutional question is how courts control
'These actions'*

The comparison thus reflects legal basis, constitutional structure, grounds of review, judicial role and the limits of intervention.

2.1 UNITED KINGDOM

In United Kingdom [UK] the constitutional basis of judicial review is closely observed in common-law tradition and parliamentary sovereignty. UK have no single written Constitution or a constitutional framework consisting of statutes, common-law principles and conventions.⁵ Parliamentary sovereignty means that primary legislation enacted by Parliament are not ordinarily invalidated by court. However, Judicial review permits the courts to scrutinize executive action including secondary legislation to ensure that authorities acted within the powers conferred upon them.⁶

The above similarity is central to restrictions on liberty. Where a minister or public authority exercises power under an Act of Parliament, the court may examine whether the authority has remained within the statutory framework. *The doctrine of ultra vires is therefore important: an executive decision made beyond the legal authority granted by Parliament is unlawful.* Proportionality has also developed as an important basis of review as the administrative measures interfere with individual rights. The Human Rights Act 1998 further supported the human rights factor of review by requiring domestic courts to protect Convention rights whereas the parliamentary model continued to limit the courts ability to invalidate primary legislation.

2.2 UNITED STATES OF AMERICA

The United States of America [USA] has a different constitutional design where judicial review developed significantly through *Marbury v Madison (1803)* in which the Supreme Court established its authority to determine the constitutionality of governmental action and treated the Constitution as the supreme law.⁹ The judicial review doctrine of USA is merely understood from the constitutional structure, including the written Constitution, separation of powers and the Supremacy Clause in Article VI.¹⁰

USA's approach places executive action within a clear constitutional distribution of powers where the executive is a distinct branch, and judicial review can be used to examine whether presidential action falls within statutory authority. *Youngstown Sheet & Tube Co v Sawyer* was the case where President Truman ordered the seizure of steel plants during a national emergency. Upon which the Supreme Court held that executive action unconstitutional because the Constitution did not confer legislative law-making power upon the President.¹¹ The case determines that a declared emergency does not by itself create an unlimited executive power.

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graph LR; A["Judicial review operates as part of the system of"] --> B["Checks"]; A --> C["Balances"]
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Although the courts also recognize limits, including restraint in political questions and the requirement that a constitutional violation be identified and reasoned judicially.¹²

2.3 INDIA

India combines written constitutional supremacy with a parliamentary form of government and a judiciary empowered to enforce fundamental rights. The term 'judicial review' is clearly stated in written constitution but the doctrine is established through several provisions particularly *Articles 13, 32, 131–136, 143, 226, 227, 245 and 246*.¹³

Article 13 provides an important basis by rendering laws inconsistent with fundamental rights void to the extent of inconsistency, while *Articles 32 and 226* provide constitutional remedies through the Supreme Court and High Courts respectively.¹⁴

Judicial review of executive action in India operates through *legality, jurisdiction, procedural fairness, reasonableness and the protection of fundamental rights*. The position of *Article 21* is particularly significant for restrictions on liberty. The case of *Maneka Gandhi v Union of India* as a decision that expanded the understanding of personal liberty and connected it with procedural fairness in administrative action.¹⁶ Thus, executive power remains subject to

constitutional standards even when the action is administrative rather than legislative.

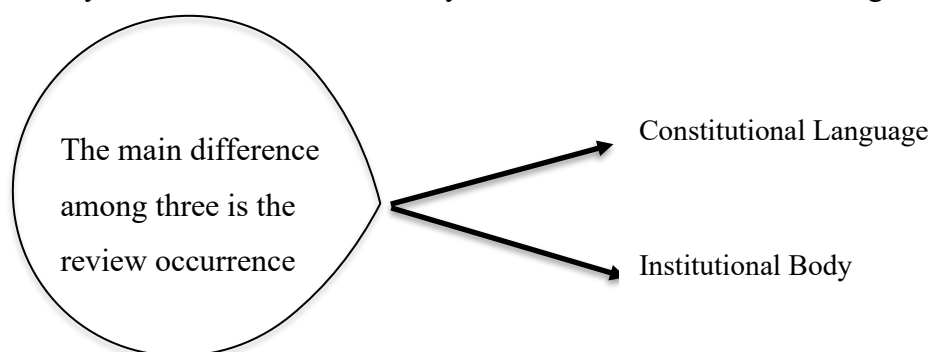
3. CONSTITUTIONAL DESIGN, SEPARATION OF POWERS AND JUDICIAL CONTROL

The differences among the three jurisdictions become clearer when constitutional design is placed at the centre of the comparison. In the UK, parliamentary sovereignty establishes Parliament as the supreme law-making authority. Courts therefore review executive action principally through common-law legality and statutory limits rather than by treating the judiciary as a general authority to invalidate Acts of Parliament. The executive, however, cannot rely on its political status to escape legal control. Ministers and public bodies exercising delegated powers remain subject to judicial review.¹⁹

The USA has the constitutional supremacy where the written Constitution defines and limits governmental powers, and judicial review forms part of the institutional system of checks and balances. The executive and legislature are separately constituted, which makes questions of institutional authority particularly visible when presidential action is challenged. Youngstown case illustrates this feature where the President's action was examined not simply for procedural fairness but for whether the executive possessed the constitutional or statutory authority to take the measure.²⁰

India occupies a middle position in institutional design. It has constitutional supremacy and enforceable fundamental rights like the USA, but its parliamentary executive is closely linked to the legislature and its separation of powers is not rigid. The judiciary however possesses extensive powers under *Articles 32 and 226* and has developed judicial review as an important constitutional principle.²¹ The Indian model therefore reflects both structural review of institutional power and rights-based review of executive action.

Restrictions on liberty reveal the practical importance of these structural differences. In all three systems, executive action may be reviewed when it exceeds legal authority.



In the UK legality is strongly connected with statutory authority and common-law principles, supplemented by the Human Rights Act. In USA constitutional limitations and separation of powers provide the principal framework. Whereas in India executive restrictions may be tested against the Constitution, statutory authority and fundamental rights, particularly Articles 14, 19 and 21 where applicable.²²

4. LEADING DECISIONS

4.1 UNITED KINGDOM:

COUNCIL OF CIVIL SERVICE UNIONS

V

MINISTER FOR THE CIVIL SERVICE

Facts: The Council of Civil Service Unions [CCSU] case concerned a decision by the government affecting the right of civil servants to participate in trade union activities at the government communications headquarters. The executive relied on national security considerations. The case therefore brought an important executive decision before the courts while also raising the question of how far judicial review could operate where national security was invoked.²³

Legal issue: The central issue was whether the exercise of executive power was subject to judicial review and on what grounds. The case required the court to consider the relationship between executive discretion, national security and judicial supervision.²⁴

Applicable principle and decision: Lord Diplock's formulation classified the grounds of review under three heads: *Illegality, irrationality and procedural impropriety*. The case is therefore important not because the court simply substituted its assessment for that of the executive, but because it clarified the legal framework within which administrative decisions could be controlled.²⁵ The national security dimension also demonstrates that the subject matter of executive power may affect the intensity and practical scope of review, without making executive action automatically immune from legal scrutiny.

Significance: For the present study, CCSU shows the characteristic British approach. Judicial review controls the legality of executive action while recognising institutional limits and the special position of matters such as national security. The decision illustrates how common-law review can protect legal accountability without displacing parliamentary sovereignty. It is therefore particularly relevant where restrictions on liberty are justified through executive claims of public security.

4.2 UNITED STATES:

YOUNGSTOWN SHEET & TUBE CO

V

SAWYER

Facts: During a period of national emergency, President Truman ordered the seizure of steel plants in order to prevent disruption. The executive measure was challenged because the President had acted without a congressional law authorising the seizure.²⁶

Legal issue: The central question was whether the President possessed constitutional authority to take control of private steel production in the circumstances. The case directly raised the boundary between executive administration and legislative power.

Applicable principle and decision: The Supreme Court held the presidential action unconstitutional. The materials emphasise Justice Black's reasoning that the Constitution did not give the President or military supervision a law-making power. The Court therefore treated the executive order as an impermissible exercise of legislative authority.²⁷

Significance: Youngstown case is important for the restrictions-on-liberty context because it demonstrates that the executive cannot enlarge its legal authority merely by invoking an exceptional situation. Although the case concerned property and executive seizure rather than detention or movement restrictions, its public-law significance lies in the judicial control of executive power during a claimed national emergency. It also reflects the American conception of separation of powers, in which the judiciary examines whether presidential action falls within the constitutional distribution of powers.

4.3 INDIA:

MANEKA GANDHI

V

UNION OF INDIA

Facts and issue: The case of Maneka Gandhi v Union of India was a major decision concerning personal liberty and administrative action. The case involved the passport of Maneka Gandhi and the effect of governmental action on her ability to travel. The Supreme Court examined the relationship between executive action, procedural fairness and the constitutional protection of personal liberty.²⁸

Applicable principle: The decision is significant because it expanded the understanding of

personal liberty under Article 21 and emphasised procedural fairness in administrative action. The case recognised the importance of a person's opportunity to be heard before passport confiscation and connected administrative procedure with the protection of individual freedom.²⁹ The decision thus moved judicial review beyond a narrow inquiry into formal authority and toward a constitutional examination of fairness of State action affecting liberty. Significance: Maneka Gandhi is especially relevant to the present research question because the executive measure directly affected individual movement and personal freedom. It illustrates the Indian Court's rights-based approach, in which executive action is tested not merely against statutory power but also against constitutional guarantees. It therefore demonstrates the distinctive interaction between judicial review and fundamental rights in India.

5. COMPARATIVE ANALYSIS OF THE THREE DECISIONS

The three decisions show a common concern with the legality of executive power but different constitutional routes to judicial control. *CCSU presents a common-law model in which executive action is reviewable through established grounds of judicial review. Youngstown presents a written constitutional model in which the President's authority is measured against the constitutional allocation of powers. Maneka Gandhi presents a rights-oriented constitutional model in which administrative action affecting personal liberty is examined against fundamental rights and requirements of fair procedure.*³⁰

The first major difference is the source of constitutional limitation. In UK the executive's legal authority is closely connected to *Parliament and the common law*. In USA the *Constitution itself is the supreme legal standard*. In India the *Constitution supplies the controlling standard while also creating direct remedial routes through Articles 32 and 226*. Thus while all three systems recognize judicial control of executive action, the constitutional basis and institutional consequences of that control differs.³¹

The second difference concerns the relationship between judicial review and individual liberty. CCSU demonstrates that *even a powerful governmental justification such as national security does not eliminate the legal framework of judicial review*, although it may affect the court's approach. Youngstown demonstrates *institutional restraint through separation of powers*: the court prevents executive action from becoming an exercise of legislative power. Maneka Gandhi goes further into the *rights dimension by linking administrative procedure with personal liberty*. The Indian approach therefore gives a particularly direct constitutional role to the protection of the individual against executive restrictions.³²

However, yet three of them have an important similarity. *None of the three decisions suggests that judicial review means that courts should administer government in place of the executive.* The central concern is whether public power has been lawfully exercised. The judicial review is a system of checks and balances and as a mechanism for ensuring legality, fairness, reasonableness and accountability.³³ Judicial restraint therefore remains relevant even where rights are affected: courts control legal boundaries, while policy choices within lawful boundaries ordinarily remain for the political branches.

6. CRITICAL ASSESSMENT OF INDIA'S POSITION

India's position cannot be explained solely by its common-law heritage. The common-law tradition certainly influenced Indian administrative law and the development of grounds such as illegality, irrationality and procedural fairness. Under the judicial review of executive action major development originated from Britain and identifies the CCSU cases classification as influential.³⁴ Indian courts also use concepts such as ultra vires, natural justice and reasonableness that have strong common-law connections.

However, the Indian Constitution fundamentally reshapes that inheritance. Unlike the United Kingdom, India has a written Constitution that functions as the supreme legal framework and contains enforceable fundamental rights. Articles 13, 32 and 226 provide constitutional mechanisms for controlling governmental action, while Article 21 makes personal liberty a direct constitutional concern.³⁵ The judiciary is therefore not merely enforcing the limits of an ordinary statute against an administrative authority; it can examine executive action against constitutional standards.

The Indian model is also hybrid in institutional character. The parliamentary executive resembles the British model, and the administrative law tradition is substantially common-law in character. At the same time, constitutional supremacy and a written catalogue of rights create a stronger judicially enforceable framework. The separation of powers is not rigid in the American sense, because the executive is drawn from and politically accountable to the legislature. Yet the judiciary has an independent constitutional role in ensuring that governmental organs remain within their respective spheres.³⁶

Rights-based jurisprudence further distinguishes India. Maneka Gandhi illustrates how a restriction affecting personal liberty can become a constitutional question concerning the quality of the procedure adopted by the State. The uploaded sources also identify proportionality as an important basis of judicial review and explain that administrative measures should not be more drastic than necessary for the purpose for which the power was

conferred.³⁷ In a liberty context, this makes judicial review capable of asking not only whether an authority possessed power but whether the manner in which that power was exercised unjustifiably burdened the individual.

At the same time, India's wide judicial review jurisdiction raises a question of judicial restraint. The very purpose of separation of powers requires courts to respect the institutional role of the executive in matters of policy and administration. The public-law states that the judiciary should not step into the shoes of the executive or legislature merely because it may disagree with their choices.³⁹ The proper balance therefore lies in meaningful scrutiny of legality, constitutional rights, procedure and proportionality, combined with restraint regarding policy merits where the executive has acted within lawful limits.

7. CONCLUSION

Restrictions on liberty provide a clear lens through which the three systems of judicial review can be compared. The United Kingdom, United States and India all recognise that executive power must operate within legal boundaries, but those boundaries are shaped by different constitutional arrangements. The British system relies heavily on common-law judicial review, statutory authority and parliamentary sovereignty. The American system places executive power within a written constitutional structure characterised by constitutional supremacy and a more rigid separation of powers. India combines written constitutional supremacy, enforceable fundamental rights and constitutional remedies with a parliamentary executive and a common-law administrative tradition.⁴⁰

The three leading decisions reinforce these differences. CCSU demonstrates structured review of executive action through illegality, irrationality and procedural impropriety, while recognising the special position of matters such as national security. Youngstown demonstrates judicial control of presidential power through constitutional separation of powers and limits on executive law-making. Maneka Gandhi demonstrates the Indian development of judicial review into a direct protection of personal liberty and procedural fairness.⁴¹

In balancing executive power, individual rights and judicial restraint, each system maintains a different institutional equilibrium. The common principle is that executive authority is accountable to law. The important constitutional question is not whether courts should control government generally, but whether restrictions on liberty have been imposed through lawful authority, fair procedure and constitutionally permissible means. Judicial review is most effective when it preserves that boundary: protecting the individual from unlawful public power while respecting the institutional responsibilities of the executive and legislature.

FOOTNOTES

1. Abhishek Pandey, 'Judicial Review vis-a-vis Comparative Analysis between U.S.A and India –3 (describing judicial review of executive and administrative action and its grounds).
2. Pratibha Sahu, 'Judicial Review: A Comparative Study between India and U.K.' (Indian Journal of Law and Legal Research, Vol IV Issue VI) 2–3; Sargam Jain, 'Judicial Review: A Comparative Analysis of India, USA & UK' (International Journal of Law Management & Humanities, Vol 1 Issue 2, 2018) 10–11.
3. Tarishi Agrawal, 'Judicial Review: A Comparative Study between USA, UK and India' (International Journal of Law Management & Humanities, Vol 5 Issue 5, 2022) 890–891; Dhvani Nitin Naikwadi, 'Judicial Review in India, USA and UK: A Comparative Study' (IJLRA, Issue 7).
4. Ram Datt Bhati, 'Comparative Public Law: Analyzing Constitutional Structures and Legal Systems 2–3.
5. Shivakumar MA, 'Judicial review powers in India and the UK: A comparative analysis' (International Journal of Law, Justice and Jurisprudence, 2025) 284–285.
6. Jain (n 2) 10–11; Naikwadi (n 3), discussion of judicial review in the UK.
7. Judicial-Review-A-Comparative-Analysis-of-India-USA-UK - 11; see also Abhishek Pandey (n 1) 3.
8. Naikwadi (n 3), discussion of the Human Rights Act 1998 and review of administrative decisions; Sahu (n 2) 3.
9. Marbury v Madison, 5 US (1 Cranch) 137 (1803), as discussed in Abhishek Pandey (n 1) 5 and Akshita Narula, 'Unveiling Judicial Authority: An Exploration of Judicial Review in the USA, UK, and India 253–256.
10. Narula (n 9) 256–258; US Constitution art VI, as reproduced/discussed in the comparative material.
11. Youngstown Sheet & Tube Co v Sawyer, 343 US 579 (1952), discussed in Narula (n 9) 259–260 and Judicial-Review-A-Comparative-Analysis-of-India-USA-UK (n 7) 14–15.
12. 'Judicial Review in India, USA and UK: A Comparative Study' (IJLRA PDF), comparative section; see also Tarishi Agrawal (n 3) 903–904.
13. Constitution of India arts 13, 32, 131–136, 143, 226, 227, 245–246 and 372, as listed in Pandey (n 1) 3 and Naikwadi (n 3).
14. Sargam Jain (n 2) 5; Naikwadi (n 3), discussion of Articles 13, 32 and 226.
15. Narula (n 9) 270–272.
16. Narula (n 9) 269–272; see also Sahu (n 2) 3.
17. CPL Handbook SK Bose, section on separation of powers in India and the observations in I C Golak Nath v State of Punjab and Indira Nehru Gandhi v Raj Narain.
18. CPL Handbook SK Bose (n 17), discussion of separation of functions, judicial review and institutional boundaries.
19. CPL Handbook SK Bose (n 17), section on the UK executive and judicial review; Shivakumar (n 5) 284–285.
20. Narula (n 9) 259–260.
21. Jain (n 2) 5; Naikwadi (n 3), Indian constitutional provisions.
22. Constitution of India arts 14, 19 and 21, considered in comparative discussions of rights and judicial review; see Narula (n 9) 269–272.
23. Jain (n 2) 11; Judicial-Review-A-Comparative-Analysis-of-India-USA-UK (n 7) 11.
24. Judicial-Review-A-Comparative-Analysis-of-India-USA-UK (n 7) 11.

25. CCSU v Minister for the Civil Service [1985] AC 374, as discussed in Judicial-Review-A-Comparative-Analysis-of-India-USA-UK (n 7) 11.
26. Youngstown (n 11); Narula (n 9) 259–260.
27. Youngstown (n 11); Judicial-Review-A-Comparative-Analysis-of-India-USA-UK (n 7) 14–15.
28. Maneka Gandhi v Union of India, (1978) 1 SCC 248, as discussed in Narula (n 9) 269–272
29. Narula (n 9) 269–272.
30. discussions of CCSU, Youngstown and Maneka Gandhi
31. Jain (n 2) 5; Naikwadi (n 3); Narula (n 9) 256–272.
32. the comparative discussions in Jain (n 2), Naikwadi (n 3) and Narula (n 9).
33. Pandey (n 1) 2–3; Judicial-Review-A-Comparative-Analysis-of-India-USA-UK (n 7) 11.
34. Pandey (n 1) 3; Narula (n 9) 270–272.
35. Jain (n 2) 5; Naikwadi (n 3).
36. CPL Handbook SK Bose (n 17), discussion of separation of powers and the judiciary's institutional limits.
37. Judicial-Review-A-Comparative-Analysis-of-India-USA-UK (n 7) 11; CPL Handbook SK Bose, discussion of proportionality.
38. Narula (n 9) 256–258, 269–272.
39. CPL Handbook SK Bose (n 17), discussion of subsidiarity and the limits of judicial intervention.
40. Jain (n 2) 5; Shivakumar (n 5) 284–285; Narula (n 9) 256–272.
41. See CCSU (n 25), Youngstown (n 26) and Maneka Gandhi (n 28).

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