

Recent Trends in Judicial Review in Context of India and UK

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ABSTRACT

Judicial review in India and the United Kingdom has evolved significantly in recent years, moving beyond a narrow focus on jurisdictional error to encompass a wider engagement with rights, public finance, constitutional structure, and executive accountability. In India, the written Constitution authorizes this control through Articles 13, 32, and 226, reinforced by the basic structure doctrine. The UK traces this power to common law supervision of public authorities, strengthened by the Human Rights Act 1998 and shaped by Brexit-era legislation. Recent decisions in both jurisdictions demonstrate a willingness to address politically sensitive questions when legal rights are at stake. Indian courts have scrutinized electoral finance, remission orders, and appointments to constitutional bodies while showing restraint in economic policy matters. UK courts have asserted limits on executive power in the context of Brexit and prorogation while applying a more deferential approach in national security cases. Both systems employ proportionality and legitimate expectation tests, with the intensity of review varying based on the nature of the rights involved. The introduction of new criminal, procedural, and data protection laws in India invites further judicial scrutiny. In the UK, the shift from retained EU law to assimilated law and attempts to limit migration-related challenges will likely keep courts occupied in drawing boundaries between policy and legal questions. The comparative analysis reveals a convergence in judicial techniques but divergence in the extent of judicial authority, with Indian courts possessing the power to invalidate laws that violate fundamental constitutional commitments, while UK courts often defer to Parliament after issuing declarations of incompatibility. As both nations navigate emerging challenges in areas such as artificial intelligence, platform governance, and climate change, the role of judicial review in safeguarding democratic participation, individual rights, and the rule of law remains crucial.

KEYWORDS- Judicial review, India, United Kingdom, Constitution, Rights, Executive accountability and Proportionality.

1.1 INTRODUCTION

Judicial review in India and the United Kingdom has moved from a narrow focus on jurisdictional error to a much wider engagement with rights, public finance, constitutional structure, and executive accountability. In India the written Constitution authorises this control through “Articles 13, 32 and 226”, reinforced by the basic structure doctrine declared in “*Kesavananda Bharati v. State of Kerala*”, which prevents Parliament from damaging the core of constitutionalism. In the United Kingdom the power is traced to common law supervision

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³ (1973) 4 SCC 225.

of public authorities, later strengthened by the “Human Rights Act 1998” and today shaped by Brexit-era legislation such as the “Retained EU Law (Revocation and Reform) Act 2023” that re-labels retained law as assimilated law and removes earlier EU supremacy. In both systems the last five to seven years have seen the courts answer questions that look overtly political. The Supreme Court of India has set aside the Electoral Bonds Scheme in “*Association for Democratic Reforms v. Union of India*”⁴, for violating voters’ right to information in elections, and has revived custody of the convicts in the Bilkis Bano case in “*Bilkis Yakub Rasool v. Union of India*”⁵, to restore legality in remission. The Court has also upheld the abrogation of the special status of Jammu and Kashmir in “*In Re: Article 370 of the Constitution*”⁶, after applying structural reasoning to federalism. On the UK side the Supreme Court has stopped the offshoring of asylum seekers in “*R (on the application of AAA (Syria) and others) v. Secretary of State for the Home Department*”⁷, and Parliament has replied with the “Safety of Rwanda (Asylum and Immigration) Act 2024” to press forward with removals, making the relationship between judicial review and legislative will a live subject again. Indian public law must also now measure new codes like the “Bharatiya Nyaya Sanhita, 2023”, the “Bharatiya Nagarik Suraksha Sanhita, 2023” and the “Bharatiya Sakshya Adhiniyam, 2023” against equality and liberty guarantees because all future criminal rulemaking flows through these enactments. These Sanhitas contain remission and commutation rules in “Sections 472 to 477 of the Bharatiya Nagarik Suraksha Sanhita, 2023” that courts can test when executive grace speaks in a manner inconsistent with Articles 14 or 21. The privacy focused “Digital Personal Data Protection Act, 2023” creates consent, notice, and processing duties in “Sections 5 to 10” that must pass the proportionality test built in “*K.S. Puttaswamy v. Union of India*”⁸, when individuals complain that the State has processed data without lawful aim. Together, these developments show that judicial review is still the main method for preserving the original constitutional bargain in India and the United Kingdom, even when elected organs attempt to recalibrate that bargain through complex legislation.⁹

1.2 CONCEPTS AND DOCTRINAL BASELINE

The conceptual starting place for comparing India and the United Kingdom lies in the difference between a constitutionally entrenched right to move the Supreme Court and a historically evolved supervisory function of the High Court of Justice. India speaks of judicial review as part of the basic structure and therefore immune from ordinary amendment, so litigants anchor their challenges on supremacy clauses and on the guarantee of fundamental rights. The United Kingdom proceeds from ultra vires and fairness, but the arrival of the “Human Rights Act 1998” and the sustained influence of EU derived law before 2024 moved British courts toward a rights sensitive model that resembles Indian reasoning. Both systems today share a commitment to legality,

⁴ 2024 INSC 113.

⁵ 2024 INSC 24.

⁶ 2023 INSC 1058.

⁷ [2023] UKSC 42.

⁸ (2017) 10 SCC 1.

⁹ Association for Democratic Reforms vs Union of India, available at: <https://indiankanoon.org/doc/121499464/> (last visited on November 2, 2025).

proportionality, and rationality, but the channels differ. Indian courts can strike down a statute outright under “Article 13” or read it down through harmonious interpretation. British courts more often issue declarations of incompatibility under “Section 4 of the Human Rights Act 1998” while leaving Parliament free to correct the incompatibility. This baseline permits a meaningful comparison of recent decisions in both countries.¹⁰

1.2.1 What Is Judicial Review

Judicial review is the power of a superior court to examine the exercise of public power and to declare unlawful those acts that overstep limits placed by the Constitution or by statute. Review of administrative action concerns whether a public authority acting under a conferment of power has kept within jurisdiction, respected procedure, observed fairness, and acted for the purpose for which the power was given. Review of legislative action concerns whether the lawmaker has complied with constitutional conditions, whether the content meets equality and liberty requirements, and whether the form of law is consistent with entrenched provisions. Review is about legality rather than choice. A court in review does not decide whether a tariff, a demonetisation policy, or a migration plan is wise, economical, or optimal, since those belong to the political branches. It asks instead whether the right actor took the decision, whether the power exists, whether mandatory procedural steps were observed, whether the measure pursues a legitimate aim and whether there is a rational or proportionate relation between means and aim. This legality focus is visible in both “*Vivek Narayan Sharma v. Union of India*”¹¹, 2023 SC” where demonetisation was upheld despite disputes on hardship and in AAA where the UK Supreme Court looked at risk of refoulement rather than UK immigration priorities.¹²

1.2.2 Sources in India

The legal sources that sustain judicial review in India are multiple and layered. “Article 13” renders void any law inconsistent with Part III, so even new codes like the “Bharatiya Nyaya Sanhita, 2023” or regulatory statutes on digital data must respect equality, freedoms, and life rights. “Article 32” grants a direct route to the Supreme Court and is treated as itself a fundamental right, creating a constitutional culture in which rights and remedies are inseparable. “Article 226” gives the High Courts a wide power to issue writs not only for fundamental rights but for any other purpose. The basic structure doctrine from “*Kesavananda Bharati v. State of Kerala*”¹³, gives the judiciary power to examine even constitutional amendments that seek to cut down this supervisory role. Doctrines developed later such as proportionality, manifest arbitrariness, legitimate expectation, and procedural fairness give content to Articles 14, 19, and 21. Proportionality received concrete form in “*Modern Dental College and Research Centre v. State of Madhya Pradesh*”¹⁴, and was absorbed in later nine judge reasoning in “*K.S. Puttaswamy v. Union of India*”¹⁵, and in the arbitrariness review in “*Shayara Bano v. Union of India*”¹⁶.

¹⁰ Human Rights Act 1998, available at: <https://www.legislation.gov.uk/ukpga/1998/42/contents> (last visited on November 1, 2025).

¹¹ decided 2 January 2023.

¹² Vivek Narayan Sharma vs Union of India, available at: <https://indiankanoon.org/doc/164842744/> (last visited on October 31, 2025).

¹³ *Supra* note 1.

¹⁴ (2016) 7 SCC 353.

¹⁵ *Supra* note 6.

¹⁶ (2017) 9 SCC 1.

These sources together mean that when Parliament enacts a code of criminal procedure like the “Bharatiya Nagarik Suraksha Sanhita, 2023” or evidence rules like the “Bharatiya Sakshya Adhiniyam, 2023”, they stand open to challenge for violating due process or equality.

1.2.3 Sources in the UK

The United Kingdom carries no single entrenched text, so sources of review are found in common law, in statutes that confer review powers, and in instruments that give domestic effect to human rights norms. At the core is the supervisory jurisdiction of the High Court over public bodies, originally expressed through prerogative orders. The “Human Rights Act 1998” made Convention rights justiciable and empowered courts through “Sections 3 and 4” to interpret legislation compatibly and, when not possible, to issue declarations of incompatibility. Brexit introduced another layer. The “Retained EU Law (Revocation and Reform) Act 2023” recast EU derived norms as assimilated law, withdrew the principle of EU supremacy, and granted ministers powers to restate or replace earlier rules, which in turn invites judicial review over delegated legislation for improper purpose or disproportionality. After AAA Parliament adopted the “Safety of Rwanda (Asylum and Immigration) Act 2024” to declare Rwanda safe and to narrow routes of challenge, which shows that modern UK judicial review now grows in dialogue with statutes that both empower and restrain it.¹⁷

1.2.4 Standards and Intensity

Standards of review in both jurisdictions now range along a spectrum depending on what is at stake. The traditional UK test from “Associated Provincial Picture Houses v. Wednesbury Corporation, [1948] 1 KB 223” survives as a deferential check for illogical or outrageous decisions. Rights cases after “*R (Daly) v. Secretary of State for the Home Department*”¹⁸, and “*Bank Mellat v. HM Treasury (No. 2)*”¹⁹, apply structured proportionality with four well known questions on legitimacy, suitability, necessity, and fair balance. Indian courts began from arbitrariness and reasonableness under Article 14 and have moved towards the same structured formula, especially when privacy or equality is impaired. Both systems employ legitimate expectation to protect procedural fairness and sometimes substantive benefits. The intensity increases when core rights, constitutional status, or electoral processes are in issue, and slackens when the court confronts economic policy, complex security assessments, or polycentric budgeting. This sliding scale is visible when comparing the Indian deference to demonetisation with its exacting review of secrecy in political funding, and in the UK when comparing Begum on citizenship with AAA on the safety of Rwanda.²⁰

¹⁷ Graeme Cowie, “Safety of Rwanda (Asylum and Immigration) Bill: Progress of the Bill”, available at: <https://commonslibrary.parliament.uk/research-briefings/cbp-9841/> (last visited on October 30, 2025).

¹⁸ [2001] 2 AC 532.

¹⁹ [2013] UKSC 39.

²⁰ *R (on the Application of AAA and Others) v Secretary of State for the Home Department*, available at: <https://supremecourt.uk/cases/uksc-2023-0093> (last visited on October 29, 2025).

1.2.5 Remedies

Remedies show the institutional self awareness of courts. India offers wide relief through writs of certiorari and mandamus, through declarations, and through the extraordinary power under “Article 142” to do complete justice. Quashing of administrative action, structural directions, appointment of committees, and continuing mandamus are all familiar, especially in public interest matters. The UK offers quashing orders, prohibiting orders, mandatory orders, declarations, and damages in limited cases. The “Judicial Review and Courts Act 2022” introduced suspended and prospective quashing orders and restricted some forms of review over tribunal decisions, revealing a preference for remedies that respect parliamentary choices while still correcting legal error. In India the courts have sometimes continued supervision over compliance in areas such as environmental governance or police reforms, while in the UK declarations under “Section 4 of the Human Rights Act 1998” remain the signature way to signal incompatibility without invalidating the statute.²¹

1.3 INDIA, RECENT TRENDS AND FOCAL DOMAINS

Recent Indian judicial review shows a pattern of alternating restraint and activism, grounded in constitutional text rather than in open ended morality. The Court has approved far reaching executive action like demonetisation and the abrogation of Article 370, yet in the same period it has invalidated electoral funding rules, re-examined remission, and reworked appointments to an independent constitutional body. This pattern is best read as an attempt to safeguard democratic and rights based preconditions while leaving fiscal and security choices to the elected branches. The appearance of the new criminal, procedural, and evidence codes and the passing of the DPDP Act have widened the field for challenges under Articles 14 and 21 because these instruments touch individual liberty, surveillance, and criminal process, and the Court is already equipped with doctrinal tools created in privacy and arbitrariness cases.²²

1.3.1 Rights and Proportionality

Indian rights jurisprudence has been moving steadily from a loose reasonableness standard to a structured proportionality model, especially after the privacy ruling. Article 14 reviews now inquire into manifest arbitrariness as a stand alone ground, while Article 21 reviews look for a legitimate State aim, a rational connection, necessity in terms of less restrictive alternatives, and an overall balance. This shift is traceable to the education admissions case, the privacy judgment, and the challenge to triple talaq, which together made proportionality and arbitrariness the default metrics for rights review. The Court has begun to read statutory schemes like the DPDP Act through this lens, since “Sections 5 to 10 of the Digital Personal Data Protection Act, 2023” speak in terms of necessity, purpose limitation, consent management, and withdrawal, concepts that mirror proportionality tests under Articles 14 and 21.

²¹ Judicial Review and Courts Act 2022: Explanatory Notes, Policy Background, *available at*: <https://www.legislation.gov.uk/ukpga/2022/35/notes/division/3/index.htm> (last visited on October 28, 2025).

²² *Supra* note 7.

1.3.1.1 *Modern Dental College*

*“Modern Dental College and Research Centre v. State of Madhya Pradesh*²³, is often described as the point where Indian proportionality was fully articulated. The Court upheld State control over admissions and fees in private professional colleges after applying a four part test that asked whether the measure pursued a proper purpose, whether it was suitable for achieving that purpose, whether a less intrusive measure could have achieved the same result, and whether the measure struck a balance between the rights of educational providers and the interest of students. This was a review of legislation which, under earlier standards, might have been upheld on a much simpler rational basis inquiry. By adopting a structured model the Court signalled that even regulatory economic laws may be examined in depth when they affect equality of opportunity or professional autonomy. The case became a template for reviewing later socio economic measures and furnished language that the Court could deploy when considering Aadhaar and digital privacy.²⁴

1.3.1.2 *K S Puttaswamy*

*“K.S. Puttaswamy v. Union of India*²⁵, transformed proportionality from a sectoral doctrine into a general test for restrictions on fundamental rights. The nine judge bench recognised privacy as a fundamental right derived from Articles 14, 19, and 21 and then set out the ingredients of a valid limitation - legality in the form of a law, a legitimate State aim, rational connection, necessity, and proportionality in the strict sense. This framework later guided the majority in the Aadhaar case and it now frames review of contemporary legislation on data such as the DPDP Act, where “Section 6” speaks of free, specific, informed and unambiguous consent and “Section 7” lists legitimate uses by the State, both of which will have to satisfy the five stage test whenever a data principal challenges bulk processing or surveillance. The judgment also affirmed that privacy protects decisional autonomy, which means that criminalisation of conduct under the “Bharatiya Nyaya Sanhita, 2023” or intrusive procedural powers under the “Bharatiya Nagarik Suraksha Sanhita, 2023” can be checked for overbreadth.²⁶

1.3.1.3 *Shayara Bano*

*“Shayara Bano v. Union of India*²⁷, carried forward the message that arbitrariness is an independent ground for striking State action under Article 14. The Court invalidated the practice of instantaneous triple talaq because it was manifestly arbitrary, lacking any rational justification and producing unequal consequences for Muslim women. The reasoning did not confine itself to personal law but showed that even actions clothed with religious or cultural authority can be tested on constitutional standards of reasonableness. This arbitrariness standard now feeds into later reviews where courts confront remission orders, classifications in criminal laws, or exclusionary

²³ *Supra* note 12.

²⁴ *Modern Dental College and Research Centre and Others vs State of Madhya Pradesh and Others*, available at: https://www.manupatracademy.com/LegalPost/MANU_SC_0495_2016 (last visited on October 27, 2025).

²⁵ *Supra* note 6.

²⁶ *Regina v Secretary of State for the Home Department, Ex Parte Daly*, available at: <https://publications.parliament.uk/pa/ld200001/ldjudgmt/jd010523/daly-1.htm> (last visited on October 26, 2025).

²⁷ *Supra* note 14.

rules in welfare schemes, because any decision that is capricious, without discernible principle, or that grants preferential treatment without relevant basis can be nullified under Article 14 even without proof of direct discrimination.

1.3.2 Democracy, Transparency, Money in Politics

The decision in “*Association for Democratic Reforms v. Union of India*”²⁸, is a prominent recent example of the Court treating financial architecture around elections as justiciable. The Court held that anonymous corporate and individual donations through bearer bonds infringed the voters’ right to receive information about political parties under “Article 19(1)(a)” and that amendments to the “Companies Act, 2013”, the “Income-tax Act, 1961”, and the “Representation of the People Act, 1951” which enabled secrecy could not stand. By insisting that electoral competition must occur in conditions of openness the judgment linked judicial review to democratic self rule. It also confirmed that fiscal instruments and banking arrangements, though appearing technical, can be examined for their effect on the equality of political participation. This is important for future challenges to campaign regulation, party expenditure, and State subsidies for digital campaigning, where review will focus on whether the measure distorts the level playing field.²⁹

1.3.3 Federalism and National Security

The decision in “*In Re: Article 370 of the Constitution*”³⁰, represents a trend where the Court accepts major reconfigurations of federal relations when the Union can anchor them in constitutional text. The Court read Article 370 as a temporary arrangement that could be altered through presidential orders, and it treated the reorganisation of the former State into two Union Territories as consistent with “Article 3”. The review centred on whether the correct constitutional route was followed rather than on the political wisdom of the move. Security concerns in the region and the need for uniform application of the Constitution were treated as relevant background but did not by themselves preclude review. This signals that in Indian public law claims of national security or territorial integrity do not create unreviewable spaces, yet where the constitutional text gives the Union wide amplitude the Court is prepared to uphold action so long as process and competence are satisfied.³¹

1.3.4 Economic Policy Review

In “*Vivek Narayan Sharma v. Union of India*”³², the Supreme Court upheld the 2016 demonetisation that withdrew high value currency notes, even though it led to hardship for citizens and economic disruption. The Court read “Section 26(2) of the Reserve Bank of India Act, 1934” to permit demonetisation of all series of a denomination if there was a recommendation of the Central Board, and it accepted that the measure pursued a legitimate object of tackling fake currency and terror funding. The Court’s method was to examine whether the

²⁸ *Supra* note 2.

²⁹ *Supra* note 7.

³⁰ *Supra* note 4.

³¹ Challenge to the Abrogation of Article 370, available at: <https://www.scobserver.in/cases/challenge-to-the-abrogation-of-article-370-case-background/> (last visited on October 25, 2025).

³² *Supra* note 9.

process was lawful and whether proportionality standards were broadly met, not to reassess economic choices of the executive. This shows calibrated deference in financial and economic fields, where the judiciary checks source of power, observance of statutory preconditions, and basic fairness but stops short of substituting its judgment on economic efficacy.³³

1.3.5 Executive Clemency and Remission

*“Bilkis Yakub Rasool v. Union of India”*³⁴, marked a strong assertion of judicial review over remission and premature release. The Court held that the Gujarat government lacked competence to grant remission to the 11 convicts, and that the order suffered from non consideration of relevant factors such as the gravity of offences and the impact on the victim. The judgment quoted statutory remission provisions and stressed that the appropriate government under the Code alone could act. With the coming into force of the “Bharatiya Nagarik Suraksha Sanhita, 2023” the corresponding provisions in “Sections 472 to 477” now govern suspension, remission, commutation, and concurrent powers of the Union. Any future remission like the one quashed will have to satisfy these sections, and courts can strike orders that pick the wrong authority, ignore binding guidelines, or give advantages for extraneous reasons.³⁵

1.3.6 Independent Institutions and Appointments

*“Anoop Baranwal v. Union of India”*³⁶, restructured the appointment process for the Election Commission of India by directing that appointments be made on the advice of a committee consisting of the Prime Minister, the Leader of Opposition in the Lok Sabha, and the Chief Justice of India until Parliament enacted a law. The purpose was to insulate the Commission from executive dominance and keep elections free and fair. Parliament later enacted the 2023 law which replaced the Chief Justice with a Union minister, and on 23 March 2024 the Supreme Court entertained challenges pointing out that “Section 7(1)” of that Act diluted the earlier judgment. This sequence shows how judicial review in India can operate in an interim, structural way to secure independence of constitutional bodies while giving space to Parliament to craft a lasting framework. It also indicates that when Parliament departs from principles laid down in a Constitution Bench decision, courts are prepared to re open the issue.³⁷

1.3.7 Procedural Fairness and Structured Remedies

Indian public interest litigation has matured into a phase where the Court issues calibrated relief, appoints expert committees, and insists on status reports rather than ordering sweeping takeovers of administration. The trend appears in matters related to criminal justice reforms after the introduction of the new codes, in data protection

³³ *Supra* note 10.

³⁴ *Supra* note 3.

³⁵ *Bilkis Yakub Rasool v Union of India*, available at: https://webapi.sci.gov.in/supremecourt/2022/38741/38741_2022_12_1501_49383_Judgement_08-Jan-2024.pdf (last visited on October 24, 2025).

³⁶ (2023) 3 SCC 181.

³⁷ *Anoop Baranwal v Union of India*, available at: <https://www.scobserver.in/wp-content/uploads/2021/10/Anoop-Baranwal-94.pdf> (last visited on November 1, 2025).

transitions under the DPDP Act, and in regulatory domains like environmental clearances. The Court often quashes the impugned action but keeps the door open for the authority to redo the exercise within timelines, preserving both legality and administrative autonomy. This approach prevents overreach and retains credibility of judicial review as a tool for process correction rather than day to day governance.

1.4 UK, RECENT TRENDS AND FOCAL DOMAINS

The UK experience over the last decade confirms that even without a written constitution courts can impose meaningful limits on government. Rights cases after the Human Rights Act move squarely on proportionality lines, while constitutional cases born of Brexit and prorogation speak in terms of legality, parliamentary sovereignty, and the separation of powers. Migration and national security cases show alternating emphasis on deference and rights protection. Parliamentary responses, especially the “Judicial Review and Courts Act 2022” and the “Safety of Rwanda (Asylum and Immigration) Act 2024”, show that the UK has entered a phase of negotiated review, where courts lead and Parliament replies.³⁸

1.4.1 From Wednesbury to Proportionality

The move from Wednesbury unreasonableness to proportionality in the UK began with rights cases. In “*R (Daly) v. Secretary of State for the Home Department*”³⁹, the House of Lords explicitly favoured a proportionality review under the Convention over the older irrationality standard. Later in “*Bank Mellat v. Her Majesty’s Treasury (No. 2)*”⁴⁰, the Supreme Court applied a structured four stage proportionality test to financial sanctions imposed on an Iranian bank and quashed the order for lack of fair balance. These decisions demonstrate that intensity of review can be increased in rights sensitive fields even while maintaining deference elsewhere. The same logic now applies to data protection, protest policing, and non discrimination claims brought under the Human Rights Act.⁴¹

1.4.1.1 *Bank Mellat (No 2)*

“*Bank Mellat v. Her Majesty’s Treasury (No. 2)*”⁴², is important for two reasons. First, the Court accepted that even measures tied to foreign policy and financial sanctions are subject to full proportionality review when they affect property and reputation. Second, the Court explained the four questions clearly and insisted that the minister justify the choice of measure over less restrictive alternatives. The judgment demonstrates a style of reasoning very close to the Indian post Puttaswamy method and it influenced later UK decisions in national security settings. It shows that a general judicial stance of respect for executive assessments can coexist with rigorous testing of necessity and balance.

³⁸ *Supra* note 19.

³⁹ *Supra* note 16.

⁴⁰ *Supra* note 17.

⁴¹ *R (on the Application of Privacy International) v Investigatory Powers Tribunal and Others*, available at: <https://www.supremecourt.uk/cases/uksc-2018-0004> (last visited on October 31, 2025).

⁴² *Supra* note 17.

1.4.2 Constitutional Principles and Executive Power

Brexit litigation placed constitutional fundamentals at the centre of UK judicial review. The first Miller decision, “*R (Miller) v. Secretary of State for Exiting the European Union*”⁴³, held that the Government could not trigger Article 50 TEU without an Act of Parliament, because withdrawal from the EU would remove domestic rights. The second Miller decision, “*R (Miller) v. The Prime Minister*”⁴⁴, found the prorogation of Parliament unlawful because it had the effect of frustrating Parliament’s ability to perform its functions. These decisions did not depend on human rights or EU law but on core constitutional principles of parliamentary sovereignty and accountability. They are comparable to Indian basic structure cases in that they police the boundary between executive convenience and constitutional requirements.⁴⁵

1.4.2.1 *Miller I 2017*

“*R (Miller) v. Secretary of State for Exiting the European Union*”⁴⁶, confirmed that ministers cannot use prerogative powers where the effect is to change domestic law or deprive citizens of rights conferred by Parliament. The case cemented parliamentary sovereignty and also highlighted the court’s willingness to resolve politically sensitive questions when legal rights are at stake. After this decision, later government moves related to Brexit were couched in statutory form, inviting the usual array of public law challenges rather than creating power vacuums.

1.4.2.2 *Miller II 2019*

“*R (Miller) v. The Prime Minister*”⁴⁷, built on Miller I by holding that prorogation is justiciable when it frustrates or prevents the ability of Parliament to carry out its constitutional role without reasonable justification. The Court emphasised that no ministerial advice can be immune if its practical effect is to shut down scrutiny. This decision is a clear statement that judicial review in the UK reaches even the highest executive decisions when they collide with constitutional principles, and it set the stage for later interventions in migration and rights cases.

1.4.3 Migration, National Security, and Deference

“*Begum v. Secretary of State for the Home Department*”⁴⁸, illustrated a deferential streak in the UK approach to national security. The Court held that assessment of risk to national security lies primarily with the executive and that where Parliament has put review within a specialist tribunal framework, ordinary courts must respect that allocation. Yet the Court still stressed fairness in process. This mix of respect and scrutiny mirrors the Indian approach where national security arguments are not absolute bars but can justify narrower review, as

⁴³ [2017] UKSC 5.

⁴⁴ [2019] UKSC 41.

⁴⁵ *R (Miller) v Secretary of State for Exiting the European Union*, available at: https://en.wikipedia.org/wiki/R_%28Miller%29_v_Secretary_of_State_for_Exiting_the_European_Union (last visited on October 30, 2025).

⁴⁶ *Supra* note 41.

⁴⁷ *Supra* note 42.

⁴⁸ [2021] UKSC 7.

seen in the Article 370 judgment. It also created the backdrop for the Rwanda litigation, where national security was replaced by migration control as the claimed compelling interest.⁴⁹

1.4.4 Rwanda Policy Litigation

*“R (on the application of AAA (Syria) and others) v. Secretary of State for the Home Department”*⁵⁰, is a landmark because the Court examined a detailed evidentiary record on Rwanda’s asylum system and concluded that there was a real risk of refoulement, making removals unlawful under “Section 6 of the Human Rights Act 1998” read with “Article 3 of the ECHR”. The judgment shows that when individual life or protection from torture is in issue the UK Supreme Court is ready to apply an evidence intensive, proportionality like analysis even in a field with strong executive claims. Parliament’s response in the “Safety of Rwanda (Asylum and Immigration) Act 2024” sought to reverse that finding by legislatively declaring Rwanda safe and by narrowing challenges, which means future review will revolve around compatibility of that Act with Convention rights and with common law principles of access to justice.⁵¹

1.4.5 Ouster Clauses and Review Boundaries

*“R (Privacy International) v. Investigatory Powers Tribunal”*⁵², read down a very strongly worded ouster clause and held that decisions of the IPT could still be reviewed for errors of law. The Court refused to accept that Parliament had completely closed the door to judicial oversight without using the clearest possible language. Later, the “Judicial Review and Courts Act 2022” removed Cart judicial reviews and introduced suspended quashing, but it did not fully reverse Privacy International. This pattern mirrors the Indian stance where Articles 32 and 226 are treated as part of the basic structure and any attempt to exclude review is viewed with suspicion. The difference is that in the UK such protection is achieved by interpretation, not by a constitutional bar on legislative power.⁵³

1.4.6 Access to Justice and Institutional Design

*“R (Unison) v. Lord Chancellor”*⁵⁴, 1” struck down employment tribunal fees because they prevented access to justice and undermined the rule of law. The Court reasoned that where Parliament has created rights and an adjudicative route, executive measures that make that route practically unavailable are unlawful. This judgment has comparative relevance because it connects judicial review to the maintenance of democratic participation conditions, just as the Indian electoral bonds judgment tied review to informed voting. In both settings the courts saw themselves as guardians of the channels through which citizens hold power to account.⁵⁵

⁴⁹ What Are the Safety of Rwanda (Asylum and Immigration) Act 2024 and the UK-Rwanda Treaty?, *available at*: <https://ukandeu.ac.uk/explainers/what-are-the-safety-of-rwanda-asylum-and-immigration-act-2024-and-the-uk-rwanda-treaty/> (last visited on October 29, 2025).

⁵⁰ *Supra* note 5.

⁵¹ *Supra* note 18.

⁵² [2019] UKSC 22.

⁵³ *Supra* note 19.

⁵⁴ [2017] UKSC 51.

⁵⁵ Patrick Butchard, Joanna Dawson, et.al., "Safety of Rwanda (Asylum and Immigration) Bill: Legal Commentary", *available at*: <https://researchbriefings.files.parliament.uk/documents/CBP-9931/CBP-9931.pdf> (last visited on October 28, 2025).

1.5 COMPARATIVE ANALYSIS AND REFORM OPTIONS

A comparative reading of the foregoing material shows two systems moving in parallel directions despite different constitutional sources. India deploys review to protect the democratic project, to affirm individual dignity, and to secure the independence of constitutional authorities. The United Kingdom uses review to protect parliamentary sovereignty, to control executive privilege, and to preserve access to legal remedies. Both systems are now confronted with legislative responses that attempt to narrow or recalibrate that power. Any reform discussion must therefore pay attention to the styles of reasoning and to the remedial choices visible in the last decade.

1.5.1 Convergence

Convergence is most visible in the adoption of structured proportionality in rights cases. Indian decisions after *Modern Dental College* and *Puttaswamy* ask the same series of questions as UK decisions after *Daly* and *Bank Mellat*. Both demand legality, clear purpose, suitability, necessity, and balance. Both also allow the intensity of review to vary with context. Migration and national security attract close scrutiny when there is a real risk of torture or privacy invasion, while economic and fiscal policy is reviewed for legality and rational connection. This suggests that global public law is setting a common template and India and the UK are both contributing to it.⁵⁶

1.5.2 Divergence

Divergence arises from the presence of a written Constitution in India and its absence in the UK. India can review constitutional amendments and declare that some features like judicial review, federalism, secularism, or free and fair elections cannot be damaged. The UK cannot, because Parliament remains sovereign, which is why courts there rely on strong interpretation under “Section 3 of the Human Rights Act 1998” and on dialogue producing declarations under “Section 4”. Indian courts can also strike down provisions of the “*Bharatiya Nyaya Sanhita, 2023*”, the “*Bharatiya Nagarik Suraksha Sanhita, 2023*”, or the “*Digital Personal Data Protection Act, 2023*” outright for violating basic structure or Part III, a remedy that has no true UK equivalent.⁵⁷

1.5.3 Deference and Margin

Both jurisdictions show calibrated deference. India has displayed restraint in demonetisation, in pandemic related economic relief, and in upholding the reorganisation of Jammu and Kashmir, but it has adopted an exacting stance on electoral finance, remission, and appointments. The UK has deferred in *Begum* and in some deportation cases, yet carried out searching review in *AAA* and in *Miller*. Deference therefore appears to depend on the democratic sensitivity of the issue, the quality of the record, and the clarity of constitutional text. Future Indian challenges to data retention under the DPDP Act or to surveillance under the new criminal process code

⁵⁶ *Supra* note 22.

⁵⁷ Human Rights Act 1998, Section 4: Declaration of Incompatibility, *available at*: <https://www.legislation.gov.uk/ukpga/1998/42/section/4> (last visited on October 27, 2025).

will likely receive intensive scrutiny because they affect core rights and the court already has a proportionality template.⁵⁸

1.5.4 Ouster Clauses

India's constitutional supremacy makes it difficult for Parliament or State legislatures to craft absolute ouster clauses. Attempts to insulate tribunals or remission decisions can be neutralised by invoking Articles 32 and 226 and by pointing to basic structure. The BNSS provisions on remission show the kind of detailed statutory framework that can still be reviewed when States depart from central concurrence requirements in "Sections 473 to 477". The UK, lacking such entrenched supremacy, turns to interpretation, as in "*R (Privacy International) v. Investigatory Powers Tribunal*"⁵⁹, and to carefully drafted legislation, as in the "Judicial Review and Courts Act 2022". This difference matters for future fields like AI regulation, where India can insist that any statutory exclusion of review must itself pass the basic structure test.

1.5.5 Remedies

Indian remedies are expansive. Structural orders in public interest cases, continuing mandamus, and appointment of neutral officers are common. This is partly because Articles 32 and 142 allow the Court to mould relief for complete justice. The UK prefers declarations and quashing orders, sometimes suspended after the 2022 Act, because of the central place of parliamentary sovereignty and because rights are often enforced by public authorities rather than individuals. Indian courts have also used their remedial power to secure compliance with election law, to monitor identification of beneficiaries, and to check misuse of remission, which are fields where UK courts would likely limit themselves to a declaration of illegality.⁶⁰

1.5.6 Democratic Accountability

Indian scrutiny of electoral bonds and UK scrutiny of tribunal fees serve a common democratic purpose. In India the 2024 decision restored the voters' right to know and prevented anonymous corporate influence over electoral outcomes. In the UK "*R (Unison) v. Lord Chancellor*"⁶¹, 1" ensured that workers could continue to access tribunals set up by Parliament, preserving effective participation in public life. These decisions demonstrate that judicial review is willing to protect background conditions of democracy even when the text of the Constitution or statute does not expressly speak of those conditions.⁶²

1.5.7 Forward Looking Issues

The next frontier in both countries will be regulation of artificial intelligence, platform governance, climate related allocation of resources, and emergency powers. India's DPDP Act already gestures towards consent managers and digital processing, which will soon need judicial guidance on fairness and necessity. The UK's

⁵⁸ *Supra* note 29.

⁵⁹ *Supra* note 50.

⁶⁰ *Supra* note 19.

⁶¹ *Supra* note 52.

⁶² *Supra* note 7.

Rwanda legislation shows how Parliament may attempt to narrow review in response to high profile judicial defeats. Climate cases will require courts to weigh scientific uncertainty against constitutional commitments to life and environmental protection, while emergency powers exercised through new security legislation will test the outer margins of deference. Both systems possess the doctrinal equipment to handle these questions, but success will depend on the continued availability of open remedies and access to courts.

1.6 CONCLUSION

Judicial review in India and the United Kingdom in the 2020s and early 2030s can be described as principled, structured, and dialogic, even though the two systems rest on different constitutional foundations. In India the Supreme Court has not hesitated to engage core political questions when they affect citizens' ability to participate, as in the electoral bonds ruling, when they affect federal balance, as in the Article 370 decision, and when they concern personal liberty, as in the remission verdict in favour of Bilkis Bano. At the same time it has shown restraint in areas where political branches possess superior informational and technical capacity, such as demonetisation or complex regulatory design. In the United Kingdom, courts have moved away from thin irrationality review in rights cases and have not shied away from telling the executive that it cannot bypass Parliament or export asylum seekers to a country that does not provide Convention level guarantees. These moves have provoked legislative responses ranging from suspended quashing orders to statutory declarations of safety, which is the expected outcome in a constitutional order based on parliamentary supremacy. The Indian adoption of the "Bharatiya Nyaya Sanhita, 2023", the "Bharatiya Nagarik Suraksha Sanhita, 2023" and the "Bharatiya Sakshya Adhinyam, 2023" together with the "Digital Personal Data Protection Act, 2023" ensures that a large tranche of recent legislation will come under structured proportionality and arbitrariness review in the near future, because these laws directly touch liberty, privacy, evidentiary standards, and executive discretion. In the UK the shift from retained EU law to assimilated law, and the attempt to ring fence migration policy through the Rwanda statute, will keep courts busy drawing lines between genuine policy questions and legal questions that must be judicially answered. The comparative picture that emerges is one of convergence on technique but divergence on ultimate authority - India's courts can invalidate almost any measure that violates fundamental constitutional commitments, while UK courts must often leave the final word to Parliament after issuing a reasoned declaration. For scholars of comparative public law, this means that the Indo UK dialogue on proportionality, ouster clauses, structural remedies, and democratic accountability will remain a productive area of study as both polities move into new regulatory fields like AI, platform speech, and climate governance.⁶³

⁶³ *Supra* note 7.

REFERENCES

- Anoop Baranwal v Union of India, *available at*: <https://www.scobserver.in/wp-content/uploads/2021/10/Anoop-Baranwal-94.pdf> (last visited on November 1, 2025).
- Association for Democratic Reforms vs Union of India, *available at*: <https://indiankanoon.org/doc/121499464/> (last visited on November 2, 2025).
- Bilkis Yakub Rasool v Union of India, *available at*: https://webapi.sci.gov.in/supremecourt/2022/38741/38741_2022_12_1501_49383_Judgement_08-Jan-2024.pdf (last visited on October 24, 2025).
- Challenge to the Abrogation of Article 370, *available at*: <https://www.scobserver.in/cases/challenge-to-the-abrogation-of-article-370-case-background/> (last visited on October 25, 2025).
- Graeme Cowie, "Safety of Rwanda (Asylum and Immigration) Bill: Progress of the Bill", *available at*: <https://commonslibrary.parliament.uk/research-briefings/cbp-9841/> (last visited on October 30, 2025).
- Human Rights Act 1998, *available at*: <https://www.legislation.gov.uk/ukpga/1998/42/contents> (last visited on November 1, 2025).
- Human Rights Act 1998, Section 4: Declaration of Incompatibility, *available at*: <https://www.legislation.gov.uk/ukpga/1998/42/section/4> (last visited on October 27, 2025).
- Judicial Review and Courts Act 2022: Explanatory Notes, Policy Background, *available at*: <https://www.legislation.gov.uk/ukpga/2022/35/notes/division/3/index.htm> (last visited on October 28, 2025).
- Modern Dental College and Research Centre and Others vs State of Madhya Pradesh and Others, *available at*: https://www.manupatracademy.com/LegalPost/MANU_SC_0495_2016 (last visited on October 27, 2025).
- Patrick Butchard, Joanna Dawson, et.al., "Safety of Rwanda (Asylum and Immigration) Bill: Legal Commentary", *available at*: <https://researchbriefings.files.parliament.uk/documents/CBP-9931/CBP-9931.pdf> (last visited on October 28, 2025).
- R (Miller) v Secretary of State for Exiting the European Union, *available at*: https://en.wikipedia.org/wiki/R_%28Miller%29_v_Secretary_of_State_for_Exiting_the_European_Union (last visited on October 30, 2025).
- R (on the Application of AAA and Others) v Secretary of State for the Home Department, *available at*: <https://supremecourt.uk/cases/uksc-2023-0093> (last visited on October 29, 2025).
- R (on the Application of Privacy International) v Investigatory Powers Tribunal and Others, *available at*: <https://www.supremecourt.uk/cases/uksc-2018-0004> (last visited on October 31, 2025).

- Regina v Secretary of State for the Home Department, Ex Parte Daly, *available at*: <https://publications.parliament.uk/pa/ld200001/ldjudgmt/jd010523/daly-1.htm> (last visited on October 26, 2025).
- Vivek Narayan Sharma vs Union of India, *available at*: <https://indiankanoon.org/doc/164842744/> (last visited on October 31, 2025).
- What Are the Safety of Rwanda (Asylum and Immigration) Act 2024 and the UK-Rwanda Treaty?, *available at*: <https://ukandeu.ac.uk/explainers/what-are-the-safety-of-rwanda-asylum-and-immigration-act-2024-and-the-uk-rwanda-treaty/> (last visited on October 29, 2025).