

MAPPING THE CONTOURS OF JUDICIAL REVIEW : A COMPARATIVE ANALYSIS OF THE UK, USA, FRANCE AND INDIA

by

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Abstract

Judicial review is one of the core constitutional features that lays the foundations of the supremacy of the Constitution, the rule of law, and protection of individual rights, by allowing courts to review the legality and constitutionality of legislative and executive decisions and actions. Its scope, nature and constitutional bases vary however, significantly in different legal systems. This article compares judicial review in the United Kingdom, the United States, France and India, looking at the history, constitution, institutions and practice of each. The United Kingdom has a doctrine of parliamentary sovereignty and limited judicial review principles, as opposed to those of the United States which are very strong in constitutional judicial review principles, with judicial precedent as the basis. The Basic Structure Doctrine has expanded and made the judicial review system in Indian Constitution dynamic and strong, while in France it is a centralized constitutional review system through the Constitutional Council. Despite the variations in judicial review from jurisdiction to jurisdiction, the study shows that it is an essential tool for upholding constitutionalism, holding government to account, and protecting democratic governance.

Keywords: judicial review, parliamentary sovereignty, basic structure doctrine, constitutional supremacy, rule of law, constitutional council.

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Introduction

The power of judges to examine the laws and the actions of the executive to see if they are constitutionally valid and in accordance with other laws is judicial review. When a law or government action is determined to be in conflict with provisions or legal principles of the constitution, the courts can declare invalid or strike down such action to uphold the rule of law and constitutional supremacy (Gupta & Kashyap, 2024; Boiragi, 2025; Yahya, 2019). Comparatively speaking, judicial review that is universally considered the protector of the rule of law, has evolved in different ways and been used differently, in the UK, the USA, France and India, where the rule of law itself is established through unique constitutional traditions (Calabresi, 2021).

The global expansion of judicial review since the mid-twentieth century illustrates its emergence as a foundational feature of modern constitutionalism. By 2011, constitutional review was a feature of 83 per cent of the world's constitutions, a figure that has continued to rise in the decades since, underscoring the near-universal appeal of courts as guardians of constitutional limits on governmental power.² Comparative constitutional scholarship has, however, consistently noted a fundamental structural divide between the decentralised American model, in which ordinary courts of general jurisdiction exercise constitutional review, and the centralised Kelsenian model of specialised constitutional tribunals, with many jurisdictions adopting hybrid variants that draw from both traditions.³

It is generally accepted that judicial review refers to a judicial process whereby courts check the activities of other public bodies and organizations against constitutional or legal limits. It is a key element of several constitutional purposes in different legal systems: it protects the primacy of the constitution or of other fundamental legal values, promotes the rule of law, secures respect for fundamental rights and guarantees the balance of power between the institutions of the state (Jain, 2024; Birkinshaw, 2021). Judicial Review is the power of a court to review the legality of or the constitutionality of legislative or executive decisions, and to overturn decisions when they are in conflict with higher law. The judiciary's role of striking

² Rosalind Dixon, 'Comparative Judicial Review' (2019) 17(3) *International Journal of Constitutional Law* 847, 847 (noting that, by one measure, constitutional review was a feature of 83 per cent of the world's constitutions in 2011, with continued growth thereafter).

³ Blerton Sinani, 'Global Patterns of Constitutional Judicial Review Systems: Two Major Models of Constitutional Judicial Review in the World' (2024) 14(1) *Tribuna Juridica* 155, 155-157 (distinguishing the American model of decentralised review by ordinary courts from the Kelsenian/European model of centralised review by specialised constitutional courts).

down laws or executive actions in common law countries with a broadly worded jurisdictional power over the constitution allows judges to invalidate actions if they are in conflict with constitutional principles or other higher law standards. The British tradition of the constitution, however, is more narrow. However, due to the doctrine of parliamentary sovereignty, there is no power for courts to annul Acts of Parliament and judicial review is directed mainly towards ensuring that the executive actions and delegated legislation do not exceed the powers granted by Parliament and meet the requirements of statute and common law (Birkinshaw, 2021; Boiragi, 2025).

States can invoke the doctrine of judicial review from two major intellectual traditions. Its philosophical underpinning can be linked to the English common law, in particular, the concepts propounded in *Dr. Bonham's Case*, which is still considered a landmark case that has contributed significantly to judicial oversight and modern constitutional jurisprudence (Jain, 2024; Pandey, 2020; Tripathy, 2020). As such, its formal constitutional recognition came to the U.S. in the U.S. Supreme Court case of *Marbury v. Madison* (1803) where the Court ruled that it had the power to review the constitutionality of acts of Congress, even if there was no explicit constitutional provision granting such power (Jain, 2024; Boiragi, 2025).

Judicial review as a concept has developed in many different ways in different jurisdictions. The concept of judicial review emerged slowly in the common law and was an important protection for people who were being acted on by a public body in an unlawful way in the United Kingdom. As Parliament is constitutionally sovereign, the courts have no jurisdiction to strike down Parliament's acts. As such, their supervisory function is limited to reviewing the 'legality, procedural fairness and rationality of executive actions and subordinate legislation' to ensure that public authorities act within their powers as delegated by Parliament (Birkinshaw, 2021; Singh & Bhangu, 2025).

In contrast, the United States is the classic example of a constitutional system of judicial review based upon the concepts of constitutional supremacy and limited government. American judges have the power to strike down laws and executive orders that violate the country's Constitution, which is documented. Under a written Constitution, American judges have the power to void laws and executive actions that conflict with it. This principle was clearly recognized in *Marbury v. Madison*, where judicial review became an integral part of the American constitutional tradition (Kumar, 2021; Roy, 2012).

In France, it is a model very different from the Anglo-American one. The French legal system, instead of having general courts undertake constitutional review, created constitutional review institutions that review the constitutionality and legality of governmental actions. The administrative legality is monitored by the Conseil d'État (State Council), and the constitutional scrutiny is done by the Constitutional Council, which traditionally carries out pre-enactment or preventive examination of laws before their entry into force (Radovanovic, 2023).

India, on the other hand, has taken a mixed approach to judicial review where some of the principles are derived from British legal tradition and others from the U.S. Constitution. The idea of judicial review was introduced through colonial legal system, but the Constitution of 1950 laid a robust constitutional framework, providing the courts with the power to strike down a law that is not in keeping with the Constitution. The Indian judiciary also enhanced this power by the development of the doctrine of the basic structure of the Constitution which protects the essential attributes of the Constitution from tampering by the amendment process or by legislation (Calabresi, 2021; Pandey, 2020).

Therefore, although judicial review exists with the common aim of holding the government to account and maintaining the rule of law, it has various institutional structures, foundations and limitations in scope in different legal systems. Legality is stressed in the United Kingdom, based on the principle of parliamentary sovereignty; in the U.S. it is on constitutional supremacy, enforced by the judiciary; in France, it is stressed through the presence of specialized constitutional and administrative institutions; and in the case of India, it is stressed in a unique and hybrid way, where the common law tradition of enforcement is combined with constitutional supremacy.

The United Kingdom

In the UK, the doctrine of judicial review is very different from that of a written, supreme Constitution like the one of the U.S. and India. The constitution of the United Kingdom is unwritten and the principle of parliamentary sovereignty as expounded by Dicey is the basis of constitutional governance. As a result, UK courts are unable to declare laws made by Parliament unconstitutional. Rather, judicial review concerns itself with reviewing the legality of executive acts, the procedures used by public bodies and administrators, the delegation of powers and the guiding principles of their administrative powers. The focus of judicial review is to ensure that their acts are within the powers of the law, their decisions are done fairly and according to law, and that their acts and decision making are done within the powers it has

decided to delegate. Judicial review occurs when the key points are that they must be within the powers of the law (*ultra vires*), followed a fair procedure and acted reasonably (Craig, 2021; Elliott & Thomas, 2020). This system is a balance between parliamentary supremacy and the rule of law, that in this, courts have legality, but not the damage of the legislative supremacy of Parliament. The GCHQ Case, *Council of Civil Service Unions v Minister for the Civil Service* (1985), is the case that has had the greatest impact on the development of modern judicial review in the UK. The House of Lords recognized that prerogative powers are subject to judicial review, unless they relate to topics outside the scope of judicial power, including national security and foreign affairs. In England three reasons for judicial review stand out: illegality, irrationality, and procedural impropriety, each of which is equivalent to a part of the foreign policy test (Craig, 2021).

In *Associated Provincial Picture Houses Ltd. V. Wednesbury Corporation* (1948), “the doctrine of Wednesbury” was established. In this instance the court ruled that if an administrative decision was so irrational that no rational public body would have reached it, then it could be challenged. Where intervention itself is concerned, the standard is still, of course, very high, but this principle has had a marked effect on the UK, as well as common law jurisdictions, in respect of judicial review.

The principle of judicial review was still further extended by *Anisminic Ltd. v. Foreign Compensation Commission* (1969), where the House of Lords held that the courts had the power to review decisions which have been contaminated with an error of law even where Parliament seeks to remove the possibility of judicial review by means of ouster clauses. This gave judges much greater powers of oversight, and meant that there was a reduction of attempts to protect public bodies from judicial powers.

The Human Rights Act 1998 ushered in a new era for judicial review by enabling courts to scrutinise legislation in relation to rights guaranteed by the European Convention on Human Rights. Section 4 of the Act, unlike the constitutional courts of countries which have entrenched constitutions, allows courts to make a declaration of incompatibility. The final say on any amendments or repeals to laws will be Parliament to maintain its sovereign powers and strengthen judicial protection of fundamental rights (Elliott & Thomas, 2020).

Beyond the declaration of incompatibility mechanism created by section 4, section 3 of the Human Rights Act 1998 imposes on courts a duty to read and give effect to all legislation, so far as it is possible to do so, in a way compatible with Convention rights, enabling creative

interpretation that goes considerably beyond the ordinary literal meaning of the statutory text in order to avoid incompatibility.⁴ In practice, the Human Rights Act 1998 has introduced a structured proportionality analysis into UK judicial review wherever qualified Convention rights are engaged, requiring courts to assess whether any interference is prescribed by law, pursues a legitimate aim, and is necessary and proportionate in a democratic society. This has moved the focus of judicial review in the United Kingdom beyond the high-threshold Wednesbury irrationality standard towards a more intensive and rights-sensitive form of scrutiny, while preserving the ultimate sovereignty of Parliament through the section 4 declaration mechanism.⁵

More recently, the UK Supreme Court's decision in *R (Miller) v. The Prime Minister* and *Cherry v. Advocate General for Scotland* (2019), the Court unanimously ruled that the Prime Minister's advice to prorogue Parliament was illegal as it heightened the "obstruction" of Parliament's constitutional role. The ruling established that prerogative powers are not unlimited and can be challenged in court, to uphold the rule of law, while safeguarding the doctrine of parliamentary sovereignty.

The United States

In the United States it is well known that the modern system of constitutional judicial review began. The U.S. has a written, supreme Constitution, in contrast to the UK, which requires that all legislative and executive decisions are taken in accordance with its commands. Under the Constitution, the Supreme Court has no explicit authority to exercise judicial review. (Chemerinsky, 2023; Hall & Feldmeier, 2020). However, in the seminal case of *Marbury v. Madison* (1803), the Court asserted this authority in a broad sense. Chief Justice John Marshall famously stated that it is the job of the Courts to "interpret the law" and thus confirm that they have the power to rule on and strike down laws that are in violation of the Constitution.

⁴ Florence Powell and Stephanie Needleman, 'How Radical an Instrument is Section 3 of the Human Rights Act 1998?' (UK Constitutional Law Association, 24 March 2021) <ukconstitutionallaw.org/2021/03/24/florence-powell-and-stephanie-needleman-how-radical-an-instrument-is-section-3-of-the-human-rights-act-1998/> accessed 1 September 2026 (observing that section 3 has become deeply embedded in judicial reasoning and enables courts to read and give effect to legislation in ways that may depart significantly from ordinary statutory meaning).

⁵ 'Human Rights Act 1998: Summary and What It Means in 2026' (Davidson Morris, 27 February 2026) <www.davidsonmorris.com/human-rights-act-1998/> accessed 1 September 2026 (explaining that under the Act, courts must assess whether interference with a qualified Convention right is prescribed by law, pursues a legitimate aim, and is necessary and proportionate, introducing a structured proportionality framework into UK judicial review).

This was the roots of American constitutionalism, establishing that any laws that conflict with the Constitution were null and void, as was any action by the President or other official that infringed upon it. In the U.S., judicial review occurs in the context of constitutional supremacy and separation of powers. The Supreme Court has the power to review the constitutionality of federal statutes, state laws, executive actions and administrative regulations. Under this power, it monitors Congress and the Executive to see that they do not go beyond the limits established by the Constitution. The role of judicial review has since emerged as a key feature of balancing powers between the three branches of government and of ensuring that individual rights and freedoms are not infringed by them (Tribe, 2000; Hall & Feldmeier, 2020).

After Marbury, the Supreme Court extended judicial review in various cases. The doctrine of implied powers according to the Necessary and Proper Clause was established in *McCulloch v. Maryland* (1819) and the supremacy of the law of the United States to supersede conflicting state law was strengthened. Later, in *Brown v Board of Education* (1954), the Court determined racial segregation in public schools was unconstitutional, and that the “separate but equal” doctrine established in *Plessy v. Ferguson* (1896) was no longer valid. This decision displayed a new facet of the power of judicial review and its importance for constitutional rights and equality of treatment under the Fourteenth Amendment. The Court's power was further cemented in the *Cooper vs Aaron* decision (1958), in which the Court said that its interpretations of the Constitution are binding on all state officials, unanimously. This asserted that the Constitution, as interpreted by the Supreme Court, is the supreme law of the land, which boded ill for the states and defined the judicial supremacy that exists within the American constitutional order, under Article VI of the U.S. Constitution. To date, judicial review also played a key role in ensuring civil liberties and in limiting government power. In this case, *United States v. Nixon* (1974) the Court affirmed that the President is also subject to the rule of law, despite his contention that there were absolute privileges for the Executive Branch, it ordered the documents produced during the Watergate scandal. Likewise, in *Roe v. Wade* (1973), the Court ruled that the Constitution added a new right to privacy, which comprised medical abortion and contraceptive rights, but which was reversed by the Dobbs decision (2022), in which new judicial philosophy reversed the interpretation of the Constitution with judicial review.

Judicial review today is a key feature of the U.S. Constitution. The Supreme Court remains as the final arbiters of the constitution, imposing limits on the legislatures and executive powers and protecting fundamental rights. While judicial activism/ limitations are still hotly debated,

judicial review remains the most important method of maintaining the rule of law and the supremacy of the Constitution in the United States (Chemerinsky, 2023; Tribe, 2000).

France

The French judicial review is unique among practices of judicial review because it is very different from the American and British models. In France, there is also a centralized option (differently from the United States where other courts have the right to consider constitutional matters and differently from the United Kingdom that has a doctrine of the supremacy of parliament that prevents the judiciary from challenging legislation). The Fifth Republic's Constitution (1958) places constitutional review power in a house known as the Constitutional Council (Conseil constitutionnel). The Council was not formed to protect fundamental rights, but to ensure that constitutional balance is maintained between Parliament and the Executive. But its jurisdiction has grown immensely over the years and is now the most vocal champion of constitutional supremacy and civil freedoms in France (Stone Sweet, 2000; Bell et al., 2020).

The French system was first based upon "a priori" or "preventive" judicial review, where the legislation being assessed first for constitutionality. According to Article 61 of the French Constitution, an amendment to the French Constitution in 1974, laws may be referred to the Constitutional Council, acting by a designated authority like the President, the Prime Minister, parliamentary leaders or groups of at least 60 deputies or senators. The Council is prohibited from promulgating and enforcing a statute if it deems it to be unconstitutional. The device of a "preventive" review is a reflection of French preeminence in not nullifying a law after it is enacted for fear of breaching the Constitution.

The turning point for the Constitutional Council was the very significant decision on *Liberté d'association* (Freedom of Association) (1971). The Council determined that the "constitutional bloc", that is, the Preamble of the Constitution of 1958, the Declaration of the Rights of Man and of the Citizen of 1789 and the Preamble of the Constitution of 1946, are all together a "constitutional bloc". This expanded the interpretation of the Constitution's role from an institutional to a human rights focus. It has been termed as "the Marbury of France", because of its decisive influence in French constitutional law, and the function of the Council as active guardian of constitutional rights (Bell et al., 2020).

In 2008, the Constitutional Reform Act transforms a very important aspect of the constitution, by introducing Article 61-1 and the Question Prioritaire de Constitutionnalité (QPC) procedure,

which comes into force in 2010. The first time anyone could move to strike down existing laws as unconstitutional was in judicial proceedings. If the question of the constitutionality of their act is considered substantial by an ordinary court, the court refers the question to the Conseil d'État or the Court of Cassation that can then pass the case on to the Constitutional Council. The reform was an a posteriori (after the event) constitutional review, which resembled a more contemporary constitutional review system as it was found in France, meant to put the French system closer to constitutional review in other democratic states, but still maintaining a centralized system (Stone Sweet, 2000; Bell et al., 2020).

The importance of the QPC was exemplified in the case of *Daniel W. and others* (Decision No. 2010-39 QPC) in which the Council affirmed that a person could file a constitutional complaint directly against constitutional clauses that limit their freedoms. While, in the 2018 *Cédric H.* in the Council's Digital Privacy case, it abolished surveillance laws that were found to be unfairly breaching the constitutional right to privacy. These decisions reflect the Council's increasing willingness to bring a balanced approach to the question of balancing legislative purposes with constitutionally protected rights (Bell et al., 2020).

The quantitative impact of the Question Prioritaire de Constitutionnalité has been substantial since the procedure came into force on 1 March 2010. The Constitutional Council now issues approximately 75 QPC decisions per year, and by June 2022 it had issued its one-thousandth QPC ruling; these decisions account for approximately 80 per cent of all decisions rendered by the Council annually.⁶ Of the legislative provisions referred to it under the QPC procedure, the Council has partially or wholly invalidated approximately 30 per cent, demonstrating that a posteriori constitutional review has become not merely a formal mechanism but an actively functioning tool for the protection of individual rights and freedoms in France.⁷

Currently, judicial review in France combines both preventive and subsequent constitutional review, thereby making it one of the most sophisticated legal system. In France the role of ordinary courts is not to strike down laws on their own, but that of the Constitutional Council has exclusive power over constitutional validity. This centralized system contributes to

⁶ Conseil constitutionnel, 'Bilan statistique: second semestre 2025' (Conseil constitutionnel, 2025) <www.conseil-constitutionnel.fr/bilan-statistique> accessed 1 September 2026 (recording that since March 2010 the Council has issued over 1,000 QPC decisions, with QPC rulings accounting for approximately 80 per cent of all decisions rendered by the Council annually).

⁷ Conseil constitutionnel, 'Bilan statistique: second semestre 2025' (Conseil constitutionnel, 2025) <www.conseil-constitutionnel.fr/bilan-statistique> accessed 1 September 2026 (showing that the Council has partially or wholly invalidated approximately 30 per cent of legislative provisions referred to it via the QPC procedure since 2010).

legislative certainty while preserving the compliance with the constitutional rules and fundamental rights, and ensures the supremacy of the Constitution and the rule of law in the French Republic (Stone Sweet, 2000).

India

Judicial review is an integral part of the Indian constitutional system and is one of the vital checks and balances for ensuring the supremacy of the Constitution, rule of law and the protection of fundamental rights. The United States, which took primarily from the United States, has adapted it to Indian constitutional structure unlike UK which has a parliament that is sovereign and France that has constitutional review performed in a centralized council. There is supremacy of the Constitution of India and all legislative and executive acts are held to account before the court. The power of judicial review also can be traced back to a number of the provisions of the Constitution, including Article 13, 32, 131–136, 226, and 227. The supreme court and the high courts have the power to scrutinize the constitutionality of the legislation and action of the executive and to declare them unconstitutional (Jain, 2022). The basis for judicial review in India is Article 13 of the constitution that reads that any law inconsistent with or in derogation of the Fundamental Rights shall be void on the extent it is inconsistent. In the same way, Article 226 empowers the High Courts to issue writs for the enforcement of Fundamental Rights and "for any other purpose" which gives judicial review at the national and the state level. Together, these protections help to make the rule of law more constitutional and to provide an effective remedy to citizens of state actions that are unconstitutional (Basu, 2023).

The Supreme Court has first occasion to discuss the meaning and ambit of judicial review of constitutional amendments in *Shankari Prasad v. Union of India*, (1951) in which it upheld Parliament's ability to abrogate Fundamental Rights under Article 368 of the Constitution. A confirmation of this was given in the case of *Sajjan Singh v. State of Rajasthan* (1965). In the later case of *I.C. Golak Nath v. State of Punjab* (1967), however, the Court took a different position, stating that any restriction on the right to Fundamental Rights by Parliament would violate the meaning of the word 'Law' in Article 13 of the Constitution. This judgment had profound implications on both sides of the Constitutional balance as it boosted judicial review of constitutional amendments importantly, while at the same time raising some uncertainty about Parliament's amending power.

In a significant judgment in the constitutional history of India, *Kesavananda Bharati v. State of Kerala* (1973) marked the apex of the constitutional conflict. The Supreme Court by the narrow majority, held that the powers of Parliament under Article 368 of the Constitution of India are wide and are not subject to limitation, however, the court also ruled that the parliament shall not have the power to change the Basic Structure of the Constitution. The idea of Basic Structure is a novel concept in Indian constitutional interpretation and has become an important principle for constitutional review of constitutional amendments (Jain, 2022).

In *Indira Nehru Gandhi v. Raj Narain* [(1975)], the Supreme Court struck down a constitutional amendment aimed at precluding the judiciary from hearing the case on the Prime Minister's elections under the free and fair electoral system as a feature of the Constitution. Likewise, in the case of *Minerva Mills Ltd. v. Union of India* (1980), the Court invalidated the provisions of the Forty-second Constitutional Amendment which were designed to give the Parliament an adamant power to amend the Constitution. The Court made it clear that the concept of limited government, judicial review and the balance between Fundamental Rights and the Directive Principles of State Policy are part of the basic structure of the Constitution (Jain, 2022).

Judicial review in India, too, has undergone development to make constitutional governance and the independence of the judiciary more robust. The Supreme Court in *L. Chandra Kumar v. Union of India* (1997) declared that the authority of judicial review in the Supreme Court under Article 32 of the Indian Constitution and in High Courts under Article 226 of the Constitution belongs to the basic structure of the Constitution and therefore can't be taken away even by a constitutional amendment. Similarly, it was held in *I.R. Coelho v. State of Tamil Nadu* (2007) that the laws added to the Ninth Schedule after 24 April 1973 are amendable when they clash with the basic structure of the Constitution. This was a judgment, which confirmed that Parliament could not shield unconstitutional legislation from the judge by passing it through the Ninth Schedule.

In modern India, judicial review does not stop the Courts from examining the action of the executive and administrative authorities, its ruling on environmental issues, electoral reforms, and violation of constitutional rights. Judicial review today in India does not limit its ability to examine the action of the executive and administrative authorities, their decisions on environmental issues, electoral reforms, and violation of constitutional rights. The Supreme Court in its recent judgments, for instance, in *Puttaswamy (Retd) v Union of India* (2017) and

in *Supreme Court Advocates-on-Record Association v Union of India* (2015), wherein it declared the Right to Privacy as Fundamental Right and held that the NJAC is unconstitutional and infringes upon the independence of judges, respectively, has established itself as the protector of the Constitution. Judicial review has thus become the most important constitutional protection for against arbitrary use of governmental power without sacrificing democracy and the rule of law.

The Supreme Court's proportionality framework, as elaborated in the 2017 privacy judgment, introduced into Indian constitutional law a multi-stage test requiring that any restriction on fundamental rights must satisfy requirements of legality, a legitimate aim, proportionality *stricto sensu*, and procedural guarantees, drawing explicitly on comparative constitutional jurisprudence from multiple jurisdictions.⁸ Academic commentary has, however, observed that the Court's subsequent application of this framework has been uneven: some decisions have omitted the necessity requirement or conducted the proportionality balancing in a cursory manner, suggesting that the doctrine, while formally embraced by the Court, has yet to be consistently institutionalised as a rigorous standard of review in Indian constitutional litigation.⁹

So, Judicial review in India is an essential element of the Constitution. The judiciary has functions as the final interpreter and protector of the Constitution which include to ensure the supremacy of the Constitution, uphold the Fundamental Rights, maintain a balance between the organ of the State and ensure the basic structure of the Constitution. While the development of judicial review powers through the use of constitutional language and judicial precedent have given constitutional constraints a formidable force in India, thereby making it one of the most powerful constitutional democracies in the world today (Basu, 2023; Jain, 2022).

Comparative Analysis and Synthesis

⁸ Selma G.S., 'Comparative Jurisprudence: Unraveling the Doctrine of Proportionality in the USA, UK, and India' (2024) 7(3) International Journal of Law Management and Humanities 1174, 1179-1182 (discussing the four-stage proportionality test adopted by the Indian Supreme Court in the Puttaswamy privacy judgment, drawing on comparative constitutional jurisprudence from multiple jurisdictions).

⁹ Aditya Jain and Ayushi Shukla, 'Proportionality Principle in India: A Hollow Promise?' (NUALS Law Journal, 23 October 2024) <nualslawjournal.com/2024/10/23/proportionality-principle-in-india-a-hollow-promise/> accessed 1 September 2026 (observing that while the Supreme Court has formally accepted proportionality, its application in subsequent cases has been inconsistent, with the necessity requirement sometimes omitted and the balancing exercise conducted without adequate rigour).

The principal differences between judicial review in the countries like United Kingdom, the United States, France and India, are the nature of the constitutional origins, the institutions involved, and the amount of monitoring over the legislative and executive branches. These three dimensions for analysis establish a set of constitutional foundations, institutional processes, and limits on judicial intervention. These three dimensions of the analysis constitute a set of constitutional foundations, institutional processes, and limits on judicial intervention (Gupta & Kashyap, 2024; Taraki, 2025; Craig, 2009).

Judicial review is a practice that embraces the rule of law, but has different constitutional principles in different systems. This is because judicial review is inherently bound up with the concept of the supremacy of the constitution both in India and in the United States, and courts can strike down any law that interferes with the constitution. The opposite side of this coin is that in the UK, judicial review became mainly a way of holding administrative decisions to account in the context of parliamentary sovereignty. France is a special case as far as constitutional review is concerned, having a special, non-ordinary, constitutional court that shares no judges with other courts. The doctrine of basic structure of the constitution is constitutionally entrenched in the constitution through the following Articles: 13, 32 and 226 (Shivkumar, 2025; Gupta & Kashyap, 2024; Kumar, 2021).

However, in UK judicial review refers to evaluating the legality of executive action. This way of looking into judicial review is common law based which hold public bodies accountable, with Parliament always becoming the supreme decision maker and judiciary being the entity which evaluates executive' action (Singh & Bhangu, 2025).

The system is structurally different in France, which has specialized administrative courts for public law, rather than ordinary courts, and which allocates constitutional questions to the Constitutional Council rather than ordinary courts. From the practical standpoint, the United States is a true example of the typical constitutional system of having a final court that is the protector of constitutional integrity, the Supreme Court. In India, such a common-law approach is broadly replicated but with an expanded public law function and by using explicit provisions in the constitution for judicial review (Jain, 2024; Taraki, 2025).

In contrast, the UK and France have a clearer distinction between the role of the review of public administration and primary legislation. Remarkably, the UK has a recent history of a growing judicial focus on rights protection and accountability of the executive branch of government. Unlike other constitutional systems which have independent constitutional courts,

in the US judicial review is carried out by the existing judiciary, mainly the Supreme Court (James, 2023).

The institutional structure of India is more similar to that of the US, although the legislative review, in the Indian context, is said to be narrower, but is more textual constitutional in its basis. France is the only country that has a more extensive form of political and judicial review and that has shifted from a purely ex ante to a mixed model in 2010, where ex post and ex ante reviews are combined (Jain, 2024).

A notable point of convergence across the four jurisdictions is the growing influence of proportionality as a standard of judicial review, which has progressively displaced the traditional Wednesbury irrationality threshold in common law systems. Both the United Kingdom and India now employ proportionality-type reasoning in cases engaging Convention rights and fundamental rights respectively, though the intensity of scrutiny and the formality of the analytical framework applied varies significantly between the two systems.¹⁰ Comparative administrative law scholarship identifies this shift towards proportionality as part of a broader global trend towards more intensive and structured judicial oversight, while cautioning that the adoption of proportionality language does not guarantee uniform outcomes given the widely differing constitutional foundations, institutional contexts, and judicial cultures in which the four systems examined in this article operate.¹¹

In terms of limitation and modern developments, the four systems are quite different in how willing they are to rule on politically explosive or policy questions. In some constitutional conflicts the US asserts judicial restraint principles, and the UK has other pragmatic limitations resulting from constitutional traditions. In India, the breadth of judicial intervention is broadened and they are still aware of the constraints they put themselves. Comparative studies in common law world shows that there is a variation in the substantive test to be considered during the review process including proportionality, irrationality and error of law (Katiyar et al., 2025; Singh & Bhangu, 2025; Craig, 2009).

¹⁰ Selma G.S., 'Comparative Jurisprudence: Unraveling the Doctrine of Proportionality in the USA, UK, and India' (2024) 7(3) International Journal of Law Management and Humanities 1174, 1183-1188 (comparing the application of proportionality in the UK and India and noting that while both systems employ proportionality-type reasoning, the intensity of scrutiny and the formality of the analytical framework differ significantly).

¹¹ CP Singh and A Bhangu, 'Recent Trends in Judicial Review in Context of India and UK' (2025) International Journal of Scientific Research in Engineering and Management <doi.org/10.55041/ijsem53613> accessed 1 September 2026 (identifying convergence in judicial techniques but noting divergence in the extent of judicial authority, with Indian courts possessing power to invalidate laws contrary to constitutional commitments while UK courts often defer to Parliament).

There has been a recent extension of the scope of judicial review in the UK and India in relation to the rights, accountability of the executive and constitutional structure, but the level of the scrutiny differs depending on the issues at stake (Singh & Bhangu, 2025). Comparative administrative law scholarship frequently compares the English tradition of ordinary-court review to the French tradition of the Conseil d'État, leading to greater differences in analysis of common-law and civil-law traditions. In some instances, too, India has a more interventionist attitude in administrative settings, which is reflected in the lack of distinction between reviewing legal compliance and analysing merits of a decision (Bignami, 2016; Jhaveri, 2021).

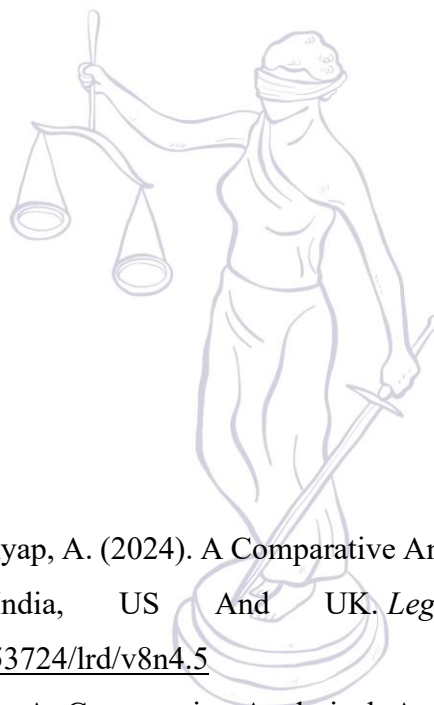
To sum up, judicial review is a significant part of the constitutional systems of all four countries, but in each it is situated on different constitutional grounds: in the USA it is entrenched in the normal courts, in India it has constitutional grounds and the boundaries are defined differently, in the UK it has parliamentary sovereignty as its constitutional foundation, and in France it rests on a separate constitutional council.

Conclusion

Judicial review is a well-known feature of constitutional democracy, the rule of law, and the prevention of arbitrary use of public power. It serves as a source of judicial review of legislative and executive measures, and strikes them down if they are at odds with it. The United States is a good example of strong-form judicial review; a form of judicial review that is embedded in the institution of the courts and that provides the court with the authority to invalidate laws that are contrary to the Constitution, as *Marbury v. Madison* did. But in the United Kingdom, judicial review has developed slowly over time and is primarily concerned with the legality of the actions of public authorities, and is constrained by parliamentary sovereignty – the principle which ensures that parliament cannot be overruled by judges when passing legislation in the UK. In contrast, French constitutional review has also developed under a civil-law form of government, by means of political supervision and a body that was neither the Constitutional Court nor the Supreme Court, but rather the State Council and the Constitutional Council. India is a hybrid triumph of legal principles inherited from the British common law tradition, tradition of strong-form judicial review and enforceable rights from the United States, and explicit judicial review enshrined in its Constitution of 1950.

There is convergence as well as divergence in judicial review's function of securing legality, upholding rights and ensuring institutional balance. The most important lesson that can be learned is that the power to review legislation has become an accepted characteristic of contemporary government but its extent and authority is tied closely to the underlying principles of constitutional supremacy, parliamentary sovereignty, or special constitutional supervision in each country.

To conclude, judicial review is ubiquitous but not universal in the United Kingdom, the United States, France and India, in which it has four traditions of institutional operation rather than one.



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