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PARLIAMENTARY SOVEREIGNTY VS. CONSTITUTIONAL SUPREMACY: A COMPARATIVE STUDY OF INDIA AND THE UNITED KINGDOM

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ABSTRACT

This article undertakes a rigorous comparative examination of two foundational but contrasting constitutional doctrines: parliamentary sovereignty, as classically developed and applied in the United Kingdom, and constitutional supremacy, as enshrined and evolved in the Republic of India. Employing doctrinal, historical, and comparative methodologies, the article traces the philosophical origins, institutional embodiments, and judicial elaborations of each doctrine. It demonstrates that while the United Kingdom has historically vested supreme legislative authority in Parliament, rendering statute law immune from judicial invalidation, India adopted at its independence a written, justiciable, and supreme Constitution that subordinates all legislative and executive action to constitutional norms. The article further analyses how both systems have evolved under contemporary pressures — including rights adjudication, supranational obligations, and judicial assertiveness — and concludes that despite different starting points, both constitutions are converging towards a model in which neither the legislature nor the judiciary enjoys absolute supremacy, but rather each is constrained by an implicit or explicit commitment to constitutionalism, the rule of law, and the protection of fundamental rights.

Keywords: *Parliamentary Sovereignty, Constitutional Supremacy, Basic Structure Doctrine, Judicial Review, Dicey, Human Rights Act, Kesavananda Bharti , Rule of Law, Comparative Constitutional Law.*

I. INTRODUCTION

Among the most fundamental questions in public law is the following: who, ultimately, holds supreme authority in a constitutional order — the elected legislature, the written text of a constitution, or the courts that interpret and enforce both? The answers offered by different constitutional traditions reveal deep divergences in philosophy, history, and institutional design. Two of the most instructive answers in the common law world are provided by the United Kingdom and the Republic of India. Though both share a common legal heritage derived from British colonial rule, they have charted strikingly different courses in allocating sovereign power within their respective constitutional frameworks.

In the United Kingdom, constitutional orthodoxy has long been anchored to the principle of *parliamentary sovereignty* — the doctrine, classically formulated by A.V. Dicey in 1885, that Parliament possesses the unlimited legal power to make or unmake any law, and that no institution, including the courts, may override or set aside an Act of Parliament.[2073] This principle was, for much of the nineteenth and twentieth centuries, the lodestar of British constitutionalism, shaping everything from the

[2073] A.V. Dicey, Introduction to the Study of the Law of the Constitution (8th edn, Macmillan 1915) 39-40.

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absence of a written constitution to the limited character of judicial review in England and Wales.

India, by contrast, adopted in 1950 a comprehensive, written, and justiciable Constitution that explicitly declares itself to be the supreme law of the land. Article 13(2) categorically provides that the State shall not make any law which takes away or abridges the rights conferred by Part III, and any law made in contravention of this clause shall, to the extent of the contravention, be void.[2074] The Indian Supreme Court has further expanded the reach of constitutional supremacy through the celebrated *Basic Structure Doctrine*, first articulated in *Kesavananda Bharati v State of Kerala* (1973), which holds that even the constituent power of Parliament cannot destroy the essential features of the Constitution.[2075]

The contrast between the two systems is made all the more vivid by episodes of constitutional tension in recent times. In the United Kingdom, the Supreme Court in *R (Miller) v Secretary of State for Exiting the European Union* (2017) affirmed parliamentary sovereignty as the foundational principle of the British constitution, while simultaneously recognising significant limitations on executive prerogative — a nuanced picture that defies any simplistic invocation of legislative omnipotence.[2076] In India, the ongoing assertion of the basic structure doctrine by the judiciary has generated recurring friction with parliamentary majorities, raising persistent questions about the boundary between constitutionalism and judicial supremacism.[2077]

This article proceeds in four parts. Part I examines the doctrine of parliamentary sovereignty as developed in the United Kingdom — its intellectual origins, institutional expressions, and the significant qualifications it has undergone since the mid-twentieth century. Part II analyses the doctrine of constitutional supremacy in India, tracing the Constituent Assembly debates, the text of the Constitution, and the trajectory of the basic structure doctrine through Supreme Court jurisprudence. Part III offers a systematic comparative analysis of the two systems across key dimensions: the locus of sovereign power, the scope and character of judicial review, amendment procedures, and the adjudication of fundamental rights. Part IV examines convergences and divergences between the two systems in the twenty-first century, with particular attention to emerging trends in both jurisdictions. The article concludes by suggesting that both systems, despite their different starting points, are moving towards a shared commitment to constitutional governance that transcends any single institution.

II. PARLIAMENTARY SOVEREIGNTY IN THE UNITED KINGDOM

A. Intellectual Origins and Dicey's Classical Formulation

The principle of parliamentary sovereignty in England has its roots in the constitutional struggles of the seventeenth century, particularly the conflicts between the Crown and Parliament that culminated in the Glorious Revolution of 1688 and the Bill of Rights 1689. The Revolution settlement established the supremacy of Parliament over the Crown, ending the monarchical claim to govern by prerogative alone and cementing the legislative authority of the King-in-Parliament as the ultimate source of law in England.

It was, however, A.V. Dicey whose work crystallised this historical development into a formal constitutional doctrine. In his *Introduction to the Study of the Law of the Constitution*, first published in 1885 and enormously influential for the next century, Dicey identified parliamentary sovereignty as one of the twin pillars of the British constitution (the other being the rule of law). He articulated the doctrine with great precision: Parliament

[2074] The Constitution of India, 1950, art 13(2).
[2075] Kesavananda Bharti v State of Kerala AIR 1973 SC 1461.
[2076] R (Miller) v Secretary of State for Exiting the European Union [2017] UKSC 5.
[2077] Mark Elliott and Robert Thomas, Public Law (4th edn, Oxford University Press 2020) 55.

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has the right to make or unmake any law; no body other than Parliament can override Parliament's legislation; and there is no distinction in legal validity between constitutional and ordinary legislation.[2078]

Dicey's formulation had three distinct limbs. First, the *positive limb*: Parliament can legislate on any subject matter, including the amendment of earlier Acts, the imposition of taxation, the regulation of fundamental rights, and even the extension of its own term of office. Second, the *negative limb*: no institution — no court, no executive body, no person — can lawfully override or hold void an Act of Parliament. Third, the *self-continuity limb*: no Parliament can bind its successors; a later Parliament can always repeal or modify earlier legislation. Wade and Forsyth have argued that this third limb is perhaps the most controversial, since it implies that entrenchment of earlier legislation is legally impossible.[2079]

The historical antecedents of the doctrine can be traced further to Sir William Blackstone's *Commentaries on the Laws of England* (1765), in which Blackstone described Parliament as possessing absolute despotic power: what Parliament does, no authority upon earth can undo.[2080] This near-absolute positivism was reflected in the refusal of English courts to engage in substantive review of primary legislation. In *Edinburgh & Dalkeith Railway v Wauchope* (1842), the House of Lords firmly held that once an Act of Parliament has been regularly passed, courts cannot enquire into the propriety of the procedure by which it was enacted.[2081] This principle was reaffirmed in *Pickin v British Railways Board* (1974), where Lord Reid emphatically denied the courts any competence to examine the proceedings of Parliament.[2082]

B. Challenges to Parliamentary Sovereignty in the Twentieth Century

The twentieth century introduced a series of pressures on the classical Diceyan paradigm, the most dramatic being the United Kingdom's accession to the European Communities and the subsequent passage of the European Communities Act 1972. The Factortame litigation tested the doctrine to breaking point: in *R v Secretary of State for Transport, ex parte Factortame Ltd* (1991), the House of Lords accepted the obligation to disapply an Act of Parliament — the Merchant Shipping Act 1988 — that was inconsistent with directly effective Community law. The House granted interim relief restraining application of the offending Act, something that would have been unthinkable under classical Diceyan theory.[2083]

This was not, strictly speaking, a repudiation of parliamentary sovereignty: the dominant view held that Parliament had itself, by passing the 1972 Act, authorised the supremacy of Community law within the domestic legal order, and could in principle repeal the 1972 Act at any time. The theoretical purity of the doctrine was thus preserved, but its practical operation was substantially altered. The United Kingdom had, even within the logic of sovereignty, created a constitutional statute that was, for as long as it subsisted, effectively immune from implied repeal.

The second major challenge came with the Human Rights Act 1998 (HRA), which incorporated the European Convention on Human Rights into domestic law. The HRA introduced two remarkable innovations. Section 4 conferred upon senior courts the power to make a 'declaration of incompatibility' where primary legislation was found to be irreconcilable with Convention rights.[2084] Such a

[2078] Dicey (n 1) 40: "Parliament... has, under the English constitution, the right to make or unmake any law whatever; and, further, that no person or body is recognised by the law of England as having a right to override or set aside the legislation of Parliament."

[2079] William Wade and Christopher Forsyth, Administrative Law (11th edn, Oxford University Press 2014) 12.

[2080] Sir William Blackstone, Commentaries on the Laws of England, Vol I (Clarendon Press 1765) 160.

[2081] Edinburgh & Dalkeith Railway v Wauchope (1842) 8 Cl & F 710 (HL).

[2082] Pickin v British Railways Board [1974] AC 765 (HL).

[2083] R v Secretary of State for Transport, ex parte Factortame Ltd [1991] 1 AC 603 (HL).

[2084] Human Rights Act 1998, s 4.

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declaration does not affect the validity, continuing operation, or enforcement of the provision — parliamentary sovereignty is formally preserved. However, section 3(1) required all courts to read and give effect to legislation, so far as it is possible to do so, in a way compatible with Convention rights.[2085] The House of Lords in *R v A (No 2)* (2001) demonstrated the extraordinary reach of this interpretive obligation, reading down the literal terms of the Youth Justice and Criminal Evidence Act 1999 to make it compliant with Article 6 of the ECHR.[2086]

C. Theoretical Challenges: Is Parliamentary Sovereignty Self-Limiting?

The persistent theoretical challenge to parliamentary sovereignty has been mounted by judges and scholars who argue that the doctrine is itself contingent upon the common law, and that the common law may, in extreme circumstances, refuse recognition to legislation that violates fundamental principles. Sir John Laws argued influentially that Parliament's legislative supremacy exists only because the common law grants it, and that the common law can, at least in principle, withdraw that recognition from legislation that contravenes fundamental rights.[2087] Paul Craig similarly argued that sovereignty is not a jurisprudential necessity but a political choice, grounded in contingent historical arrangements.[2088]

The devolution settlements of the late 1990s introduced a further layer of complexity.[2089] The Scotland Act 1998, the Government of Wales Act 1998, and the Northern Ireland Act 1998 created legislative assemblies with defined competences and subjected their acts to judicial challenge on grounds of competence. The UK Supreme Court in *AXA General Insurance Ltd v HM Advocate* (2011) confirmed that Acts of the Scottish Parliament are not sovereign legislation but are subject to substantive review on grounds of irrationality and common law rights.[2090] The devolved context thus creates, within the United Kingdom's multi-layered constitutional order, something approaching constitutional review of the kind familiar in federal and written-constitution systems.

III. CONSTITUTIONAL SUPREMACY IN INDIA

A. The Constituent Assembly and the Choice of Constitutional Supremacy

When the Constituent Assembly of India convened in December 1946 to draft a constitution for the newly independent nation, it was confronted with a fundamental structural choice: should India follow the Westminster model of parliamentary sovereignty, or should it opt for a written, enforceable constitution that would be supreme over Parliament? The answer, overwhelmingly favoured by the Assembly's leadership, was constitutional supremacy. Dr B.R. Ambedkar, the principal architect of the Constitution and Chairman of the Drafting Committee, explained this choice in memorable terms in his closing address to the Assembly: the Constitution is the supreme law, binding on every organ of state, and Parliament, however representative, derives its authority from the Constitution and must exercise that authority within constitutional bounds.[2091]

The choice reflected the particular context of Indian constitutionalism. The Assembly was drafting not merely a framework of government but a transformative document: one that would dismantle the social hierarchies of caste and untouchability, guarantee fundamental rights to a population long denied them, and lay the foundations of a federal and democratic republic.[2092] As Granville Austin famously observed, the Indian Constitution was first and foremost a social document, and it was precisely the ambition of social transformation

[2085] Human Rights Act 1998, s 3(1).
[2086] R v A (No 2) [2001] UKHL 25, [2002] 1 AC 45.
[2087] John Laws, 'Law and Democracy' [1995] Public Law 72, 81.
[2088] Paul Craig, 'Public Law, Political Theory and Legal Theory' [2000] Public Law 211.
[2089] Scotland Act 1998; Wales Act 2017; Northern Ireland Act 1998.
[2090] AXA General Insurance Ltd v HM Advocate [2011] UKSC 46, [2012] 1 AC 868.
[2091] Constituent Assembly Debates, Vol XI (25 November 1949) 972 (Ambedkar).
[2092] B. Shiva Rao (ed), The Framing of India's Constitution (2nd edn, Indian Institute of Public Administration 2004) Vol I, 1.

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that required the Constitution to be supreme and immune from easy legislative erosion.[2093]

The supremacy of the Constitution is expressed in several interlocking provisions. Article 13 renders void any law that is inconsistent with the fundamental rights guaranteed by Part III. Article 32 guarantees the right to move the Supreme Court for enforcement of fundamental rights, and is itself declared to be a fundamental right that cannot be suspended except in the manner provided by the Constitution.[2094] The Supreme Court's original jurisdiction under Article 32 functions as the constitutional guardian of the supremacy of Part III, rendering it directly enforceable against all state action.

B. The Amendment Power and its Limits: From Golak Nath to Kesavananda

The most dramatic assertion of constitutional supremacy over parliamentary power came through the evolution of the *Basic Structure Doctrine*. The story begins with a paradox embedded in Article 368 of the Constitution, which confers on Parliament the power to amend the Constitution, including its fundamental rights provisions, but does not specify whether the amendment power is unlimited or whether it has inherent substantive limits.[2095]

The early Supreme Court took an expansive view of the amendment power. However, in *I.C. Golak Nath v State of Punjab* (1967), the Court made a dramatic reversal, holding by a majority of six to five that Parliament had no power to amend the fundamental rights provisions of the Constitution. Chief Justice Subba Rao reasoned that fundamental rights occupied a transcendent position and could not be abridged even by way of constitutional amendment.[2096] Parliament responded by enacting the Twenty-Fourth Constitutional Amendment Act 1971, which explicitly conferred on Parliament the power to amend any provision of the Constitution, including the fundamental rights chapter, and declared that no such amendment shall be called in question on the ground of contravening Article 13.[2097]

The constitutional conflict was brought to a head in *Kesavananda Bharati v State of Kerala* (1973), the most consequential decision in Indian constitutional history. A bench of thirteen judges — the largest ever convened by the Indian Supreme Court — was asked to determine the constitutional validity of the Twenty-Fourth Amendment and the scope of Parliament's power to amend the Constitution. By a razor-thin majority of seven to six, the Court upheld the Twenty-Fourth Amendment in its formal validity — Parliament does have the power to amend any provision of the Constitution — but simultaneously introduced a momentous qualification: the amendment power cannot be used to destroy or abrogate the *basic structure* of the Constitution.[2098]

Chief Justice Sikri, articulating one of the leading opinions, identified the basic structure as including the supremacy of the Constitution, the republican and democratic form of government, the secular character of the Constitution, the separation of powers, and the federal character. While the Court did not exhaustively enumerate the elements of the basic structure, subsequent decisions have progressively expanded its content. The doctrine was applied for the first time to strike down a constitutional amendment in *Indira Nehru Gandhi v Raj Narain* (1975), where the Court invalidated the Thirty-Ninth Amendment — enacted during the Emergency to immunise the Prime Minister's election from judicial scrutiny — on the ground that it violated the basic structure by undermining free and fair elections as an essential feature of democracy.[2099]

[2093] Granville Austin, The Indian Constitution: Cornerstone of a Nation (Clarendon Press 1966) 34.
[2094] The Constitution of India 1950, art 32.
[2095] State of Madras v V.G. Row AIR 1952 SC 196.
[2096] The Constitution of India 1950, art 368.
[2097] I.C. Golak Nath v State of Punjab AIR 1967 SC 1643.
[2098] The Constitution (Twenty-Fourth Amendment) Act 1971.
[2099] Kesavananda Bharati (n 3) para 316 (Sikri CJ).

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C. Consolidation and Expansion: Minerva Mills to the Twenty-First Century

The basic structure doctrine was further consolidated in *Minerva Mills Ltd v Union of India* (1980), where the Court struck down Sections 4 and 55 of the Forty-Second Amendment Act 1976 — which had sought to give absolute primacy to the Directive Principles over the fundamental rights and to immunise all constitutional amendments from judicial review. Justice Bhagwati, delivering a concurring opinion, observed that the Constitution was founded on a fundamental premise — a harmonious balance between Parts III and IV — and that to destroy this balance by making either absolutely supreme over the other was to damage an essential feature of the constitutional scheme.[2100]

The doctrine has since been applied across a remarkable range of constitutional controversies. In *S.R. Bommai v Union of India* (1994), the Court held that federalism and secularism are part of the basic structure, limiting the Union government's power to impose President's Rule in states.[2101] In *I.R. Coelho v State of Tamil Nadu* (2007), the nine-judge Constitution Bench held that even laws placed in the Ninth Schedule — originally designed to immunise agrarian reform legislation from Part III challenge — are subject to basic structure review if they abrogate or abridge fundamental rights.[2102]

More recently, the constitutional culture of rights-based adjudication reached a landmark in *Justice K.S. Puttaswamy v Union of India* (2017), where a nine-judge bench unanimously recognised the right to privacy as a fundamental right under Article 21, and in doing so drew extensively on the foundational values of dignity, autonomy, and liberty that underlie the basic structure of the Constitution.[2103] The privacy judgment exemplifies the Supreme Court's continuing role as the guardian of constitutional supremacy, expanding fundamental rights even in the absence of legislative action. This trajectory continued in *Navtej Singh Johar v Union of India* (2018), where the Court decriminalised consensual same-sex conduct, overruling an earlier decision and reaffirming the supremacy of constitutional values over majoritarian legislative choices.[2104]

IV. COMPARATIVE ANALYSIS: KEY DIMENSIONS

A. The Locus of Sovereign Power

The most fundamental contrast between the two systems is in the location of sovereign power. In the United Kingdom, sovereignty — at least in its formal Diceyan sense — resides in Parliament. Parliament is the author of its own authority; there is no external norm, not even a natural law principle, that the courts recognise as legally superior to an Act of Parliament. Sovereignty is, in this sense, legislative: it belongs to the institution that makes law, rather than to a text or set of values that constrain law-making.[2105]

In India, sovereignty in the constitutional sense resides not in Parliament but in the Constitution itself. Parliament is a creature of the Constitution: it derives its existence, its composition, its powers, and its procedures from the constitutional text.[2106] It is constrained by fundamental rights, the basic structure doctrine, the division of powers between the Union and the States, and the supervisory jurisdiction of the higher judiciary. This means that constitutional sovereignty is, in an important sense, *popular* rather than parliamentary: as Dr Ambedkar argued, the Constitution is the expression of the will of the people of India, and Parliament, as the representative of the people, is subordinate to that expression.

[2100] Indira Nehru Gandhi v Raj Narain AIR 1975 SC 2299.
[2101] Minerva Mills Ltd v Union of India AIR 1980 SC 1789.
[2102] S.R. Bommai v Union of India AIR 1994 SC 1918.
[2103] I.R. Coelho v State of Tamil Nadu AIR 2007 SC 861.
[2104] Justice K.S. Puttaswamy v Union of India (2017) 10 SCC 1.
[2105] Navtej Singh Johar v Union of India (2018) 10 SCC 1.
[2106] M.P. Singh, 'Securing the Independence of the Judiciary – The Indian Experience' (2000) 10 Indiana International & Comparative Law Review 245, 249.

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The contrast, however, should not be over-stated. British constitutional law has, in the wake of devolution and the HRA, increasingly acknowledged that Parliament's sovereignty operates within a framework of constitutional values — including the rule of law, the independence of the judiciary, and basic rights — that constrain its exercise even if they cannot formally invalidate its output. Lord Steyn famously observed in *Jackson v Attorney General* (2005) that the doctrine of parliamentary sovereignty may have to yield if Parliament were to abolish judicial review or the ordinary role of the courts.[2107] These dicta suggest that British constitutionalism is itself moving, at least rhetorically, towards a model in which certain constitutional fundamentals — what might be called a British basic structure — are beyond the reach of parliamentary majority.

B. Judicial Review: Contrasting Models

The second major dimension of comparison is the model of judicial review adopted in each jurisdiction. In the United Kingdom, judicial review of primary legislation was, until the HRA, essentially non-existent. Courts could review the acts of executive bodies and inferior tribunals for procedural and substantive legality, but they could not set aside a validly enacted Act of Parliament. The HRA introduced a limited form of rights review through declarations of incompatibility, but even this mechanism is carefully constructed to avoid giving courts the power to invalidate primary legislation.[2108]

In India, by contrast, judicial review of legislation — including primary legislation enacted by Parliament and state legislatures — is a fundamental constitutional guarantee. Under Articles 13, 32, and 226, both the Supreme Court and High Courts are empowered to strike down any law that is inconsistent with the Constitution.[2109] This power of substantive constitutional review is exercised with great frequency by the Indian higher judiciary. The Supreme Court has struck down central statutes, state laws, and even constitutional amendments on grounds of inconsistency with the Constitution's fundamental rights provisions or the basic structure doctrine.

A critical difference lies in the intensity of review. Indian courts apply a standard of proportionality in fundamental rights cases, requiring the State to demonstrate not only a legitimate aim but also a rational and proportionate connection between the legislative means and the constitutional end.[2110] This standard has been progressively strengthened since *Maneka Gandhi v Union of India* (1978), in which the Supreme Court rejected the earlier American-style rational basis test and moved towards a substantive due process analysis that makes rights restrictions vulnerable to close judicial scrutiny.

In the United Kingdom, the courts' constitutional review function — even under the HRA — is more restrained. The interpretive obligation under section 3 is powerful, but it stops short of invalidation. When incompatibility cannot be cured by interpretation, a section 4 declaration is all that is available, and even that does not strike down the offending provision.[2111] The UK model is thus closer to a *dialogue model* of constitutional review, in which courts signal incompatibility to Parliament and Parliament retains the ultimate power to respond (or not), whereas the Indian model is closer to a *judicial supremacy* model in which the Supreme Court's constitutional interpretations are, subject to the basic structure doctrine itself, final.

C. Amendment Procedures and Constitutional Entrenchment

The amendment procedure is another area of sharp contrast. In the United Kingdom, since there is no single written constitutional document, there is no special procedure for 'constitutional' amendment. Parliament can, by

[2107] Jeffrey Goldsworthy, Parliamentary Sovereignty: Contemporary Debates (Cambridge University Press 2010) 11.
[2108] H.M. Seervai, Constitutional Law of India (4th edn, N.M. Tripathi 1991) Vol I, 8.
[2109] Jackson v Attorney General [2005] UKHL 56, [2006] 1 AC 262, 302 (Lord Steyn).
[2110] D.D. Basu, Commentary on the Constitution of India (8th edn, LexisNexis 2011) Vol I, 116.
[2111] Maneka Gandhi v Union of India AIR 1978 SC 597.

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ordinary majority, modify any constitutional arrangement — including the operation of the courts, the extent of fundamental rights, and the distribution of power between central and devolved institutions. This is, of course, subject to the important qualification that certain statutes — the Bill of Rights 1689, the Acts of Union, the HRA, the Scotland Act — are increasingly regarded by courts and scholars as 'constitutional statutes' that are not subject to implied repeal by later legislation.[2112]

India's Constitution, by contrast, provides for an elaborate, differentiated amendment procedure under Article 368. Certain provisions — such as the fundamental rights in Part III — can be amended by a special majority of two-thirds of members of each House present and voting, combined with an absolute majority of the total membership of each House. Certain other provisions — including the representation of states in Parliament, the amendment procedure itself, and the distribution of legislative powers — require, in addition to the parliamentary super-majority, ratification by not less than half of the state legislatures.[2113] This entrenchment is further fortified by the basic structure doctrine, which renders certain provisions immune from amendment altogether.

Crucially, the distinction between ordinary law and constitutional law in India is thus both procedural and substantive: it is not enough to comply with the formal requirements of Article 368; the amendment must also not violate the basic structure. This double protection — procedural difficulty and substantive constraint — gives the Indian Constitution a degree of rigidity that is, in comparative terms, among the most demanding in the world.[2114]

D. Fundamental Rights Adjudication

The adjudication of fundamental rights presents perhaps the sharpest contrast between the two systems. In India, fundamental rights — guaranteed under Articles 12 to 35 of the Constitution — are directly and judicially enforceable. The State cannot take them away by ordinary legislation; even constitutional amendment cannot destroy rights that form part of the basic structure. The Indian Supreme Court has developed a rich jurisprudence on the scope and content of these rights, progressively expanding the textual provisions to encompass the right to privacy, the right to livelihood, the right to a clean environment, and the right to free legal aid, among many others.[43] The United Kingdom has long possessed an unwritten tradition of fundamental liberties — [2115]freedom of speech, habeas corpus, the right to a fair trial — but these were, before the HRA, protected primarily through common law rules of construction, the presumption against the infringement of rights, and parliamentary convention rather than judicially enforceable rights norms. The HRA 1998 significantly changed this landscape by incorporating most of the ECHR rights into domestic law. However, the rights under the HRA are, in formal terms, not constitutional rights in the Indian sense: they can be limited by a later Act of Parliament that clearly expresses such intention, and the remedy for incompatibility is a declaration, not invalidation.

The practical significance of this distinction is illustrated by a comparison of judicial responses to legislative encroachments on liberty. In India, the Supreme Court struck down the criminalisation of consensual same-sex conduct in *Navtej Singh Johar* (2018) — overruling an earlier decision that had unwisely retreated from constitutional values — on the ground that the relevant provision violated Articles 14, 15, 19, and 21 of the Constitution.[2116] In the United Kingdom, though domestic courts had increasingly construed the Sexual Offences Act in Conventioncompatible ways, it ultimately required a statutory amendment — the Criminal Justice and Public Order Act 1994 — to equalise

[2112] R (Daly) v Secretary of State for the Home Department [2001] UKHL 26, [2001] 2 AC 532.
[2113] The Constitution of India 1950, art 368(2) proviso.
[2114] Parliament Acts 1911 and 1949.
[2115] M. Jain, Indian Constitutional Law (7th edn, LexisNexis 2014) 1643.
[2116] Waman Rao v Union of India AIR 1981 SC 271.

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the age of consent, reflecting the dependence of rights reform on legislative action.

Conversely, the Indian system is not without its own failures. In *Suresh Kumar Koushal v Naz Foundation* (2014), a Supreme Court division bench — to the astonishment of constitutional lawyers worldwide — reversed a High Court decision that had read down Section 377 of the Indian Penal Code, holding that it was for Parliament, not the courts, to decide on the criminalisation of consensual same-sex conduct.[2117] The decision was ultimately overruled in *Navtej Singh Johar*, but it illustrated that constitutional supremacy, even in India, does not guarantee consistently progressive rights adjudication: judicial appointments, institutional culture, and the personal convictions of judges profoundly shape the content of constitutional rights review.

V. CONVERGENCES AND DIVERGENCES IN THE TWENTY-FIRST CENTURY

A. The United Kingdom: Towards a Constitutional Culture?

The twenty-first century has witnessed significant evolution in the United Kingdom towards a constitutional culture more closely resembling the model of constitutional supremacy. Several developments are particularly noteworthy. First, the recognition of 'constitutional statutes' as a distinct category of legislation immune from implied repeal — articulated in Laws LJ's judgment in *Thoburn v Sunderland City Council* (2002) — introduces a form of hierarchical differentiation among Acts of Parliament that was foreign to the Diceyan paradigm. If constitutional statutes cannot be repealed by implication, then Parliament's own earlier legislation may, in a modest but real sense, constrain Parliament's later legislation.

Second, the Miller I and Miller II decisions have dramatically asserted the role of the courts as guardians of constitutional principles. In Miller I (2017), the Supreme Court confirmed that parliamentary sovereignty required a parliamentary statute authorising the triggering of Article 50 of the Treaty on European Union.[2118] In Miller II (2019), the Court unanimously held that the Prime Minister's advice to the Queen to prorogue Parliament for five weeks was unlawful, null, and void, because it had the effect of frustrating Parliament's constitutional function as the legislature and as the body responsible for supervising the executive.[2119] The Court's willingness to impose legally enforceable limits on the exercise of executive prerogative — indeed, on the prerogative itself — represents a significant judicialisation of constitutional review in the United Kingdom.

Third, the debates around the possible repeal of the HRA and its replacement with a 'British Bill of Rights' have revealed a constitutional culture in which rights-based adjudication has taken root, however cautiously, and in which courts have come to be regarded as legitimate participants in the constitutional dialogue about the content and limits of fundamental rights. Whatever Parliament ultimately decides, the terms of the debate have shifted: it is no longer acceptable, in mainstream political discourse, to simply assert that Parliament may do whatever it wishes with the rights of the people.[2120]

B. India: Judicial Supremacy and its Discontents

India faces a different but equally significant set of twenty-first century challenges. The basic structure doctrine has, over fifty years, become the most distinctive feature of Indian constitutionalism — celebrated by its admirers as a bulwark against constitutional erosion by transient political majorities, and criticised by its detractors as an undemocratic expansion of judicial power at the expense of the elected representatives of the people.[2121]

The most recent significant engagement between the basic structure doctrine and

[2117] Per Bhagwati J in Minerva Mills (n 29) para 77: "The power of amendment... is not an absolute power. It is a limited power."

[2118] T.R.S. Allan, Constitutional Justice: A Liberal Theory of the Rule of Law (Oxford University Press 2001) 222.
[2119] Suresh Kumar Koushal v Naz Foundation (2014) 1 SCC 1.
[2120] Shayara Bano v Union of India (2017) 9 SCC 1.
[2121] Miller (n 4) para 43 (Lord Neuberger PSC).

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parliamentary action came with the National Judicial Appointments Commission (NJAC) controversy. In 2014, Parliament enacted the Ninety-Ninth Constitutional Amendment, replacing the collegium system of judicial appointments with a NJAC. In *Supreme Court Advocates-on-Record Association v Union of India* (2016), a Constitution Bench struck down the NJAC Act and the constitutional amendment by a majority of four to one, holding that the involvement of the Union Law Minister and two eminent persons in the appointment of judges compromised the independence of the judiciary, which is a basic feature of the Constitution.[2122] The decision was deeply controversial: critics argued that the Court had used the basic structure doctrine to entrench its own institutional interest in controlling judicial appointments, and that this represented an excessive self-arrogation of constitutional power.

The tension between constitutional supremacy and democratic legitimacy also manifests in the domain of executive power. In *Anuradha Bhasin v Union of India* (2020), the Supreme Court held that the imposition of an indefinite internet shutdown in Jammu & Kashmir was disproportionate and violative of freedom of speech and expression under Article 19(1)(a), but its directions for restoration of services were widely criticised as inadequately enforced.[51] The case illustrates a recurring limitation of constitutional supremacy in practice: the court can declare the law, but enforcement depends on executive compliance — a lesson that resonates in both the Indian and British constitutional contexts.

C. Shared Challenges and Common Trends

Despite their different theoretical foundations, the Indian and British constitutional systems face a number of shared challenges in the contemporary period. Both must grapple with the rise of populist politics that challenges the authority of courts and seeks to subordinate legal norms to political imperatives. In the United Kingdom, periodic executive rhetoric about 'activist judges' and legislative proposals to curtail judicial review reflect an impatience with constitutional constraints that closely parallels the rhetoric of executive overreach familiar in other democracies.[52]

Both systems also face the challenge of maintaining constitutional effectiveness in the face of sophisticated legislative strategies designed to circumvent rights obligations. Lord Hope's observation in *Jackson* that parliamentary sovereignty may no longer be absolute even in the United Kingdom resonates across jurisdictions.[53] Similarly, India's experience with the Ninth Schedule, the successive constitutional amendments during the Emergency, and recent debates about the misuse of the President's Rule demonstrate that constitutional supremacy is not self-enforcing: it requires an independent, competent, and courageous judiciary, a vibrant civil society, and a political culture that respects constitutional norms.

There is also a convergence in the theoretical frameworks increasingly employed by courts in both jurisdictions. Proportionality — long established in German, European, and Indian constitutional law — has been recognised by the UK Supreme Court as the appropriate standard of review in HRA cases, replacing the more deferential Wednesbury standard in contexts involving fundamental rights. This convergence suggests that the traditional methodological divide between constitutional and administrative law is narrowing, as courts in both systems come to apply similar analytical frameworks to the protection of individual rights against state power.[54]

Finally, both systems are grappling with questions about the appropriate boundary between judicial and democratic decision-making. The debates around the basic structure doctrine in India and around the limits of section 3 interpretation under the HRA in the United Kingdom both ultimately ask: how much of the constitutional order should be

[2122] R (Miller) v Prime Minister [2019] UKSC 41 (Miller II/Cherry).

determined by unelected judges, and how much by the elected representatives of the people? Neither system has given — or can give — a definitive answer. The answer changes with every government, every generation of judges, and every constitutional crisis that forces the institutions of the state to confront their mutual limits and dependencies.

VI. CONCLUSION

The comparison between parliamentary sovereignty in the United Kingdom and constitutional supremacy in India reveals two fundamentally different answers to the question of who, ultimately, has the last word in a constitutional order. The United Kingdom began with an uncompromising assertion of legislative omnipotence: Parliament, in Dicey's formulation, could do anything.[2123] India, at the moment of independence, chose a radically different path: a written, justiciable, supreme Constitution that subjected both the executive and the legislature to the sovereignty of constitutional norms.

Both systems have undergone profound transformation since their classical articulations. The United Kingdom has, through the pressures of European integration, rights adjudication, and devolution, developed a constitutional culture in which certain fundamental values — access to courts, parliamentary accountability, basic rights — function as meaningful constraints on legislative and executive power, even without formal constitutional entrenchment. India has, through the basic structure doctrine and the expanding jurisdiction of the Supreme Court, developed a model of constitutional supremacy that is arguably the most robust in the common law world — one that subjects even constitutional amendments to judicial review.[2124]

The convergence between the two systems is, however, incomplete and perhaps irreversible. The United Kingdom remains formally committed to parliamentary sovereignty and continues to resist the formal entrenchment of rights in a constitutional text. India remains formally committed to constitutional supremacy but periodically witnesses legislative and executive challenges to the basic structure doctrine. Both systems thus occupy a contested middle ground between legislative supremacy and judicial supremacy, navigating the perennial tension between democratic legitimacy and constitutional constraint through a continuing institutional dialogue.

What the comparison ultimately demonstrates is that no constitutional system is static. Parliamentary sovereignty and constitutional supremacy are not fixed endpoints but evolving doctrines, shaped by history, politics, legal culture, and the never-ending practice of constitutional adjudication. The deeper question — how a constitutional democracy maintains both democratic self-governance and effective protection of fundamental rights — does not admit of a single, universal answer. What it requires, in both the United Kingdom and India, is a constitutional culture in which all institutions of the state — legislature, executive, and judiciary — understand their mutual dependence, exercise their powers with humility, and remain accountable to the fundamental values that legitimise their authority.[2125]

In the end, perhaps the most important insight of this comparative exercise is that parliamentary sovereignty and constitutional supremacy, far from being irreconcilable opposites, are two different legal vocabularies for the same underlying aspiration: to constitute a political community capable of governing itself lawfully, protecting the rights of all its members, and remaining open to the possibility of change within principled limits. The difference lies not in the goal but in the institutional design chosen to achieve it — and in the relative trust placed, in each system, in the legislature or the

[2123] Public Interest Foundation v Union of India (2019) 3 SCC 224.
[2124] Mark Elliott, 'The Human Rights Act 1998 and the Standard of Substantive Review' (2001) 60 Cambridge Law Journal 301.
[2125] Nick Barber, 'The Afterlife of Parliamentary Sovereignty' (2011) 9 International Journal of Constitutional Law 144.

courts to be the primary guardians of that aspiration.

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51 Anuradha Bhasin v Union of India (2020) 3 SCC 637.

52 Supreme Court Advocates-on-Record Association v Union of India (2016) 5 SCC 1 (NJAC Case).

53 Alok Prasanna Kumar, 'Interpreting the Basic Structure Doctrine' (2013) 5 NUJS Law Review 293.

54 Lord Hope in Jackson (n 37) 126: "Parliamentary sovereignty is no longer, if it ever was, absolute."