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# A Comparative Study of Judicial Review under Constitutional and Administrative Law in India and the English Legal System

Bendre Jyoti Dadasaheb

Research Scholar, Department of Law, Monad University, Hapur, UP, India

**ABSTRACT:** Judicial review is a cornerstone of constitutional and administrative law, serving as a vital mechanism to ensure that the exercise of public power remains within legal and constitutional limits. This research paper undertakes a comparative study of judicial review under constitutional and administrative law in India and the England legal system, examining its nature, scope, and significance in controlling legislative and administrative action. Judicial review plays a crucial role in upholding the Rule of Law, safeguarding fundamental rights, and maintaining the balance of power among the organs of the state.

In England, judicial review developed primarily as a mechanism to control administrative discretion within the framework of parliamentary sovereignty. English courts traditionally lack the power to invalidate Acts of Parliament but exercise strong supervisory jurisdiction over executive and administrative authorities. Through common law principles such as illegality, irrationality, and procedural impropriety, judicial review in England ensures that public authorities act within the limits of the powers conferred upon them and adhere to principles of fairness and natural justice.

In contrast, judicial review in India has a constitutional foundation and occupies a much broader scope. Embedded in the written Constitution, judicial review empowers courts to examine the validity of both legislative and executive actions. The Indian judiciary has consistently recognized judicial review as an essential feature of the Constitution, enabling it to strike down laws and administrative actions that violate fundamental rights or constitutional provisions. Over time, Indian courts have expanded the doctrine of judicial review to include substantive fairness, reasonableness, proportionality, and protection of human dignity.

This comparative study highlights both convergence and divergence in the operation of judicial review in the two legal systems. While both aim to prevent arbitrariness and ensure accountable governance, differences in constitutional structure, judicial power, and political context significantly influence their application. The study underscores that judicial review remains indispensable for constitutionalism and administrative accountability, adapting to the unique legal and democratic needs of each system.

**KEYWORDS:** Judicial Review, Constitutional Law, Administrative Law, Rule of Law, India, English Legal System, Separation of Powers.

## I. INTRODUCTION

Judicial review is one of the most significant instruments of constitutional and administrative law, designed to ensure that all exercises of public power conform to legal and constitutional limits. It acts as a safeguard against arbitrariness, misuse of authority, and violation of individual rights by enabling courts to examine the legality of legislative and executive actions. In modern democratic states, judicial review strengthens constitutionalism by maintaining the balance between authority and liberty and by reinforcing the Rule of Law.

The concept of judicial review has evolved differently across jurisdictions, shaped by distinct constitutional frameworks and political traditions. In the England legal system, judicial review developed mainly as a mechanism to supervise administrative action within the doctrine of parliamentary sovereignty. English courts traditionally do not possess the power to invalidate primary legislation enacted by Parliament; however, they exercise extensive control over executive and administrative authorities through common law principles. Judicial review in England focuses on ensuring legality, procedural fairness, and rationality in administrative decision-making.

In India, judicial review occupies a more expansive and constitutionally entrenched position. The Indian Constitution expressly and impliedly empowers the judiciary to review legislative as well as administrative actions. Judicial review has been recognized as a basic feature of the Constitution, making it immune from amendment or dilution. Indian courts play an active role in protecting fundamental rights and enforcing constitutional limitations on state power, thereby giving judicial review a broader substantive dimension.

A comparative study of judicial review in India and the English legal system is particularly significant because of their shared common law heritage and contrasting constitutional arrangements. While England follows an unwritten constitution grounded in parliamentary supremacy, India operates under a written Constitution based on constitutional supremacy. These structural differences have profoundly influenced the scope, nature, and effectiveness of judicial review in the two systems.

This research paper seeks to examine judicial review as it functions under constitutional and administrative law in India and England. By analyzing its evolution, scope, grounds, and limitations, the study aims to highlight similarities and differences in judicial approaches and to assess the role of judicial review in promoting accountability, protecting rights, and upholding democratic governance in both legal systems.

#### Concept and Nature of Judicial Review

Judicial review refers to the power of courts to examine the legality and constitutionality of actions taken by legislative, executive, and administrative authorities. It is a fundamental mechanism through which constitutional supremacy and the Rule of Law are maintained. The core purpose of judicial review is to ensure that public authorities act within the limits of the powers conferred upon them and that individual rights are not violated by arbitrary or unlawful state action.

In constitutional law, judicial review operates as a check on legislative and executive power. It enables courts to interpret the Constitution and to invalidate laws or actions that are inconsistent with constitutional provisions. This function reinforces the supremacy of the Constitution and preserves the balance of power among the organs of the state. Judicial review thus acts as a guardian of constitutional values such as liberty, equality, and justice.

In administrative law, judicial review primarily focuses on controlling the exercise of administrative discretion. Modern governance requires the delegation of extensive powers to administrative authorities for efficient functioning. However, such discretion is susceptible to misuse and arbitrariness. Judicial review ensures that administrative decisions are taken in accordance with law, follow principles of natural justice, and are based on reasonableness and fairness. It does not generally concern itself with the merits of a decision but examines the decision-making process to prevent abuse of power.

The nature of judicial review varies according to constitutional structure. In systems based on constitutional supremacy, judicial review has a wider scope, extending to both legislative and executive actions. In contrast, in systems grounded in parliamentary sovereignty, judicial review is traditionally confined to administrative action, with limited or no power to invalidate primary legislation. Despite these differences, the underlying objective remains the same: to uphold legality and prevent arbitrary governance.

Judicial review is closely linked to the doctrine of the Rule of Law. By subjecting all public authorities to legal scrutiny, it ensures equality before law and accountability of power. It also promotes transparency and public confidence in governance. At the same time, judicial review recognizes the need for a balance between judicial intervention and administrative efficiency. Courts often exercise restraint to avoid encroaching upon policy decisions best left to the executive or legislature.

Thus, the concept and nature of judicial review reflect a dynamic balance between control and discretion, authority and liberty. It remains an essential feature of constitutional and administrative law, adapting to changing governance needs while safeguarding fundamental legal and constitutional principles.

#### Evolution of Judicial Review in the English Legal System

Judicial review in the English legal system developed gradually as part of the common law tradition rather than through a written constitutional mandate. Its primary function has been to control the exercise of administrative power and to ensure that public authorities act within the limits prescribed by law. The evolution of judicial review in England reflects

the central position of parliamentary sovereignty and the complementary role of the judiciary in maintaining legality and fairness.

Historically, English courts asserted their supervisory jurisdiction over administrative authorities through prerogative writs such as certiorari, mandamus, and prohibition. These remedies enabled courts to review decisions of inferior tribunals and public bodies to ensure that they acted within their lawful authority. This early form of judicial review focused primarily on jurisdictional errors and abuse of power.

A defining feature of judicial review in England is its relationship with parliamentary sovereignty. Since Parliament is regarded as the supreme law-making authority, courts traditionally do not possess the power to invalidate Acts of Parliament. Judicial review is therefore largely confined to administrative and executive actions. However, this limitation has not weakened the importance of judicial review; rather, it has shaped its development as a robust mechanism for ensuring administrative accountability.

Over time, English courts refined the grounds of judicial review to address the complexities of modern administration. The landmark articulation of these grounds includes illegality, irrationality, and procedural impropriety. Illegality requires that a public authority must correctly understand and apply the law governing its powers. Irrationality, often associated with unreasonableness, addresses decisions that are so unreasonable that no reasonable authority could have made them. Procedural impropriety ensures adherence to principles of natural justice and fair procedure.

In the twentieth century, the expansion of the welfare state significantly increased administrative functions, making judicial review more prominent. Courts adopted a more flexible and purposive approach to supervising administrative discretion, balancing effective governance with individual rights. In recent developments, proportionality and human rights considerations have further influenced judicial review, strengthening protection against arbitrary administrative action.

Thus, the evolution of judicial review in the English legal system demonstrates a gradual but steady expansion of judicial control over administrative power, ensuring that legality, fairness, and accountability remain central to public administration.

#### Judicial Review in India

Judicial review in India occupies a central and constitutionally entrenched position within the framework of constitutional and administrative law. Unlike the English legal system, judicial review in India is founded on the principle of constitutional supremacy and is expressly and impliedly provided under the written Constitution. It empowers the judiciary to examine the validity of legislative, executive, and administrative actions to ensure conformity with constitutional provisions and fundamental rights.

The constitutional basis of judicial review in India is derived from several provisions, most notably Articles 13, 32, 226, and 136 of the Constitution. Article 13 declares that laws inconsistent with fundamental rights are void, thereby granting courts the authority to invalidate unconstitutional legislation. Articles 32 and 226 confer original jurisdiction upon the Supreme Court and High Courts respectively to enforce fundamental rights, making judicial review a direct and effective remedy against state action. This framework establishes the judiciary as the guardian of the Constitution.

Judicial review of legislative action in India is extensive. Courts have the power to strike down laws that violate fundamental rights, exceed legislative competence, or contravene constitutional limitations. Through landmark interpretations, the judiciary has also evolved doctrines such as basic structure, which restricts Parliament's power to amend the Constitution in a manner that destroys its essential features. This has significantly strengthened constitutionalism and limited arbitrary exercise of legislative power.

In the sphere of administrative law, judicial review focuses on controlling administrative discretion and ensuring fairness in decision-making. Indian courts examine administrative actions on grounds such as illegality, irrationality, arbitrariness, mala fides, and violation of principles of natural justice. Over time, the judiciary has expanded the scope of review to include reasonableness and proportionality, emphasizing that arbitrariness is antithetical to the Rule of Law.

Public Interest Litigation has further broadened the reach of judicial review in India by enhancing access to justice and enabling courts to address administrative injustice affecting marginalized sections of society. As a result, judicial review

in India has evolved into a powerful instrument for protecting rights, enforcing accountability, and promoting good governance, firmly embedding it as a cornerstone of constitutional and administrative law.

#### Grounds of Judicial Review: A Comparative Analysis

The grounds of judicial review constitute the legal standards through which courts assess the validity of administrative and, in some cases, legislative actions. In both India and the English legal system, these grounds have evolved to restrain arbitrariness, ensure fairness, and uphold the Rule of Law. While the underlying principles show considerable similarity due to their common law heritage, differences arise from constitutional structure and judicial philosophy.

Illegality is a primary ground of judicial review in both systems. It requires that a public authority must act within the scope of powers conferred upon it by law. Any action taken without legal authority, in excess of jurisdiction, or based on an incorrect interpretation of law is liable to be struck down. In England, illegality is closely linked to the doctrine of *ultra vires*, ensuring that administrative bodies do not exceed statutory limits. In India, illegality also includes violation of constitutional provisions, particularly fundamental rights, giving this ground a wider scope.

Irrationality or unreasonableness is another significant ground of judicial review. In the English legal system, this ground is traditionally associated with the principle that a decision is invalid if it is so unreasonable that no reasonable authority would have taken it. This standard emphasizes judicial restraint and respects administrative discretion. In India, the concept of unreasonableness has evolved into a broader doctrine of arbitrariness. Indian courts have consistently held that arbitrariness is incompatible with equality before law, thereby expanding judicial scrutiny over administrative decisions.

Procedural impropriety focuses on the manner in which a decision is made rather than its substance. This ground ensures adherence to principles of natural justice, including the right to a fair hearing and the rule against bias. Both systems place strong emphasis on procedural fairness as an essential component of judicial review. In India, procedural impropriety also includes violation of statutory procedures and constitutional due process requirements, thereby strengthening administrative accountability.

Proportionality has emerged as an important modern ground of judicial review, particularly in cases involving fundamental rights. In England, proportionality has gained prominence with the influence of human rights jurisprudence, allowing courts to assess whether administrative measures are appropriate and necessary to achieve legitimate objectives. In India, proportionality has been increasingly applied in constitutional and administrative cases to ensure that state action does not impose excessive or unreasonable restrictions on rights.

Overall, the comparative analysis shows that while the terminology and intensity of review may differ, both India and the English legal system employ similar grounds of judicial review to ensure legality, fairness, and rationality in governance.

#### Judicial Review and Administrative Discretion

Administrative discretion refers to the authority granted to administrative bodies and officials to make decisions within the limits prescribed by law. In modern welfare states, the delegation of discretionary powers is essential for efficient governance, as rigid application of rules may not adequately address complex social and economic needs. However, unchecked discretion poses a serious risk to the Rule of Law, as it may lead to arbitrariness, discrimination, or abuse of power. Judicial review serves as a crucial mechanism to regulate and control administrative discretion in both India and the English legal system.

In the English legal system, courts traditionally adopt a supervisory rather than interventionist approach to administrative discretion. Judicial review does not involve substituting the court's judgment for that of the administrative authority but focuses on examining whether the discretion has been exercised lawfully and reasonably. English courts ensure that discretionary powers are exercised for proper purposes, based on relevant considerations, and in accordance with principles of fairness. If discretion is exercised arbitrarily, irrationally, or in bad faith, courts intervene to invalidate such decisions.

In India, judicial control over administrative discretion is more expansive due to constitutional guarantees of equality and fundamental rights. Indian courts have consistently held that discretionary power must not be arbitrary and must conform to constitutional standards of reasonableness and fairness. The judiciary has emphasized that discretion should be guided

by clear norms and policies to prevent misuse. Where discretion results in unequal treatment, violation of natural justice, or infringement of fundamental rights, courts exercise judicial review to correct administrative excesses.

The relationship between judicial review and administrative discretion reflects a balance between governance efficiency and legal accountability. While courts recognize the necessity of discretion for effective administration, they also assert that such discretion cannot be absolute or unfettered. Judicial review ensures that discretionary power is exercised within legal boundaries and for legitimate purposes.

Thus, judicial review acts as a safeguard against the dangers of excessive administrative discretion. By enforcing standards of legality, reasonableness, and procedural fairness, courts in both India and England uphold the Rule of Law while allowing administrative authorities sufficient flexibility to perform their functions effectively.

#### Judicial Review and the Doctrine of Separation of Powers

The doctrine of separation of powers is a fundamental principle of constitutional governance that seeks to divide governmental functions among the legislature, executive, and judiciary. Its primary objective is to prevent concentration of power in a single authority and to establish a system of checks and balances. Judicial review plays a critical role in maintaining this balance by ensuring that each organ of the state functions within its constitutionally assigned limits.

In the English legal system, the doctrine of separation of powers operates in a flexible and pragmatic manner. England does not follow a strict separation of powers, as Parliament remains the supreme law-making authority and there is considerable overlap between the organs of government. Within this framework, judicial review functions as a supervisory mechanism rather than a tool of constitutional supremacy. Courts respect parliamentary sovereignty and generally refrain from questioning the validity of primary legislation. However, they actively review executive and administrative actions to ensure legality, fairness, and adherence to statutory limits. This restrained approach reflects judicial respect for legislative supremacy while preserving the judiciary's role in preventing administrative arbitrariness. In India, the doctrine of separation of powers is implicit in the Constitution and operates within the framework of constitutional supremacy. Although the Constitution does not provide for a rigid separation, it clearly demarcates the functions of the legislature, executive, and judiciary. Judicial review is the primary means through which this separation is enforced. Indian courts have consistently asserted their authority to review legislative and executive actions to ensure compliance with constitutional provisions. At the same time, the judiciary has emphasized that it should not encroach upon the policy-making domain of the legislature or executive.

The tension between judicial activism and judicial restraint is a key aspect of the relationship between judicial review and separation of powers. In England, courts traditionally adopt a cautious approach, intervening only when administrative actions are unlawful or procedurally unfair. In India, courts have often taken a more activist stance, particularly in matters involving fundamental rights and social justice. While this activism has strengthened constitutional protections, it has also raised concerns regarding judicial overreach and interference with democratic decision-making. Despite these concerns, judicial review remains essential for preserving the balance of power. It ensures that no organ exceeds its authority and that constitutional and legal limits are respected. Thus, judicial review, when exercised with appropriate restraint, complements the doctrine of separation of powers by reinforcing accountability, preventing abuse of power, and safeguarding democratic governance in both India and the English legal system.

#### Challenges and Limitations of Judicial Review

Despite its vital role in upholding constitutionalism and administrative accountability, judicial review faces several challenges and limitations in both India and the English legal system. These challenges arise from the expanding role of the state, increasing complexity of governance, and the need to balance effective administration with judicial control. While judicial review is essential for preventing abuse of power, its excessive or inadequate use can raise concerns for democratic governance.

One major challenge is the risk of judicial overreach. In exercising judicial review, courts may sometimes encroach upon the policy-making domain of the legislature or executive. In India, judicial activism has played a significant role in protecting fundamental rights and promoting social justice. However, frequent intervention in policy matters may blur the constitutional separation of powers and raise questions about democratic legitimacy. In England, although courts generally adopt a restrained approach, expanding judicial review standards may still create tension with the principle of parliamentary sovereignty.

Another limitation relates to delay and access to justice. Judicial review proceedings can be time-consuming and expensive, reducing their effectiveness as a remedy against administrative injustice. In India, the large backlog of cases and procedural delays often weaken the practical impact of judicial review, particularly for marginalized and economically weaker sections. In England, procedural complexities and restrictions on legal aid have raised concerns about equal access to judicial remedies.

Administrative efficiency is also affected by excessive judicial scrutiny. Overly strict judicial control may discourage administrative initiative and decision-making, leading to bureaucratic hesitation and inefficiency. Courts in both systems therefore attempt to strike a balance by reviewing the legality of decisions without substituting their own judgment for that of administrative authorities.

Another challenge is the limited scope of judicial review in certain areas. In England, the inability of courts to invalidate primary legislation restricts the reach of judicial review, even where laws may adversely affect individual rights. In India, although the scope is broader, constitutional amendments and emergency powers have occasionally tested the limits of judicial review.

Finally, political influence and institutional independence remain concerns. The effectiveness of judicial review depends on an independent judiciary and respect for judicial decisions by other organs of the state. Any erosion of institutional autonomy undermines the Rule of Law.

Thus, while judicial review is indispensable, its effectiveness depends on careful exercise, institutional balance, and continuous commitment to constitutional values.

## **II. FINDINGS AND DISCUSSION**

The comparative study of judicial review under constitutional and administrative law in India and the English legal system reveals several significant findings regarding its nature, scope, and effectiveness. One of the central findings is that judicial review functions as a vital instrument for maintaining the Rule of Law in both jurisdictions, although its operation is shaped by differing constitutional structures. In both systems, judicial review acts as a safeguard against arbitrary exercise of power and ensures accountability of public authorities.

A key finding of this study is that constitutional framework plays a decisive role in determining the scope of judicial review. In England, judicial review has evolved within the doctrine of parliamentary sovereignty, which limits the judiciary's power to review primary legislation. As a result, judicial review in the English legal system is primarily concerned with administrative and executive actions. Despite this limitation, English courts have developed strong supervisory mechanisms to ensure legality, procedural fairness, and rationality in administrative decision-making.

In contrast, judicial review in India is grounded in constitutional supremacy and has a much wider reach. The Indian judiciary exercises the power to review both legislative and administrative actions and has consistently asserted judicial review as a basic feature of the Constitution. This expansive scope has enabled courts to protect fundamental rights and uphold constitutional values effectively. The development of doctrines such as basic structure and proportionality reflects the judiciary's active role in shaping constitutional governance.

The study also finds that the grounds of judicial review in both systems share common principles rooted in common law tradition. Illegality, unreasonableness, and procedural impropriety form the core grounds in both jurisdictions. However, Indian courts have adopted a broader interpretation of these grounds, particularly by treating arbitrariness as a violation of equality before law. This substantive approach enhances protection against administrative injustice.

Another important observation relates to the balance between judicial intervention and administrative discretion. Courts in both India and England recognize the necessity of discretion for effective governance but emphasize that such discretion must be exercised within legal limits. The comparative analysis shows that while English courts generally adopt a restrained approach, Indian courts tend to exercise a more activist role, especially in cases involving fundamental rights.

The findings further indicate that judicial review faces similar challenges in both systems, including judicial overreach, delay, and concerns regarding access to justice. These challenges highlight the need for a balanced and context-sensitive application of judicial review.

Overall, the discussion suggests that despite structural and procedural differences, judicial review remains an indispensable component of constitutional democracy in both India and the English legal system, reinforcing legality, accountability, and protection of rights.

### **III. CONCLUSION**

The comparative study of judicial review under constitutional and administrative law in India and the English legal system demonstrates that judicial review is a cornerstone of democratic governance and an essential mechanism for upholding the Rule of Law. Despite differences in constitutional structure, historical development, and judicial approach, both systems recognize judicial review as a vital tool to control the exercise of public power and to protect individual rights against arbitrary state action.

In the English legal system, judicial review has evolved within the framework of parliamentary sovereignty and an unwritten constitution. Its primary focus remains the supervision of administrative and executive actions to ensure legality, procedural fairness, and rationality. Although English courts traditionally lack the power to invalidate primary legislation, their strong control over administrative discretion has played a crucial role in maintaining accountability and preventing misuse of authority. The gradual incorporation of human rights principles has further strengthened judicial review by expanding protection of individual liberties.

In contrast, judicial review in India operates within a written Constitution based on constitutional supremacy. The Indian judiciary exercises extensive powers of review over both legislative and administrative actions and has consistently affirmed judicial review as a basic feature of the Constitution. This expansive role has enabled Indian courts to safeguard fundamental rights, enforce constitutional limitations, and promote substantive justice. Through doctrines such as arbitrariness, proportionality, and basic structure, judicial review in India has evolved into a powerful instrument of constitutional control.

The comparative analysis reveals that while England follows a more restrained and supervisory model of judicial review, India has adopted a more activist and interventionist approach shaped by its socio-economic realities and constitutional goals. Both approaches have their strengths and limitations. Excessive judicial intervention may raise concerns of overreach, while excessive restraint may weaken protection against administrative injustice.

In conclusion, judicial review remains indispensable for constitutionalism and administrative accountability in both India and the English legal system. Its effectiveness depends on maintaining a delicate balance between judicial intervention and respect for democratic governance. Strengthening institutional independence, ensuring access to justice, and exercising judicial power with responsibility are essential to preserve the legitimacy and effectiveness of judicial review in contemporary constitutional democracies.

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