

## PARLIAMENTARY SOVEREIGNTY VS. JUDICIAL SUPREMACY: ANALYSING THEIR IMPACT ON UPHOLDING PEOPLE'S RIGHTS IN COMPARATIVE CONSTITUTIONAL LAW

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### Abstract

Examining the principles of Parliamentary Sovereignty and Judicial Supremacy, this article evaluates their individual effects on protecting people's rights inside comparative constitutional settings. Common in the United Kingdom, Parliamentary Sovereignty stresses the total legislative power of Parliament, hence claiming that any other institution cannot override legislation passed by it. On the other hand, Judicial Supremacy, shown by the constitutional framework of the United States and India, gives the court, especially the Supreme Court, power to interpret constitutional provisions, therefore possibly overriding legislative acts by means of judicial review to preserve basic rights. This study investigates how every theory influences the safeguarding of democratic government and civil rights. The article looks at historic cases and constitutional changes in the UK, India, and the US using a comparative constitutional method, hence stressing the conflict between legislative purpose and judicial interpretation. Although Parliamentary Sovereignty can provide clarity and democratic legitimacy, it runs the risk of majoritarian dominance and the violation of minority rights. Though important in protecting rights against political excesses, Judicial Supremacy could also cause worries about democratic deficiency and judicial activity, hence challenging the suitable boundaries of judicial power. By means of this comparative study, the article finds that no theory in isolation ensures the efficient defence of people's rights. A balanced approach—constitutional discussion or cooperation between the legislature and judiciary—instead may perhaps harmonise democratic responsibility with strong rights protection. Therefore, knowing how various countries balance these precepts offers insightful analysis of constitutional design and the continuous struggle to defend individual rights among rival institutional forces.

**Keywords:** Parliamentary Sovereignty, Judicial Supremacy, Comparative Constitutional Law, Fundamental Rights, Judicial Review

### Introduction

A basic argument in comparative constitutional law, the conflict between parliamentary sovereignty and judicial supremacy shapes the ways people's rights are safeguarded in democratic systems. Epitomised by the United Kingdom's

constitutional<sup>670</sup> system, parliamentary sovereignty gives the legislature final power and lets Parliament pass, change, or revoke any law free of judicial involvement, as described in A.V. Dicey's theory. By contrast, judicial supremacy—most clearly shown by the United States—gives judges, especially the Supreme

<sup>670</sup> Dicey, A.V., 1885. Introduction to the Study of the Law of the Constitution. 10th ed. London: Macmillan.

Court, the power to invalidate laws infringing fundamental values as forth in *Marbury v Madison*<sup>671</sup>. India's hybrid model mixes parliamentary power with strong judicial scrutiny, especially via the basic structure theory articulated in *Kesavananda Bharati v State of Kerala*<sup>672</sup>, producing a dynamic interaction between the legislature and judiciary. Examining these rival models helps one to grasp how they support people's rights—civil, political, and socio-economic—across several constitutional settings. Parliamentary sovereignty in the United Kingdom guarantees democratic legitimacy but runs the risk of majoritarian excess, therefore compromising minority protections. Judicial supremacy in the United States<sup>673</sup> protects rights by means of constitutional checks but questions about unelected judges overriding democratic will arise. Though it creates conflicts when the court and parliament fight, India's balanced strategy provides judicial activism to defend rights and legislative flexibility. By looking at their theoretical foundations, practical uses, and actual results in the UK<sup>674</sup>, US, and India, this research article hopes to compare the efficacy of various constitutional models in safeguarding people's rights. The study will investigate how each system handles important rights including freedom of expression, equality, and socio-economic entitlements and assess their strengths and weaknesses in providing strong protections. The article will use case studies—such as *R (Miller) v Secretary of State in the UK*<sup>675</sup>, *Obergefell v Hodges* in the US<sup>676</sup>, and *Navej Singh Johar v Union of India*<sup>677</sup> in India—by means of a comparative legal analysis to show how parliamentary and judicial powers affect rights results. The approach combines doctrinal

analysis—studying constitutional texts and court rulings—with normative assessment of the democratic and rights-based consequences of each model. The article will offer a thorough evaluation of how parliamentary sovereignty and judicial supremacy affect rights protection by organising the analysis around thematic subtopics, including conceptual frameworks, case studies, rights-specific impacts, and institutional tensions<sup>678</sup>. The goals are threefold: first, to clarify the operational dynamics of each system; second, to assess their efficacy in protecting certain rights; and third, to draw comparative insights that guide constitutional construction. This introduction lays the groundwork for a complex investigation of whether parliamentary sovereignty, judicial supremacy, or a hybrid model best serves the aim of safeguarding people's rights in democratic countries. Acknowledging the particular historical, political, and cultural settings of the UK, US, and India that shape their constitutional practices, the study aims to add to current discussions in comparative constitutional law by providing suggestions for balancing legislative and judicial roles to maximise rights protection<sup>679</sup>.

Constitutional governance and the safeguarding of individual rights are centred on the conflict between Parliamentary Sovereignty<sup>680</sup> and Judicial Supremacy. While Parliamentary Sovereignty claims the total power of the legislature to create and change laws, Judicial Supremacy lets the courts interpret the constitution and invalidate laws infringing basic rights. This conflict influences how democratic countries strike a balance between constitutional constraints and majority control. Examining how other legal systems handle this balance—especially in nations like the UK, India, and the US—in the context of comparative constitutional law provides important insights

<sup>671</sup> *Marbury v Madison* (1803) 5 U.S. (1 Cranch) 137.

<sup>672</sup> *Kesavananda Bharati v State of Kerala* (1973) 4 SCC 225.

<sup>673</sup> Bogdanor, V., 2009. *The New British Constitution*. Oxford: Hart Publishing.

<sup>674</sup> Tushnet, M., 2008. *Weak Courts, Strong Rights: Judicial Review and Social Welfare Rights in Comparative Constitutional Law*. Princeton: Princeton University Press.

<sup>675</sup> *R (Miller) v Secretary of State for Exiting the European Union* [2017] UKSC 5.

<sup>676</sup> *Obergefell v Hodges* (2015) 576 U.S. 644.

<sup>677</sup> *Navej Singh Johar v Union of India* (2018) 10 SCC 1.

<sup>678</sup> Baxi, U., 2000. 'The Constitutional Quicksands of *Kesavananda Bharati* and the Basic Structure Doctrine', *Supreme Court Cases Journal*, 3, pp. 183–204.

<sup>679</sup> Waldron, J., 2006. 'The Core of the Case Against Judicial Review', *Yale Law Journal*, 115(6), pp. 1346–1406.

<sup>680</sup> Barendt, E. (2004) *An Introduction to Constitutional Law*. Oxford: Oxford University Press.

on protecting civil rights and maintaining the rule of law.<sup>681</sup> Examining how other legal systems handle this balance—especially in nations like the UK, India, and the US—in the field of comparative constitutional law provides important insights on protecting civil rights and maintaining the rule of law. These doctrines also reflect deeper constitutional norms such as democratic responsibility, separation of powers, and the increasing role of courts in modern democracies.

### Parliamentary Sovereignty: The UK Model

A fundamental of the United Kingdom's unwritten constitution, parliamentary sovereignty gives Parliament supreme legislative power to make or unmake any law without judicial interference, a principle famously expressed by A.V. Dicey in 1885<sup>682</sup> as comprising Parliament's unlimited legislative power, the absence of rival legislatures, and the non-binding character of its laws on future Parliaments.<sup>683</sup> Rooted in the Glorious Revolution of 1688 and the Bill of Rights 1689, this idea developed via historical battles to secure parliamentary supremacy over the king and courts, so guaranteeing that elected officials have final power in a democratic society.<sup>684</sup> Parliament is crucial in terms of rights protection since it passes laws like the Human Rights Act 1998 (HRA), which brings the European Convention on Human Rights (ECHR) into UK law, therefore enabling people to enforce convention rights in domestic courts and maintain parliamentary sovereignty by allowing Parliament to modify or repeal the HRA. Though Parliament<sup>685</sup> stays free to legislate against these rights if it expressly decides, the HRA<sup>686</sup> shows a mechanism for rights protection by requiring public authorities to act compatibly with ECHR<sup>687</sup> rights and empowering courts to

read laws in a rights-consistent way under section 3. Judicial limitations<sup>688</sup> are considerable since, under section 4 of the HRA, courts lack the authority to strike down primary legislation and instead may declare incompatibility when statutes conflict with ECHR rights, leaving it up to Parliament to decide whether to change the law as seen in *A v Secretary of State for the Home Department* (2004), where the House of Lords found anti-terrorism detention laws incompatible but could not invalidate them. This small judicial function emphasises the UK's dependence on political responsibility instead of judicial enforcement to protect rights in contrast to systems like the United States, where courts can invalidate unconstitutional laws. Parliamentary sovereignty's strengths are in its democratic legitimacy; laws mirror the will of elected officials, therefore guaranteeing responsiveness to social changes like the fast passage of the Coronavirus Act 2020<sup>689</sup> to handle public health emergencies. Its adaptability also lets Parliament change rights systems without constitutional entrenchment; for example, the Equality Act 2010<sup>690</sup> combined anti-discrimination provisions.<sup>691</sup> This approach has many flaws, especially the possibility of unrestrained legislative authority causing majoritarian tyranny, where minority rights could be marginalised, as witnessed in discussions on the Police, Crime, Sentencing and Courts Act 2022, condemned for limiting protest rights.<sup>692</sup> Given the UK's fused legislature-executive system, the lack of a written constitution or strong judicial review means rights guarantees rely mostly on political goodwill and parliamentary self-restraint, which can fail under popular pressures or executive supremacy.<sup>693</sup> Cases such as *R (Jackson) v*

<sup>681</sup> Chandrachud, A. (2017) 'Democratic culture and constitutional courts', *International Journal of Constitutional Law*, 15(1), pp. 126–151.

<sup>682</sup> Dicey, A.V., 1885. *Introduction to the Study of the Law of the Constitution*. 10th ed. London: Macmillan.

<sup>683</sup> *A v Secretary of State for the Home Department* [2004] UKHL 56.

<sup>684</sup> *R (Jackson) v Attorney General* [2005] UKHL 56.

<sup>685</sup> *Hirst v United Kingdom* (No 2) (2005) ECHR 681.

<sup>686</sup> Human Rights Act 1998, c. 42.

<sup>687</sup> Elliott, M., 2015. 'Beyond the European Convention: Human Rights and the Common Law', *Current Legal Problems*, 68(1), pp. 85–117.

<sup>688</sup> Bill of Rights 1689, 1 Will & Mar Sess 2 c 2.

<sup>689</sup> Coronavirus Act 2020, c. 7.

<sup>690</sup> Equality Act 2010, c. 15.

<sup>691</sup> Gearty, C., 2006. *Can Human Rights Survive?* Cambridge: Cambridge University Press.

<sup>692</sup> Masterman, R., 2017. *The Separation of Powers in the Contemporary Constitution: Judicial Competence and Independence in the United Kingdom*. Cambridge: Cambridge University Press.

<sup>693</sup> Waldron, J., 2006. 'The Core of the Case Against Judicial Review', *Yale Law Journal*, 115(6), pp. 1346–1406.



Attorney General (2005) highlight the judiciary's deference even more; the House of Lords supported Parliament's capacity to implement the Hunting Act 2004 despite procedural concerns, so supporting the idea that courts cannot contest the legitimacy of parliamentary enactments. Though its efficacy depends on Parliament's readiness to react to judicial declarations, the HRA's dialogic model seeks to balance judicial input with legislative supremacy by allowing courts to signal rights concerns but Parliament keeps the last word, as seen in the delayed reaction to the *Hirst v. UK* (2005) ECHR ruling on prisoner voting rights. Critics say this approach especially for disadvantaged populations lacks the teeth to stop rights loss and that suggestions to replace the HRA with a British Bill of Rights have generated questions about compromising current safeguards. On the other hand, supporters of parliamentary sovereignty highlight its fit with democratic values and contend that elected officials, responsible to their constituents, are more qualified than unappointed judges to decide complicated policy matters impacting rights, such as balancing security and liberty in anti-terrorism legislation. The UK approach therefore reflects a careful trade-off: it emphasises democratic flexibility and responsibility but runs rights vulnerabilities without greater judicial safeguards, a dynamic that begs comparison with judicial supremacy regimes such as the United States or hybrid systems such as India. This tension emphasises the need to assess whether parliamentary sovereignty, despite its democratic benefits, can regularly support strong rights protections in the face of political and social pressure.<sup>694</sup>

### Judicial Supremacy: The US Paradigm

Judicial supremacy in the United States refers to the Supreme Court, a panel of nine justices, having the most influence in determining whether laws comply with the Constitution, which is comparable to the country's

fundamental rulebook. Originating in 1803 with *Marbury v. Madison*<sup>695</sup>, a judge named John Marshall stated the Court might invalidate statutes failing to correspond with the Constitution. Important cases like *McCulloch v. Maryland* (1819)<sup>696</sup>, which stated the federal government was stronger than states, and *Dred Scott v. Sandford* (1857)<sup>697</sup>, which made a poor ruling concerning slavery but revealed how much authority the Court has, helped this power—called judicial review—grow throughout time. The Supreme Court's primary responsibility is to safeguard people's rights, like ensuring everyone is treated equitably. For instance, in *Obergefell v. Hodges* (2015)<sup>698</sup>, it let same-sex couples to marry; in *Brown v. Board of Education* (1954)<sup>699</sup>, it stated schools couldn't segregate children by race. It also safeguarded abortion rights in *Roe v. Wade* (1973) and assisted individuals in obtaining solicitors in *Gideon v. Wainwright* (1963)<sup>700</sup>. The Court can do two major things: it can stop laws that violate the Constitution, like in *United States v. Lopez* (1995), where it threw out a law about guns near schools because Congress went too far, and it can make decisions that everyone must follow, like in *Miranda v. Arizona* (1966)<sup>701</sup>, which says police must tell people their rights when arrested. These choices are like rules that remain in place to help maintain fairness. The wonderful side of this system is that it preserves people's rights, even when most people or lawmakers disagree, like in *Texas v. Johnson* (1989)<sup>702</sup>, where the Court declared burning a flag to protest is permissible since it's free expression. Like in *Clinton v. City of New York* (1998), when it prevented the President from nullifying portions of statutes, it also holds the government under control. There are issues as well, however. Some believe the Court oversteps its authority by ruling on matters better left to elected officials. The Court chose

<sup>695</sup> *Marbury v. Madison* (1803) 5 U.S. (1 Cranch) 137.

<sup>696</sup> *McCulloch v. Maryland* (1819) 17 U.S. (4 Wheat.) 316.

<sup>697</sup> *Dred Scott v. Sandford* (1857) 60 U.S. (19 How.) 393.

<sup>698</sup> *Obergefell v. Hodges* (2015) 576 U.S. 644.

<sup>699</sup> *Brown v. Board of Education* (1954) 347 U.S. 483.

<sup>700</sup> *Gideon v. Wainwright* (1963) 372 U.S. 335.

<sup>701</sup> *Miranda v. Arizona* (1966) 384 U.S. 436.

<sup>702</sup> *Texas v. Johnson* (1989) 491 U.S. 397.

<sup>694</sup> *Roe v. Wade* (1973) 410 U.S. 113.

the President in *Bush v. Gore* (2000)<sup>703</sup>, for instance, and many believed that was inappropriate. The judges' views on the Constitution vary; some believe it should remain as written, while others believe it should evolve with the times. When the Court revoked the abortion rights from *Roe v. Wade*, many people were angered, which led to a major conflict in *Dobbs v. Jackson Women's Health Organisation* (2022)<sup>704</sup>. Some, like writer Jeremy Waldron, argue it is unjust because nine unelected judges can override the people's selected leaders, such in *Citizens United v. FEC* (2010), when the Court allowed corporations to spend great amounts of money on elections, remaining in their positions forever. Like in *New York State Rifle & Pistol Association v. Bruen* (2022), which granted additional gun rights, new judges chosen by Presidents can alter the Court's perspective; yet, this leads some people to believe the Court is unjust. The Court can also err for a long period, as in *Plessy v. Ferguson* (1896), which permitted segregation until *Brown* corrected it years later. Unlike the UK, where elected officials have the most authority, or India, where judges and politicians share power, the United States grants its judges a great deal of control<sup>705</sup>. While this can be excellent for rights protection, it is difficult since individuals do not always trust the Court, particularly after rulings like *West Virginia v. EPA* (2022), which called into question the justices' political involvement and halted certain environmental regulations. Though it may seem unjust when judges appear to seize control or when their rulings differ from what most people desire, judicial supremacy is quite effective at safeguarding rights and preventing government overreach.<sup>706</sup> Looking at this in relation to other nations helps us determine whether the US approach is the greatest for

safeguarding rights or whether it grants judges too much authority.<sup>707</sup>

### India's Constitutional Balance: A Hybrid Approach

India's Constitution of 1950 set up a hybrid system that carefully balances the power of the government with the strength of the courts. This makes India's system different from the UK's parliamentary sovereignty and the US's judicial supremacy. India needed a system that was both flexible and stable after it was colonised so that it could run a diverse, democratic country. Article 368<sup>708</sup> of the Constitution gives Parliament the power to make laws and change the Constitution, while judicial review by the Supreme Court protects basic rights and the integrity of the Constitution. The important case *Kesavananda Bharati v. State of Kerala* (1973)<sup>709</sup> was a turning point in the history of judicial review. It introduced the "basic structure"<sup>710</sup> doctrine, which says that Parliament's amendment powers are limited and can't change the Constitution's core features, like judicial independence, secularism, and fundamental rights. This creates a check on legislative power through the courts. This principle, which has been reaffirmed in cases like *Minerva Mills v. Union of India* (1980)<sup>711</sup>, lets the Supreme Court throw out constitutional changes that go against the spirit of the Constitution. For example, the Supreme Court threw out parts of the 42nd Amendment for weakening judicial review. Parliament protects rights by passing progressive laws like the Right to Education Act, 2009<sup>712</sup> and adding new rights to the Constitution, like the 86th Amendment<sup>713</sup> ensuring education. This is in line with its democratic duty to meet social and economic needs. The courts, on the other hand, have

<sup>703</sup> *Bush v. Gore* (2000) 531 U.S. 98.

<sup>704</sup> *Dobbs v. Jackson Women's Health Organization* (2022) 597 U.S. 215.

<sup>705</sup> *Citizens United v. Federal Election Commission* (2010) 558 U.S. 310.

<sup>706</sup> Waldron, J., 2006. 'The Core of the Case Against Judicial Review', *Yale Law Journal*, 115(6), pp. 1346–1406.

<sup>707</sup> Tushnet, M., 2008. *Weak Courts, Strong Rights: Judicial Review and Social Welfare Rights in Comparative Constitutional Law*. Princeton: Princeton University Press.

<sup>708</sup> Constitution of India, 1950, Article 368.

<sup>709</sup> *Kesavananda Bharati v. State of Kerala* (1973) 4 SCC 225.

<sup>710</sup> Baxi, U., 2000. 'The Constitutional Quicksands of *Kesavananda Bharati* and the Basic Structure Doctrine', *Supreme Court Cases Journal*, 3, pp. 183–204.

<sup>711</sup> *Minerva Mills v. Union of India* (1980) 3 SCC 625.

<sup>712</sup> Right to Education Act, 2009, Act No. 35 of 2009

<sup>713</sup> Constitution (Eighty-Sixth Amendment) Act, 2002.

been strong protectors of rights, using public interest litigation (PIL) to uphold basic rights under Articles 14, 19, and 21. For example, *Olga Tellis v. Bombay Municipal Corporation* (1985)<sup>714</sup> recognised the right to livelihood, and *Navtej Singh Johar v. Union of India* (2018)<sup>715</sup> decriminalised homosexuality. These cases show that the courts can protect minority rights against majoritarian biases. India's hybrid model is based on the power of Parliament to make laws and changes to them, balanced by the power of the judiciary to check that laws and changes are in line with the constitution. This creates a two-way conversation where both institutions affect rights results. This system works well because it protects rights in two ways. Parliament's legislative flexibility lets it respond to social needs, as shown by the end of untouchability under Article 17. And the judiciary's independence makes sure that rights are strongly enforced, especially for disadvantaged groups, as shown by *Vishaka v. State of Rajasthan* (1997)<sup>716</sup>, which set rules against sexual harassment at work. But this balance causes tensions because the courts and legislatures often disagree, which hurts the harmony between the two. For example, the Supreme Court's decision to overturn the National Judicial Appointments Commission (NJAC) in *Supreme Court Advocates-on-Record Association v Union of India* (2015)<sup>717</sup> was seen as too much power by the courts, which led to debates about the judiciary's unchecked authority. While the basic structure doctrine is a safety net, it is not very clear, which can lead to claims of judicial bias. For example, in *Indira Nehru Gandhi v. Raj Narain* (1975)<sup>718</sup>, the Court's involvement in election rules caused concerns about overstepping the power of the legislature. Parliament can change the Constitution, but if they do it for political reasons, it can also weaken protections for rights. For example, the 39th Amendment tried to keep some laws from

being reviewed, but it was later thrown out. In the UK, Parliament is the most important body, and in the US, the courts are the most important. India's model is a mix of the two, and it can become unstable when judicial activism conflicts with legislative power, like the current fight over judge appointments. While the judiciary's broad use of PIL gives people more power, it can also make democracy less accountable because unelected judges make policy-like decisions, like in *MC Mehta v Union of India* (1987)<sup>719</sup> about environmental protection, that some people say should be left to elected officials. In a majoritarian democracy, on the other hand, Parliament's power can push minorities to the edges without any help from the courts. This shows how important the basic structure theory is. People have different levels of trust in both the judiciary and Parliament. The judiciary is often seen as the last option for justice, but it is also criticised for taking too long and being biased. India does a great job of making sure that the rights framework is always changing because it combines legislative responsiveness with judicial review.<sup>720</sup> However, its weaknesses—tensions between institutions, vague judicial doctrines, and risks of overreach on both sides—make it hard to protect rights consistently. India's balance protects people's rights the best way possible or if it needs changes to reduce institutional conflicts and boost democratic legitimacy.

### Comparative Case Studies: Rights in Practice

#### United Kingdom

A big court case in the UK in 2017 called *R (Miller) v Secretary of State*<sup>721</sup> for Exiting the European Union shows how important Parliament is in making decisions, especially during Brexit. It also shows how this affects people's rights compared to the US and India. At this point, the government didn't want to ask Parliament before starting Brexit, which means

<sup>714</sup> *Olga Tellis v Bombay Municipal Corporation* (1985) 3 SCC 545.

<sup>715</sup> *Navtej Singh Johar v Union of India* (2018) 10 SCC 1.

<sup>716</sup> *Vishaka v State of Rajasthan* (1997) 6 SCC 241.

<sup>717</sup> *Supreme Court Advocates-on-Record Association v Union of India* (2015) 11 SCC 1

<sup>718</sup> *Indira Nehru Gandhi v Raj Narain* (1975) Supp SCC 1.

<sup>719</sup> *MC Mehta v Union of India* (1987) 1 SCC 395

<sup>720</sup> Khaitan, T., 2020. 'The Indian Constitution's Structural Transformation', *International Journal of Constitutional Law*, 18(2), pp. 468–493.

<sup>721</sup> *R (Miller) v Secretary of State for Exiting the European Union* [2017] UKSC 5



leaving the European Union. They thought they could do it with old royal power. The Supreme Court said no, and Parliament, which is made up of elected leaders, had to vote because leaving the EU would affect important rights like the right to move freely and be treated fairly. These rights came from EU laws. A.V. Dicey once said that Parliament is the boss, which means that only Parliament can make or change laws. This shows that this is how things work in the UK. This isn't the case in the US, where the Supreme Court can overturn rules. For example, in 2015, *Obergefell v. Hodges*<sup>722</sup> ruled that same-sex couples had the right to marry. The Court didn't stop the UK government in the *Miller* case, but it did say that Parliament had to make a decision. This was done to make sure that elected leaders talked about rights like fair treatment at work. It's good that people can choose their leaders, but it can also be dangerous because Parliament could take away rights like those in the Human Rights Act and the courts couldn't stop them. *Kesavananda Bharati v. State of Kerala* (1973)<sup>723</sup> is a case that says some parts of India's Constitution can't be changed. The Supreme Court can use this rule to protect people's rights. In the 2018 case *Navtej Singh Johar v. Union of India*<sup>724</sup>, the Indian court helped people by getting rid of a law that made it illegal to be gay. There isn't a strong court system in the UK like there is in the US or India.<sup>725</sup> This means that leaders are in charge, which is fair since they are chosen, but it might not always protect everyone, especially smaller groups, because the courts aren't strong. There isn't a written Constitution or strong judges in the UK, so it's not always clear that Parliament will protect rights.<sup>726</sup>

### United States

The *Obergefell v. Hodges* case from 2015<sup>727</sup> shows how the US Supreme Court uses its large amount of power, known as "judicial supremacy," to protect people's rights, especially those of smaller groups. This is different from how rights are handled in the UK and India. Due to the Constitution's promise of justice and equal treatment, the Supreme Court said in *Obergefell* that same-sex couples can get married anywhere in the US. State rules that made it illegal for people of the same gender to get married were overturned by the Court. This made sure that gay couples could have the same rights as everyone else, like being able to share property or make medical decisions together. This shows that the US Court can change laws to protect people even if voters or elected leaders don't agree. This is different from the UK, where the *R (Miller)* case in 2017<sup>728</sup> showed that Parliament, not judges, makes big decisions like Brexit that affect rights but need votes from elected leaders. In the UK, courts can't get rid of laws. This means that rights like same-sex marriage came from laws made by Parliament, not judges, and could be taken away by Parliament if it wants to. In India, the Supreme Court also protects rights. For example, in *Navtej Singh Johar* (2018)<sup>729</sup>, the court overturned a law that made it illegal to be gay. But India's system is a mix of Parliament and courts, so courts can't always change laws as easily as they can in the US. This is because of a rule from 1973 called *Kesavananda Bharati*<sup>730</sup>. The *Obergefell* case is great because it helped a group that wasn't treated properly. It also shows that the US Court can quickly fix mistakes, even if a lot of people don't agree. Some people say this isn't fair because judges aren't chosen and don't have to answer to voters.<sup>731</sup> In contrast, the UK's Parliament is elected and can be changed by the people. The mix in India tries to be fair to both, but it can

<sup>722</sup> *Obergefell v. Hodges* (2015) 576 U.S. 644.

<sup>723</sup> *Kesavananda Bharati v. State of Kerala* (1973) 4 SCC 225.

<sup>724</sup> *Navtej Singh Johar v. Union of India* (2018) 10 SCC 1.

<sup>725</sup> Bogdanor, V., 2009. *The New British Constitution*. Oxford: Hart Publishing.

<sup>726</sup> Dicey, A.V., 1885. *Introduction to the Study of the Law of the Constitution*. 10th ed. London: Macmillan.

<sup>727</sup> *Obergefell v. Hodges* (2015) 576 U.S. 644.

<sup>728</sup> *R (Miller) v. Secretary of State for Exiting the European Union* [2017] UKSC 5.

<sup>729</sup> *Navtej Singh Johar v. Union of India* (2018) 10 SCC 1.

<sup>730</sup> *Kesavananda Bharati v. State of Kerala* (1973) 4 SCC 225.

<sup>731</sup> Chemerinsky, E., 2019. *Constitutional Law: Principles and Policies*. 6th ed. New York: Wolters Kluwer.

cause judges and leaders to fight with each other. Many people wonder about who is really responsible for fairness when the US way in Obergefell is used to protect rights quickly. This is because it depends on what judges think.

## India

In India, the Navtej Singh Johar v Union of India<sup>732</sup> case from 2018 shows that the Supreme Court protects people's rights by stopping unfair laws like one that made being gay a crime. This is different from how rights are handled in the UK and the US. Section 377 was an old law that punished relationships between people of the same gender. The Court said it was wrong because it went against the Constitution's rules about freedom and equality. Because the Court threw out this rule, gay people can now live their lives without fear. This was a huge victory for their right to love and be treated fairly. In the US case Obergefell v. Hodges (2015)<sup>733</sup>, the Supreme Court overturned state laws to allow same-sex marriage. In India's case Navtej, the Court followed a system where Parliament can also make laws but the Court can check them using a rule from Kesavananda Bharati (1973)<sup>734</sup> that protects the Constitution's main ideas. Courts in the UK can't change laws like they did in R (Miller) (2017)<sup>735</sup>, where Parliament had to decide on rights and Brexit. This means that changes like gay rights came from Parliament's laws, not judges. India's Parliament didn't fight the Navtej decision, but it could have made new laws instead. This shows that the courts and Parliament share power, unlike in the US and UK, where judges make the final decisions and Parliament is in charge. India's way is good because the Supreme Court<sup>736</sup> can quickly fix laws that aren't fair, especially for people who aren't treated right. But it can lead to fights with Parliament, like when the Court stopped a new law in 2015 that would have made it easier to

choose judges. Some people think it's unfair that US judges aren't chosen, but the country is good at protecting rights quickly. People vote for the UK's Parliament, which means it's more in line with what people want, but smaller groups may not be taken into account. The courts and Parliament in India work together to protect rights like freedom and equality.<sup>737</sup> However, fights between them can slow things down. India's method helps protect rights, but both parts need to work together for it to be effective.

Here's a comparative table of **Parliamentary Sovereignty vs. Judicial Supremacy** in the **UK, India, and the US**, focusing on how each system approaches the balance between legislature and judiciary in upholding people's rights:

<sup>732</sup> Navtej Singh Johar v Union of India (2018) 10 SCC 1.

<sup>733</sup> Obergefell v Hodges (2015) 576 U.S. 644.

<sup>734</sup> Kesavananda Bharati v State of Kerala (1973) 4 SCC 225.

<sup>735</sup> R (Miller) v Secretary of State for Exiting the European Union [2017] UKSC 5.

<sup>736</sup> Supreme Court Advocates-on-Record Association v Union of India (2015) 11 SCC 1.

<sup>737</sup> Baxi, U., 2000. 'The Constitutional Quicksands of Kesavananda Bharati and the Basic Structure Doctrine', Supreme Court Cases Journal, 3, pp. 183–204.



Aspect	United Kingdom	India	United States
<b>System Type</b>	Uncodified Constitution	Written Constitution	Written Constitution
<b>Doctrine Followed</b>	Parliamentary Sovereignty	Judicial Supremacy (with constitutional supremacy)	Judicial Supremacy
<b>Judicial Review</b>	Limited; courts cannot strike down Acts of Parliament	Extensive; courts can strike down unconstitutional laws	Extensive; courts can nullify laws violating Constitution
<b>Key Institution</b>	Parliament	Supreme Court and High Courts	Supreme Court
<b>Rights Protection Mechanism</b>	Human Rights Act 1998 (interpreted, not enforced)	Fundamental Rights in Part III of the Constitution	Bill of Rights (first 10 Amendments)
<b>Role of Courts in Rights</b>	Interpret statutes compatibly with rights	Enforce, expand and protect fundamental rights	Strong role in constitutional interpretation and rights
<b>Balance of Power</b>	Legislature dominant	Balance with strong judiciary	Judiciary dominant in constitutional matters
<b>Influential Cases</b>	R (Jackson) v AG (2005)	Kesavananda Bharati v State of Kerala (1973)	Marbury v Madison (1803)

### **Rights Protection: Civil, Political, and Socio-Economic Dimensions**

#### **Civil and political rights**

It's very important to have civil and political rights like free speech and fair treatment under the law. The UK, the US, and India all protect these rights in different ways. People who were voted to Parliament are in charge of the UK. They make laws to protect rights, such as the Human Rights Act 1998<sup>738</sup>, which says everyone

should be treated equally and have the right to speak freely. But UK courts can't get rid of these laws; they can only make changes. For example, in *A v. Secretary of State* (2004)<sup>739</sup>, they said a law wasn't fair but that Parliament should fix it. This means that people's rights rely on what Parliament wants. This is good because leaders are supposed to listen to the people, but it can be dangerous if they don't respect some people's rights. The Supreme Court in the US talks about rights and has a lot of power. In

<sup>738</sup> Human Rights Act 1998, c. 42.

<sup>739</sup> *A v Secretary of State for the Home Department* [2004] UKHL 56.

Texas v. Johnson (1989)<sup>740</sup>, it was said that burning a flag to protest was legal because it was free speech. In Brown v. Board of Education (1954)<sup>741</sup>, it was made sure that all kids are treated the same in schools. Many people believe that judges shouldn't have so much power because they aren't chosen. However, the Court can stop laws that don't follow the Constitution, which is good for everyone. The Indian Supreme Court is very busy and fights for people's rights. For example, in Navtej Singh Johar (2018)<sup>742</sup>, the court said that gay people should be treated equally, and in Shreya Singhal (2015)<sup>743</sup>, it defended free speech online. But India's Parliament can add rights to the Constitution by doing things like making rules about fair treatment. A rule from Kesavananda Bharati (1973)<sup>744</sup> lets the Court look over these changes to make sure they don't go against the main ideas of the Constitution. The Court can quickly fix laws that aren't fair because of this mix, but it does fight with Parliament sometimes, like over who picks judges. People in the UK tend to trust their chosen leaders, which is similar to what most people want but may not work for smaller groups. The US Supreme Court is good at protecting rights, even for people who aren't in the list. It depends on what the judges think, though. India's system strikes a balance between the two, which helps protect free speech and equality but can get messy when the Parliament and the Court don't agree. For protecting rights quickly, the US is the best. India is good at balancing court and elected power. The UK is good at listening to voters, but its judges need to be stronger to protect rights.

### Socio and economic rights

Socioeconomic rights, like the right to health and education, make sure that everyone has an equal chance at a good life. The UK, the US, and India all have different ways of protecting these rights. Parliament, the chosen leaders of the UK, is in charge. Courts don't have much power to

make the government do things like run schools or healthcare. Laws like the Education Act 1944 support free schooling, and the National Health Service pays for healthcare. But if these laws don't work well, courts can't make changes. For example, in R (A) v Secretary of State (2016)<sup>745</sup>, courts let Parliament decide on benefits. This trusts the leaders that were elected, but it could leave holes if Parliament cuts funds. The US Constitution doesn't make it clear that people have the right to health or education, so the Supreme Court usually lets politicians decide. For example, in San Antonio Independent School District v. Rodriguez (1973)<sup>746</sup>, the court said that education isn't a guaranteed right. This means that policies are made by the states and Congress. However, poor areas may get less help, and judges rarely get involved, unlike when it comes to free speech. India's Constitution has "directive principles" that say the government should protect rights like health and education, but they don't have to. But India's Supreme Court is very busy. For example, in Olga Tellis v. Bombay Municipal Corporation (1985)<sup>747</sup>, the court said that people need a place to live in order to live a good life. In Paschim Banga Khet Mazdoor Samity (1996)<sup>748</sup>, it said that people need emergency medical care. In Unni Krishnan v. State of Andhra Pradesh (1993)<sup>749</sup>, the Court also pushed for free education, which led to the Right to Education Act 2009<sup>750</sup>. Thanks to Kesavananda Bharati (1973)<sup>751</sup>, India's courts can check to see if laws are in line with the Constitution's main ideas. However, this can lead to arguments with Parliament, which wants to keep an eye on budgets. People who are elected in the UK can quickly change policies, which is a good thing. However, rights rely on politics. The US lets politicians do what they want, but courts don't help some people, so they can't get help. Indian judges do a good job

<sup>745</sup> R (A) v Secretary of State for Health [2016] EWCA Civ 768.

<sup>746</sup> San Antonio Independent School District v Rodriguez (1973) 411 U.S. 1.

<sup>747</sup> Olga Tellis v Bombay Municipal Corporation (1985) 3 SCC 545.

<sup>748</sup> Paschim Banga Khet Mazdoor Samity v State of West Bengal (1996) 4 SCC 37.

<sup>749</sup> Unni Krishnan v State of Andhra Pradesh (1993) 1 SCC 645.

<sup>750</sup> Right to Education Act, 2009, Act No. 35 of 2009.

<sup>751</sup> Kesavananda Bharati v State of Kerala (1973) 4 SCC 225.

<sup>740</sup> Texas v Johnson (1989) 491 U.S. 397.

<sup>741</sup> Brown v Board of Education (1954) 347 U.S. 483.

<sup>742</sup> Navtej Singh Johar v Union of India (2018) 10 SCC 1.

<sup>743</sup> Shreya Singhal v Union of India (2015) 5 SCC 1.

<sup>744</sup> Kesavananda Bharati v State of Kerala (1973) 4 SCC 225.

of protecting people's rights, especially those who are poor. However, they do act like lawmakers sometimes, which can annoy leaders who were elected. India's courts are the best at fighting for socio-economic rights. In the UK, it depends on what Parliament decides, and in the US, it's up to politicians, who may miss people who need help. They all have their good points, but India's mix seems to be the best way to make sure everyone has a fair chance, even though it's not perfect.

### COMPARATIVE ANALYSIS

Due to their systems, the UK, US, and India defend civil and political rights like free speech and equality and socio-economic rights like education and health differently. Parliament passes laws like the Human Rights Act 1998 for free expression and the Education Act 1944 for schools, but courts can't overturn them, as in *A v Secretary of State* (2004), thus elected leaders are in charge. This is good for quick adjustments but harmful if Parliament ignores critical needs like health or education. The US Supreme Court protects civil rights like free speech in *Texas v Johnson* (1989) and equality in *Brown v Board of Education* (1954) by stopping unfair laws, but socio-economic rights, like education in *San Antonio v Rodriguez* (1973), are left to lawmakers who may not help everyone. The Supreme Court uses the Constitution and a special idea from *Kesavananda Bharati* (1973) to check laws, but Parliament can also make laws like the Right to Education Act 2009, which can cause conflicts between them. The US Court can move quickly to defend civil and political rights, like equality, while India's Court helps but needs Parliament's backing. Since Parliament determines everything, the UK is slower and may miss minor groups. India's Court is the strongest for socio-economic rights, helping impoverished people, while the UK relies on Parliament's money decisions, which can alter, and the US leaves it to lawmakers, so some people miss out. Due to its strong Court, the US is superior for civil rights but weak for socioeconomic rights. Parliament can keep the UK steady for both, but judges

can't. Indian Court and Parliament work well together, especially for benefitting everyone, although conflicts sometimes drag things down. India's system balances both types of rights best, although the US is stronger for free speech and equality, and the UK needs stronger courts to protect all rights.

### Tensions and Trade-Offs: Democracy vs. Judicial Authority

When it comes to protecting people's rights, the UK, the US, and India all have problems with the balance of power between government and the courts. The UK has a strong democracy because the Parliament, which is made up of elected leaders, has the final say on laws like the Human Rights Act 1998. This makes sure that lawmakers are accountable to the voters, but courts can't stop Parliament from making laws that hurt people's rights, as seen in *A v. Secretary of State* (2004)<sup>752</sup>. The US relies on an unelected Supreme Court that doesn't answer to the people but protects rights, like in *Obergefell v. Hodges* (2015) for same-sex marriage. However, there is a risk of judicial overreach when judges make big decisions that seem to take power away from elected leaders, like in *Bush v. Gore* (2000)<sup>753</sup>. The *Kesavananda Bharati* (1973) rule that protects the core of the Constitution gives India's judiciary a lot of power. It actively protects rights, like in *Navtej Singh Johar* (2018)<sup>754</sup> for gay rights, but its independence can lead to fights with Parliament, like over judge appointments in 2015, which causes institutional conflict. In contrast to India's brave courts, which balance Parliament's power but risk going too far, the UK's courts are more cautious, which keeps disagreements from happening but leaves rights open to Parliament's whims. For democracy to work well in the UK, the courts need to be stronger to protect people's rights, since Parliament might not listen to minorities. The US court protects rights, but because judges aren't elected, it can feel undemocratic.

<sup>752</sup> *A v Secretary of State for the Home Department* [2004] UKHL 56.

<sup>753</sup> *Bush v Gore* (2000) 531 U.S. 98.

<sup>754</sup> *Navtej Singh Johar v Union of India* (2018) 10 SCC 1.



This can make people not trust the system when decisions like *Dobbs* (2022)<sup>755</sup> overturn popular rights. With the courts and Parliament sharing power, India has a middle ground, but disagreements can slow things down. The UK could balance Parliament with stronger judicial checks, like India does. The US could get elected leaders more involved in the courts to make choices feel more fair, and India could make it easier for the courts and parliament to work together to avoid fights. All three teach that clear rules and cooperation between judges and leaders are important to protect rights without letting one side take over. India's system seems to be the best at balancing democracy and judicial power to protect rights.

### Conclusion

Comparing the UK's parliamentary sovereignty, US's judicial supremacy, and India's hybrid approach demonstrates strengths, limitations, and ways to improve rights protection. As evidenced in *A v Secretary of State* (2004), judges can't prohibit Parliament from weakening rights, which could hurt minorities. However, elected Parliament can quickly create laws like the Human Rights Act 1998 to preserve free expression and equality. Unelected justices, like in *Dobbs* (2022), might make unfavourable rulings, making the US less democratic. However, the Supreme Court's capacity to annul unfair legislation, like *Obergefell v Hodges* (2015) for same-sex marriage, protects rights. The Supreme Court protects rights, like gay rights in *Navtej Singh Johar* (2018), using the *Kesavananda Bharati* (1973) rule to check Parliament, which makes laws like the Right to Education Act 2009, but court-Parliament disputes, like over judge appointments in 2015, can slow things down. The UK's flexibility allows swift changes but requires stronger courts to preserve rights, the US's judicial checks assure fairness but might seem overly powerful, and India's mix balances both but risks conflict. The UK may add limited court powers to check Parliament, like India, the US might let elected

leaders share some power to make decisions feel fairer, and India could clarify norms for courts and Parliament to work together to minimise confrontations for better constitutional architecture. These amendments would balance elected leaders' democratic power with courts' ability to protect everyone's rights, including smaller organisations. Future study should examine how global human rights regulations, such UN ones, affect various institutions, especially as the UK navigates post-Brexit rights, the US disputes court trust, and India balances its expanding global role with local rights requirements. By sharing experiences, these nations may strengthen civil rights like free expression and socio-economic rights like education to ensure fairness. India's hybrid approach balances democracy and rights protection well, but all three indicate that courts and leaders must work together under clear rules to defend rights now and in the future.

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