A Comparative Analysis of the Constitution of India and the United Kingdom

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***Abstract*—The below-given abstract outlines the comparative study contained in the file "India UK Constitution Comparison.pdf," which focuses on comparing the constitutional designs of the Republic of India and the United Kingdom. Although both countries follow the Westminster parliamentary system of government, the two have different fundamental ideas when it comes to their constitutions. The constitution of the United Kingdom is uncodified and flexible, based on the idea of parliamentary sovereignty, while that of India is codified and rigid.**

The text examines the way in which these divergent legal doctrines deal with issues such as executive-legislature relations, delegation of legislative powers, emergency provisions, privilege of parliament, and federalism. It compares the change in the nature of judicial review by the UK courts in recent years towards one that is concerned more with rights as opposed to common law limitations, with the wide powers of the Indian Supreme Court. The Indian courts enforce constitutional morality through PILs and the collegium system among other means.

Additionally, this is an analysis of legislative accountability and how both systems limit parliamentary immunity so as not to protect criminal behavior, although India faces the additional challenge of the reality of political influence in the office of the Speaker during the debate on defection issues. Overall, the study shows a trend towards convergence. This is seen as the UK system increasingly incorporates the aspects of legal constitutionalism in checking legislative powers, whereas India's judicial system acts as a balance against the majoritarian tendencies.

I. INTRODUCTION

Comparative constitutional law provides very interesting observations on how different legal traditions cope with the common principles of democracy, responsibility, and the protection of fundamental human rights. Constitutional systems of the Republic of India and the United Kingdom (UK) illustrate two different approaches to public law. Although Indian constitution was largely inspired by the Westminster constitution of the United Kingdom, these two constitutions differ from each other in their basic assumptions. UK is based on an uncodified, flexible and historically developed system of constitution that is firmly grounded on the principle of parliamentary sovereignty. On the contrary, India is ruled by the codified and detailed constitution that ensures supremacy of the constitution, guaranteed by the independent judiciary having judicial review powers.

Understanding the intricacies of the theories requires distinguishing a "Constitution" from "Constitutionalism." A Constitution is the main legal instrument or structure dividing governmental powers. On the other hand, constitutionalism is the broader ideology which ensures that the powers of the government should be restricted and used in line with the rule of law so as to avoid any form of arbitrary government. Constitutionalism in the UK has largely been protected by the "political constitution" coined by J.A.G. Griffith.

However, India employs constitutionalism via an extremely elaborate constitution crafted to serve the function of achieving a "social revolution" amidst the intricacies of its immensely heterogeneous, post-colonial state. According to Granville Austin, in his book titled The Indian Constitution: Cornerstone of a Nation, the constitution is vital for the development of national unity and an egalitarian society through its carefully crafted provisions. Moreover, Sujit Choudhry and Madhav Khosla in The Oxford Handbook of the Indian Constitution have opined that the Indian constitution is a deliberate attempt at reconciling constitutionalism amid a very complex political environment, using legal supremacy to prevent the erosion of democracy. Sir Ivor Jennings,

while analyzing the Indian Constitution at its inception, has rightly stated that the Indian Constitution is unique due to its great detail and rigidity; indeed, the entire governmental machinery is based on British conventions, but in law.

This study offers an exhaustive comparison of these two legal frameworks through the examination of the basic ideologies of these two legal systems, the flexible separation of powers, the extent of judicial review, constitutional conventions, and parliamentary privileges. This report highlights the underlying trends of these two legal systems through an analysis that shows how the UK is moving towards a legal constitutionalism system and India is facing political challenges of parliamentary supremacy under a rigid constitution.

II. FOUNDATIONAL DOCTRINES: PARLIAMENTARY SOVEREIGNTY VS. CONSTITUTIONAL SUPREMACY

The United Kingdom: Diceyan Sovereignty and Its Modern Erosion

The cornerstone of the UK Constitution has been the principle of Parliamentary sovereignty, which was defined by A.V. Dicey in his book entitled An Introduction to the Study of the Law of the Constitution. It is said that under Dicey, the UK Parliament has the absolute power to enact or repeal any law, and there is no individual or institution which the law of England recognizes as possessing the right to set aside or annul legislation by Parliament. Since there is no written constitution in the UK, primary legislation is considered the highest law of all.

Nevertheless, modern legal scholarship suggests that parliamentary sovereignty is not a limitless and uncontrollable principle anymore. One of the greatest judicial attempts to clarify this conflict took place in the case of R (Jackson) v Attorney General (2005), when the legal nature of the Parliament Act 1949 and thus the Hunting Act 2004 were put into question. It was claimed that the Parliament Act 1949 was a case of delegated legislation, which could not increase the power of the House of Commons.

Despite the fact that the decision in the House of Lords was that the Act was indeed legally valid, the obiter dicta of a number of Law Lords reflected a significant development in constitutional theory. Lord Steyn, for example, held that the UK does not possess an "uncontrolled constitution" and that the doctrine of Parliamentary supremacy is a creation of the common law. Moreover, Lord Steyn claimed that if the Parliament would commit some outrageous actions, such as the abolishment of judicial review, it may be questioned whether such actions would contravene constitutional principles.

These judicial decisions point to another trend: that of the UK's unwritten constitution becoming aware of the existence of substantive common law constraints on the authority of the legislature. This constitutes a gradual shift towards legal constitutionalism whereby common law rights and rule of law provide the conceptual boundaries for legislative supremacy.

III. INDIA: CONSTITUTIONAL SUPREMACY AND THE BASIC STRUCTURE DOCTRINE

In contrast, the entire constitutional system in India rests on the principle of the primacy of the written text. The legislative powers of the parliament are well defined and limited by the Constitution, in particular by the distribution of powers in a federal state (Articles 245 and 246), as well as by the inalienable protection of Fundamental Rights (Part III). It is Article 13 that states that all laws that violate fundamental rights are null and void.

The restriction on parliamentary authority in India goes beyond mere legislation to constitutional amendments. Under Article 368 of the Indian Constitution, Parliament has the power to amend the Constitution; however, in the landmark case of Kesavananda Bharati v. State of Kerala (1973), the Supreme Court of India ruled that this amending power is necessarily restricted. The Court laid down the doctrine of basic structure, which holds that Parliament does not have the power to change the "basic structure" or essential elements of the Constitution, including democracy, secularism, rule of law, and separation of powers. The doctrine of the Basic Structure goes hand-in-hand with theories on "unconstitutional constitutional amendments" created by scholars such as Yaniv Roznai and Richard Albert. Roznai makes a difference between the "primary constituent power," which is the unlimited power of the people to make a constitution, and "secondary constituent power," which is the power of the legislature delegated by the people to amend the constitution. As the power of amendment is

constituted power, that is, it comes from the Constitution, it cannot be used as a tool for destroying the essential nature of the document, giving birth to it. According to Richard Albert, it leads to "constitutional rigidity" that protects the democratic powers from abuses committed by temporary majorities. Using this doctrine, the Indian Supreme Court guarantees that autocrats cannot tear down the constitutional foundation of the state.

IV. CONSTITUTIONAL MORALITY VS THE POLITICAL CONSTITUTION

This difference in the extent of sovereignty can be seen to stem from a larger philosophical conflict with regard to the way in which power should be controlled. According to J.A.G. Griffith, whose theory on the "Political Constitution" applies to the United Kingdom, it is through the use of political processes, such as the ability of ministers to answer to Parliament, debate by the opposition, and elections, that the executive can best be held responsible, not through judges who do not have any direct political legitimacy. India, despite its use of Westminster political institutions, primarily depends upon "Constitutional Morality." Though initially enunciated by B.R. Ambedkar during the Constituent Assembly debates to highlight the requirement of self-restraint and reverence for the forms of the Constitution, the idea has gained considerable weight at the hands of the contemporary Indian Supreme Court. The cases like Navtej Singh Johar v. Union of India (decriminalizing homosexuality) and K.S. Puttaswamy v.Union of India (recognizing the right to privacy) are examples of how the court has turned "constitutional morality" into an effective limit on state action. Constitutional morality goes beyond public or majoritarian morality; it requires one to comply with the core principles of dignity, equality, and liberty guaranteed by the Constitution. Hence, while India uses judicial review to uphold constitutional morality where political process does not protect the marginalized people, it is in stark contrast to the political constitution of Griffith.

V. THE SEPARATION OF POWERS AND EXECUTIVE-LEGISLATIVE DYNAMICS

Functional Overlap in the Westminster Model

The concept of the separation of powers, proposed by Montesquieu with the aim of avoiding tyranny through the division of government into three different branches namely, the executive, the legislative, and the judiciary, is an approach that has a unique place in parliamentary democracies. While neither the UK nor India follows a strict and inflexible system of separation of powers like the US does, the two follow the Westminster system of governance.

In the United Kingdom, the executive (the Cabinet) is selected from the legislature and is always accountable to it. The British Cabinet has been famously described by Walter Bagehot as "the efficient secret of the English constitution "the buckle which fastens the legislative part of the state to the executive."

The Indian Constitution is also virtually the same in its parliamentary structure. There is no express requirement of separation of powers under the Constitution, other than in Article 50, where the state is instructed to separate the judiciary from the executive as a Directive Principle.

The Supreme Court of India in Ram Jawaya Kapur v. State of Punjab (1955) made it clear that there was no separation of powers in India. It observed that the Indian Constitution envisaged cooperation and not separation. In Article 74(1), the President of India acts only on the "aid and advice" of the Council of Ministers and, therefore, the President is a constitutional head of the State only.

Cabinet Secrecy and Fiduciary Duties

The efficiency of the Cabinet in both systems depends on the idea of collective responsibility, under which the government must present a single voice. This requires strict secrecy within the Cabinet to allow free and open discussion.

In the UK, Cabinet secrecy is upheld by means of constitutional conventions and the common law principle of breach of confidence. Nevertheless, the secrecy is not unlimited, and the balance of power between the executive and judiciary has to be maintained. In the case of Attorney General v Jonathan Cape Ltd, known as "Crossman Diaries" case, the UK court did not agree to impose an injunction on the publication of the diaries of a former minister. It was held that although the principle of Cabinet secrecy is of utmost importance for the sake of collective responsibility, the necessity of confidentiality decreases over time.

In India, Cabinet secrecy is provided protection through the text of Article 74(2) where no court can

inquire into the nature of the advice tendered by Ministers to the President. It must be stated, though, that the Supreme Court has gone into great detail to determine what lies within the ambit of such protection in order not to fall prey to executive malpractices. As articulated in the historic case of S.R. Bommai v. Union of India, there is a crucial difference between the "advice" tendered (which is constitutionally protected from inquiry) and the "material" on which such advice is based. The latter can be subject to judicial examination in order to determine the validity of such materials.

VI. DELEGATED LEGISLATION AND THE LIMITS OF EXECUTIVE LAW-MAKING

An important issue for comparative analysis is the delegation of legislative powers to the executive. Owing to the intricacy and huge volume of modern-day administrative state governance, delegations of such power have become increasingly prevalent in both the UK and India.

Delegated legislation in the United Kingdom exists mainly in the form of statutory instruments (SIs), orders in council, and by-laws, which are governed mainly by the Statutory Instruments Act of 1946. As a result of parliamentary sovereignty, the United Kingdom parliament may delegate powers to the executive arm of government, which includes the infamous "Henry VIII clauses" that allow the executive to amend or repeal primary legislation through the backdoor mechanism of secondary legislation. Despite their constant criticism by many constitutional experts for their lack of proper democratic control, Henry VIII clauses are subject to judicial scrutiny. This was evidenced in the case of R (O) v Secretary of State for the Home Department (2022), where the UK Supreme Court proved its readiness to properly scrutinize if the secondary legislation is frustrating the statutory rights accorded in the parent act.

India uses executive law-making in two ways – regular delegation of laws and also an extraordinary method of law-making laid down in the Constitution – Ordinance-making Power. The President, as per Article 123 of the Constitution of India, can make an Ordinance during recess of Parliament on the advice of the Council of Ministers. The Ordinance has the same force and effect as an Act passed by Parliament, but it is meant to deal with unexpected emergencies. But often the executive has misused this power.

The Indian Supreme Court has taken strong measures to stop this encroachment on the democratic process. In D.C. Wadhwa v. State of Bihar (1987), the Supreme Court faced the problem of repeated promulgation of the same ordinances without bringing it before the legislature for voting by the state government. The Court found the act to be a "fraud on the Constitution" and an open violation of the separation of powers doctrine. The jurisprudence further developed in Krishna Kumar Singh v. State of Bihar (2017) in which a seven-judge Constitution Bench held that the power to make an ordinance cannot be considered as an alternative method of legislating and that the President's "satisfaction" about the necessity of immediate action is subject to judicial review for mala fides. This indicates a more profound structural reality that the UK mainly uses statutory control and common law administrative principles whereas India requires constitutional adjudication at a higher level to stop the executive from assuming the legislative power.

VII. EMERGENCY POWERS AND STATE RESILIENCE

Management of national crisis situations is another example that highlights the differences between the two constitutional philosophies. The UK system relies on statutory laws as far as handling emergency situations is concerned. It relies heavily on the Civil Contingencies Act of 2004. Under the Act, there is part 2 that gives the executive powers to create emergency regulations that would enable it to avoid, reduce or contain any situation likely to cause serious harm to human beings, environment or security. These powers however have strict timelines and are subjected to judicial reviews as per the Human Rights Act of 1998.

India, in consideration of the worries of its founders about its post-colonial unity and stability, is endowed with comprehensive constitutional emergency powers under Part XVIII of the Constitution. Article 352 of the Constitution empowers the President to announce a National Emergency when there is war, external aggression or armed rebellion. The effect of this emergency is significant: the federal system becomes almost a unitary one, the parliament acquires the power to enact laws over the areas reserved exclusively for the states, and the operation of some

Fundamental Rights (not Articles 20 and 21) may be suspended. However, despite the fact that the 44th Amendment Act has placed strict parliamentary control and judicial protection against such an abuse after the experience of the democratic mismanagement of the1975-1977 Emergency, India's Constitution allows temporary concentration of power and suspension of rights in a way that is constitutionally impossible in the UK under its Civil Contingencies Act.

VIII. THE LEGISLATURE: PRIVILEGES, SPEAKERS, AND DEFECTION

Parliamentary Privileges and Immunity

Parliamentary privileges are granted to ensure that the members of parliament cannot be interfered with by the executive and that the legislative process can take place smoothly. In the UK, the very basic right is guaranteed under Article 9 of the Bill of Rights 1689, according to which freedom of speech and debates or proceedings in Parliament cannot be questioned outside of Parliament.

These limits have been tested to the extent in R v Chaytor (2010) after the parliamentary expenses scandal. Some of the Members of Parliament were charged criminally with fraud and sought that their submission of the expense claim was covered by parliamentary privilege and, thus, that they could not be tried in the criminal courts. The UK Supreme Court dismissed this argument by stating that the submission of an expense claim was an administrative function and not a "proceeding in Parliament" and, therefore, was not privileged under Article 9. This important case decided that privilege is only meant to protect the legislative acts of debate and voting and not to cover up the criminal misbehavior of the legislators.

The provisions of parliamentary privileges have been adopted in India under Article 105 and Article 194 respectively, where the privileges of Parliament and State Legislatures have been stated in the context of the powers exercised by the House of Commons of UK until codified differently. But, the issue of parliamentary privilege and political corruption has been a jurisprudence riddle in India. In the landmark judgment of P.V. Narasimha Rao v. State, the deeply split bench of the Supreme Court had opined that the legislature member accepting bribes with an intention to cast a vote against a particular no-confidence motion would be immune from prosecution under Article 105(2) because it was "in respect of" a particular vote given in Parliament. It gave rise to an ironic situation wherein if the Member of Legislature took bribe and casted his vote, he would remain immune under Article 105(2), while taking bribe and abstaining himself from voting would result in a criminal proceeding as there was no "vote".

The constitutional lacuna existed for more than two decades until its correction by the Supreme Court in the year 2024, in Sita Soren v. Union of India.

The Court used the "test of necessity," which concluded that accepting bribes is not necessary for the proper performance of the duties of a legislator. The Court stressed the point that the Constitution requires integrity in governance, and interpreting Article 105 in a way that provides protection against corruption violates the very basic tenets of a democratic parliamentary system. The Sita Soren case brought back Indian law in line with the functional approach adopted by the UK in its Chaytor decision.

IX. THE ROLE OF THE SPEAKER AND ANTI-DEFECTION LAWS

There is an evident difference between the parliamentary system of both the UK and India in terms of the development of the role of the Speaker. In the case of the UK House of Commons, the Speaker becomes independent of any political party after being elected, thus rendering themselves neutral beyond question. The Speaker in the UK becomes independent of the party, does not contest against major parties in general elections, and after serving as Speaker, does not indulge in politics again.

In India, the Speaker seldom leaves their political party and has to face elections on behalf of their party tickets, which often results in legitimate allegations of partisanship. However, this susceptibility was vividly realized after the implementation of the Tenth Schedule (Anti-Defection Law) through the Constitution (Fifty Second Amendment) Act of 1985. The objective behind the introduction of this schedule was to put a stop to the prevalent trend of defections ("Aaya Ram Gaya Ram" politics), which used to create instability in the government, but in doing so, it gave the power of deciding defectors only to the Speaker.

In Kihoto Hollohan v. Zachillhu (1992), the Supreme

Court declared the Tenth Schedule to be a constitutionally valid document, but declared that specific clause relating to non-reviewability of decisions of the Speaker to be unconstitutional. It was held that the Speaker functions in his capacity as a statutory adjudicatory tribunal, and his decisions can always be subjected to judicial review in cases where there is a challenge to his jurisdiction, mala fide decision making, or any constitutional violation. Notwithstanding this judgment, however, the entire process is deeply flawed in practice, as Speakers have been known to use delay tactics to their advantage by withholding disqualification petitions for months, or even years, till the assembly in question expires, thus protecting their defectors who belong to the ruling party, while punishing the ones who defect to the opposition.

X. THE JUDICIARY, PUBLIC INTEREST, AND THE RULE OF LAW

Judicial Independence and Appointments

Appointment of judges is a case in point where different methods can be employed in order to secure the independence of the judiciary. In the UK, the appointment of judges used to be carried out by the executive (the Lord Chancellor); however, the Constitutional Reform Act 2005 created the independent Judicial Appointments Commission (JAC).

Unlike other countries, India has its own unique feature, known as “Collegium system,” where the Chief Justice of India and a group of senior justices of the Supreme Court have ultimate authority regarding the appointment and transfer of judges. The process was derived by way of judicial pronouncement (Second and Third Judges Case). When, however, the Parliament tried to introduce NJAC to replace the Collegium, the 99th Constitutional Amendment Act was declared unconstitutional by the Supreme Court on the ground that the involvement of the executive in the process of judicial appointment undermines the independence of the judiciary that is part and parcel of the Basic Structure of the Constitution.

Expansive Judicial Review and Locus Standi in India

The Indian Constitution provides the Supreme Court and the High Courts with strong and original judicial review powers through Articles 32 and 226. Hence, the Indian Judiciary is considered one of the most powerful Judiciaries in the world since it acts as the ultimate interpreter of the constitution and protector of fundamental rights.

One of the characteristics of the legal system in India is the radical concept of Public Interest Litigation (PIL). In the past, according to Anglo-Saxon common law, a litigant should be able to show locus standi (personal interest) in order to go to court. But taking into consideration the socio-economic realities of India where people are poor and uneducated, the Supreme Court of India liberalized the doctrine of locus standi. In S.P. Gupta v. Union of India (1981), it was established by the Supreme Court of India that any responsible citizen or association of citizens may file cases in the courts for people whose rights have been infringed and who themselves are not able to approach the courts.

This "epistolary jurisdiction" enables the court to commence proceedings simply on the basis of a letter or a news item from the media. The Indian judiciary, via the route of PIL, has greatly enlarged the ambit of Article 21 (right to life and personal liberty) so that it now includes socio-economic rights like the right to a clean environment, education, and livelihood. Although PIL has been instrumental in democratizing justice, it has equally been criticized for being an instance of judicial overreach, with courts getting involved in policy and administrative affairs.

The UK's Shift Toward Rights-Based Review

Judiciary in the UK used to be more restrained in its powers and was involved only in checking the legality, irrationality, and impropriety of procedure in the decision-making process (classical Wednesbury unreasonableness criteria). Locus standi was somewhat expanded but still linked to establishing an individual’s “sufficient interest” in the issue in question (e.g., ex p National Federation of Self-Employed case where representative organizations could challenge tax schemes under certain circumstances).

However, the judicial scene in the UK took a complete turnaround with the Human Rights Act (HRA) 1998, which brought into national laws the rights set out in the European Convention on Human Rights (ECHR). While the HRA carefully maintains parliamentary sovereignty through its inability to strike down primary legislation, the HRA enables the judiciary to

interpret legislation as compatible with Convention rights using Section 3 of the Act. Where such an interpretation is not possible, then according to Section 4, the court can make a "Declaration of Incompatibility".

Additionally, irrespective of the HRA, the UK Supreme Court has shown itself very aggressive in its support of the common law principle of access to justice. In the seminal case of R (UNISON) v Lord Chancellor (2017), the Court declared that certain secondary legislation, which established highly exorbitant and prohibitive fees for bringing claims to employment tribunals, was unconstitutional because it made it impossible for people to exercise their employment rights. By doing so, the case of UNISON shows that, without even having a written constitution, the UK judiciary is ready to use common law principles to declare the executive unconstitutional.

XI. FEDERALISM, DEVOLUTION, AND CONSTITUTIONAL CONVENTIONS

The Nature and Enforceability of Conventions

The constitutional conventions are non-legal, informal rules of political behavior, which determine how the legal powers are to be exercised. Conventions in the UK provide the indispensable connecting link of the unwritten constitution by bridging the gap between the written law and political practice. Three criteria laid down by Sir Ivor Jennings have been recognized as the standard test for determining the presence of a convention, namely, (a) what is the precedent? (b) did the participants feel themselves bound by the rule? and (c) is there a constitutional purpose in the rule? As conventions are essentially political rules, the UK courts do not usually enforce them legally. This point was emphatically reinforced by R (Miller) v Secretary of State for Exiting the European Union (Miller I). In this case, the key issue revolved around the Sewel Convention, according to which the UK Parliament "will not normally" legislate on devolved issues without the express legislative consent of the devolved legislatures of Scotland, Wales, and Northern Ireland. While the Sewel Convention had gained formal statutory recognition in the Scotland Act 2016 and the Wales Act 2017, the UK Supreme Court was of the view that it continued to be a political convention that is enforceable "in honour only". The Supreme Court made it abundantly clear that judges are neither the parents nor the guardians of political conventions.

In India, the authors of the written Constitution have written down a number of British conventions to make them legally enforceable obligations. For instance, the convention that the monarch acts on ministerial advice has been written down in Article 74(1). The collective responsibility of the Cabinet has been mentioned in Article 75(3). Nonetheless, India continues to use conventions where the authors of the Constitution have deliberately left some things vague, like the discretionary power of the President to choose the Prime Minister if no party enjoys absolute majority in the Lok Sabha. It is worth noting that the Supreme Court of India in certain cases has been interventionist about conventions to a greater extent than the Supreme Court of UK.

XII. DEVOLUTION VERSUS COOPERATIVE FEDERALISM

While both states share a parliamentary system of government, they have vastly contrasting systems of distribution of power, based on their unique evolution histories. Britain, for example, can be described as a purely unitary state.

But since the late 1990s, Britain has started devolving powers through asymmetric devolution process and has established the Scottish Parliament, the Senedd (Welsh Parliament) and the Northern Ireland Assembly. Powers have been granted to these assemblies by the British Parliament. More importantly, under the principle of parliamentary sovereignty, Westminster has the absolute legal right to abolish all these assemblies and legislate in their jurisdictions. However, according to the Sewel convention, Westminster will endeavor to obtain consent. But the UK Supreme Court decision in Miller I clearly stated that it is a matter of politics and parliamentary goodwill, and not federalism.

In contrast, India is referred to as a "quasi-federal" or "cooperative federal" state. The Constitution provides for a well-developed dual polity, which divides the legislative and executive powers between the Union and the States by means of three comprehensive lists (Union, State, and Concurrent), enshrined in the Seventh Schedule of the Constitution. Although the Indian Constitution has some particularly strong unitary characteristics such as the right of the Union Parliament to alter the boundaries of the states without

their consent (Article 3) and to take over the state legislative powers in emergencies (Article 356), the federal system in India is deeply rooted. In the landmark decision of S.R. Bommai v. Union of India, the Supreme Court held that federalism is one of the Basic Features of the Constitution, which cannot be altered by parliamentary legislation.

XIII. CONCLUSION

Comparing the constitutions of India and the United Kingdom reveals that there exist two opposing, but deeply intertwined, approaches towards statecraft. The UK's uncodified political constitution is grounded in a profound historical belief in parliamentary sovereignty, institutional continuity, and the normative strength of elite political conventions. India's codified constitution is shaped by the post-colonial concern about the abuse of power and the need for socio-economic change and national cohesion.

From the above comparative analysis, a number of key lessons emerge.

The first one is that there is convergence in the way that these two models treat executive power and human rights.

In the United Kingdom, the absolute orthodoxy of the sovereignty of Parliament is being slowly undermined by the radical common law doctrine of the judiciary. Cases such as R (UNISON) and Jackson illustrate how there is increasing judicial tendency to use fundamental rights, including the right to access justice and the basic rule of law, as limits on the overreaching power of the Executive and Legislature. Gradually, the UK is embracing the characteristics of legal constitutionalism, thereby accepting the fact that a political constitution alone would not be sufficient.

Secondly, the case of India highlights the inherent inadequacies of codification within texts when the morality of institutions does not flourish. While the authors of the Indian constitution were able to codify the mechanics of the Westminster system, they have failed to fully codify the political culture necessary for such a model. The misuse of the position of the Speaker in the context of the anti-defection rule (Kihoto Hollohan), the continuous undermining of the parliament in terms of the use of Ordinance-making power (Krishna Kumar Singh), and the historical tradition of protecting corruption by means of parliamentary privilege (Narasimha Rao) show how constitutional text can always be exploited if not accompanied by constitutional morality. Thus, the Indian Supreme Court had to enlarge immensely its jurisdiction by means of the doctrine of basic structure, collegium system, and public interest litigation.

In the end, however, both systems demonstrate that regardless of the extent of its codification or its complete lack thereof, the protection of democratic values depends largely on the independence of the judiciary and its readiness to uphold the rule of law. As the British judiciary meticulously charts the contours of parliamentary supremacy through common law rights and the Indian judiciary asserts its supreme position by defining the "basic structure" and ensuring probity in public affairs (Sita Soren), both systems reinforce an essential lesson of constitutionalism worldwide: democracy demands an eternal rebalancing of legislative power and human rights.

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