
JUDICIAL REVIEW OF EXECUTIVE ORDINANCES IN INDIA AND THE UNITED KINGDOM: A COMPARATIVE ASSESSMENT OF CONSTITUTIONAL SAFEGUARDS

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ABSTRACT

This article comparatively examines the judicial review of executive lawmaking in India and the United Kingdom, focusing on India's ordinance-making power under Articles 123 and 213 of the Constitution and the UK's reliance on delegated and emergency legislative mechanisms, including Orders in Council and Henry VIII clauses. The research study investigates whether judicial review functions as a complete constitutional protection because it controls executive power when officials create laws without waiting for legislative approval. The article uses doctrinal-comparative research methods to study constitutional provisions and statutes and judicial decisions together with applicable academic commentary from both legal systems. The research studies how the Indian Supreme Court develops its legal framework through *R.C. Cooper v Union of India*, *A.K. Roy v Union of India*, *D.C. Wadhwa v State of Bihar* and, most significantly, *Krishna Kumar Singh v State of Bihar*, which courts with United Kingdom ultra vires doctrine and prerogative power and executive responsibility precedents such as *Padfield* and the *GCHQ case* and *Miller*. The article argues that Indian courts possess a more searching basis for substantive review because constitutional supremacy supplies an enforceable legal standard, while UK judicial review remains constrained by parliamentary sovereignty. The two systems show accountability problems in their operations. The comparison identifies shared points between both systems while demonstrating how different constitutional structures affect the strength and success of judicial oversight.

KEYWORDS: Judicial Review, Ordinance-making Power, Delegated Legislation, Comparative Constitutionalism, Parliamentary Sovereignty

1. INTRODUCTION

Executive lawmaking has emerged as a crucial tool for contemporary governance in India and the United Kingdom because it enables governments to quickly address evolving social and economic and administrative changes. The Indian Constitution grants the President and Governors of states authority to issue Ordinances during periods when their respective legislatures remain inactive, but this power operates under constitutionally defined limitations and requires subsequent legislative approval.¹ The United Kingdom uses delegated legislation as its main method for executive lawmaking through statutory instruments and Orders in Council while Henry VIII clauses enable secondary legislation to modify or annul primary laws.²

The mechanisms of these systems operate two functions which support administrative efficiency requirements and their need for operational flexibility while handling urgent situations. The executive branch needs to control legislative functions because this power affects its capacity to hold lawmakers accountable. The question is especially significant because the availability and intensity of judicial review depend upon each jurisdiction's constitutional structure.

Although substantial scholarship examines ordinance-making in India and delegated legislation in the United Kingdom separately, comparatively less attention has been directed towards the judicial control mechanisms that determine whether executive lawmaking remains constitutionally bounded.³ This article addresses that gap by examining ordinary peacetime executive lawmaking because it does not need to study full emergency powers.

The study adopts a doctrinal-comparative approach, analysing constitutional provisions, legislation, judicial decisions and relevant academic commentary. The study compares judicial review standards institutional foundations and practical outcomes in both systems while assessing how much courts can restrict executive lawmaking without hindering government operations.

2. STATEMENT OF PROBLEM

India and the United Kingdom both allow their executive branches to establish binding regulations which require no prior approval from their respective legislatures despite using different constitutional methods to accomplish this. The system establishes an opportunity for executive branch members to exceed their authority while reducing the ability of legislators to

conduct normal oversight functions. The effectiveness of judicial review as a corrective measure operates differently across legal systems because each system depends on its specific constitutional structure. The written constitution of India allows courts to examine executive lawmaking for its compliance with constitutional limits while the United Kingdom's system of parliamentary sovereignty limits judicial authority to intervene in matters and emphasizes the need for political responsibility and procedural integrity.

3. RESEARCH QUESTIONS

The article addresses four interconnected research questions.

3.1 What are the constitutional and doctrinal bases of executive ordinance-making and delegated legislative power in India and the United Kingdom?

3.2 How have the judiciaries of both jurisdictions defined the scope and limits of judicial review over such executive lawmaking?

3.3 What constitutional and institutional factors account for the differing intensity of judicial scrutiny in the two systems?

3.4 What lessons, if any, can India and the United Kingdom draw from each other's constitutional and institutional safeguards?

4. RESEARCH OBJECTIVES

The first objective of the study investigates how executive ordinance-making powers operate under constitutional law and doctrinal principles in India while examining the legislative authority that United Kingdom delegates to its executive branch.

The second objective of the study investigates how judicial doctrines developed in both legal systems to handle executive lawmaking activities through which courts assess executive legislative actions.

The third objective of the study identifies constitutional and institutional factors that create differences in judicial review practices between India and the United Kingdom as these practices stem from Indian constitutional supremacy and British parliamentary sovereignty.

The fourth objective of the study establishes international standards that countries must follow to create executive protection systems while acknowledging that each nation needs to modify its existing institutional framework before implementing laws from different constitutional systems.

5. RESEARCH METHODOLOGY

The article employs doctrinal research together with comparative legal research as its primary research method. The Indian analysis primarily focuses on investigating the constitutional system which controls Ordinances under Articles 123 and 213 while it examines those provisions in relation to the total constitutional structure which governs emergency powers from Articles 352 to 360.⁴ The analysis of the United Kingdom examines delegated legislation and Orders in Council and Henry VIII clauses and the judicial review of executive and prerogative actions.

Primary sources comprise constitutional provisions, parliamentary legislation and judicial decisions from both jurisdictions. The research focuses on Indian legal cases which include *R.C. Cooper v Union of India*, *A.K. Roy v Union of India*, *D.C. Wadhwa v State of Bihar* and *Krishna Kumar Singh v State of Bihar* and important United Kingdom cases which include *Padfield v Minister of Agriculture, Fisheries and Food*, *Council of Civil Service Unions v Minister for the Civil Service*, *R (Miller) v Secretary of State for Exiting the European Union* and *R (Miller) v The Prime Minister*.⁵

Secondary materials include academic writings, parliamentary publications, constitutional commentary and institutional reports which pertain to delegated legislative power and judicial review. The research methodology for this study operates through doctrinal methods because it does not include any empirical survey work or primary field research activities. The comparative analysis assesses legal principles and judicial reasoning and constitutional structures instead of using statistical methods to evaluate governmental operations.

6. LITERATURE REVIEW

Indian scholarship has closely examined the exceptional nature of ordinance-making and the constitutional dangers arising from its prolonged use. D C Wadhwa's intervention remains foundational because it exposed repeated re-promulgation as an evasion of legislative authority.⁶ The seven-judge decision in *Krishna Kumar Singh v State of Bihar* established a new legal principle which classified ordinance-making as a form of legislative authority that must follow both constitutional laws and judicial regulations.⁷ British research about delegated legislation studies three main areas which include Henry VIII clauses and parliamentary scrutiny together with the constitutional effects that ministers gain through legislative power delegation.⁸ The jurisprudence regarding Orders in Council and prerogative powers and judicial review includes the *Council of Civil Service Unions v Minister for the Civil Service*

and *Miller decisions*, which create a key judicial dimension to this body of scholarly work.⁹ The meaning and remedies of judicial review under the judicial review and Courts Act 2022 have extended the contemporary discourse.¹⁰ Most research develops through distinct constitutional traditions which different groups of scholars study. The comparative analysis fails to demonstrate why courts conduct judicial review with varying intensity and which institutional protections create executive lawmaking accountability. The article fills this research gap by comparing two legal systems through their shared framework of judicial control and legislative accountability and constitutional limitations.

7. LEGAL AND JUDICIAL ANALYSIS

India

The President and Governors gain authority to issue ordinances because articles 123 and 213 of the Constitution permit them to do so when the legislature is not in session and needs immediate action.¹¹ An Ordinance has the same force as an Act of the legislature but remains temporary because it must be presented to Parliament or the State Legislature and it will automatically end six weeks after reassembly unless it gets withdrawn or disapproval.¹² The ambit of the subject matter too is drawn by legislative competence hence no ordinance can be prevailing which goes beyond the constitutional demarcation of legislative power.

Judicial treatment used executive satisfaction needed for Articles 123 and 213 as the main criterion for its initial assessment. *R.C. Cooper v Union of India* decided that presidential satisfaction functioned as a personal test, while the Ordinance maintained its status as a legal matter that could be contested.¹³ *The A.K. Roy v Union of India* case established that the power has unique legislative authority which enables constitutional examination of the law that emerges from the power.¹⁴ *The D.C. Wadhwa v State of Bihar* case established a constitutional boundary which determined that executive body re-promulgation without any legislative measures constituted a constitutional fraud because it allowed the executive branch to exercise legislative authority.¹⁵

The framework received its enhancement through the legal case *Krishna Kumar Singh v State of Bihar*. The seven-judge Bench reached the decision that judicial bodies possess authority to review Presidential and Governor decisions while the regulations governing promulgation remain binding.¹⁶ The law establishes that legislative processes require mandatory compliance which the law defines as essential to establish legislative authority for these procedures. Review may therefore address mala fides, non-application of mind, lack of constitutional or

legislative competence, infringement of fundamental rights and other recognised grounds of invalidity. The impugned legislative measure violates constitutional rules which originated from fundamental-rights jurisprudence through its existing fundamental-rights standards.¹⁷

United Kingdom

The United Kingdom lacks a written constitution which grants executive powers that match the authority found in Articles 123 and 213. The executive branch uses delegated legislative power which originates from Acts of Parliament to conduct its operations through Orders in Council and statutory instruments. Henry VIII clauses enable ministers to change or eliminate main laws through secondary regulations yet parliamentary committees consider these powers to be uncommon constitutional exceptions needing specific explanation.¹⁸

The main judicial protection system operates through the execution of ultra vires doctrine which receives additional support from legal standards and requirements of rational decision-making and correct procedural operations. The House of Lords established in *Padfield v Minister of Agriculture Fisheries and Food* that statutory powers need to be used by officials in a way that furthers the goals which Parliament established.¹⁹ The *Council of Civil Service Unions v Minister for the Civil Service* case established that all prerogative power exercises could be subject to judicial review according to their specific character and surrounding situation.²⁰ *Miller I* established that courts possess authority to enforce constitutional standards against executive actions which utilize prerogative power to impact rights and constitutional structures.²¹

Miller II extended his executive power control measure because he ruled Prime Minister advice to prorogue Parliament as illegal because it obstructed Parliament's constitutional duties without valid reasons.²² The court rulings establish no universal authority for judges to nullify parliamentary legislation or delegated laws based on conflicts with a written constitution. Judicial review in the United Kingdom operates under parliamentary sovereignty as its main structural limitation. UK courts mainly investigate three issues which include assessing whether officials went beyond their authorized powers, determining if they followed the intended legal objectives, and checking whether they complied with established procedures and decision-making processes. The system allows judges to oversee executive actions while maintaining India's constitutional supremacy framework.

8. COMPARATIVE ANALYSIS

8.1 Similarities

Both India and the United Kingdom acknowledge situations where executive branches of government can implement laws without first seeking approval from their respective legislative bodies. India allows the issuance of Ordinances during times when its legislature is not in session according to Articles 123 and 213, while the UK government depends on Parliament-approved delegated legislation which includes Orders in Council and statutory instruments.²³ The executive lawmaking process has some limitations which both systems recognize. The courts have the authority to examine three different aspects of executive power which include the conditions that enable power, the extent of assigned powers, and the methods used to execute such powers.²⁴ Both of them are actually struggling with a common accountability problem: executive efficiency might undermine ordinary legislative scrutiny.

8.2 Differences

The principal difference exists because different constitutional standards exist which allow judges to decide cases. Indian executive lawmaking operates directly beneath a written Constitution which enables courts to test Ordinances against constitutional limitations and legislative competence and fundamental rights.²⁵ Krishna Kumar Singh also fortified against re-promulgation, veering the temporary legal device from becoming a substitutive for the normal legislation.²⁶ The United Kingdom does not possess a system which establishes a formal constitutional framework that unites its different constitutional elements. The courts cannot nullify primary laws because they conflict with judicially established constitutional standards because parliamentary sovereignty controls legal authority. The courts assess delegated legislation through judicial review by examining its legal validity and its alignment with statutory intentions and its logical basis and its compliance with established procedures.²⁷

8.3 Reasons for Differences

The different systems operate according to their distinct constitutional foundations. India executes its political system through constitutional supremacy which grants legislative and executive powers their authority to operate under constitutional standards. The UK traditionally locates ultimate legislative authority in Parliament.²⁸ The UK lacks one fundamental rights document which creates multiple judicial paths to determine rights violations. Their separation-of-powers arrangements consequently produce different relationships between courts, legislatures and executives.²⁹

8.4 Practical and Legal Consequences

Indian legal system provides Ordinances with more actual constitutional review possibilities than other systems. An Ordinance may fail where its promulgation lacks constitutionally permissible justification, exceeds legislative competence, infringes fundamental rights or suffers from recognised legal defects.³⁰ In the UK, delegated legislation may be quashed when it exceeds the powers granted by the enabling Act. The judicial system usually relies on specific statutory powers to declare laws invalid instead of using general constitutional authority.³¹ Thus, political accountability becomes increasingly vital, especially where broad delegations or Henry VIII clauses are deployed.

8.5 Lessons for India

India can nevertheless draw useful institutional lessons from UK practice. The Ordinance-making process requires greater procedural transparency which can be achieved through defining sunset periods and establishing public announcement procedures and legislative review processes that occur after the Ordinance has been enacted.³² The safeguards would fortify the constitutional requirement that laws must remain temporary because they exist to protect people from judicial powers that should belong to legislators. The UK constitutional debate will benefit from India's constitutional experience because it shows the importance of external constitutional checks in situations where political systems become ineffective. The research shows that effective protection systems need judicial enforcement together with institutional systems that maintain legislative accountability.

9. CRITICAL ANALYSIS AND ORIGINAL CONTRIBUTION

The power of judicial review operates in different ways because it stems from the fundamental design of constitutional systems. The architects of India established constitutional frameworks that restricted government power through a written constitution which contained enforceable rights and institutional boundaries and judicial review mechanisms.³³ The resulting difference is therefore structural rather than merely jurisprudential.

The Indian review process received its most significant enhancement after Krishna Kumar Singh. The judgment rejected the proposition that ordinance-making constitutes an unreviewable executive prerogative and reinforced legislative accountability by recognising consequences flowing from an Ordinance's cessation.³⁴ The practice of re-promulgation still exists because doctrinal strength has not completely removed it. The research on Bihar together with its governmental operations shows that temporary legislative instruments have been used

repeatedly because they lack enforcement of constitutional requirements.³⁵ Judicial review is thus indispensable but cannot by itself rectify a political practice that again and again circumvents legislative deliberation.

The process of civil rights review faces challenges due to its crucial requirement to evaluate substantive content. The constitutional standard establishes "manifest arbitrariness" as a core requirement but its application extends beyond precise boundaries which creates problems for determining which cases of judicial disagreement with legislative policy result in constitutional violations.³⁶ The GCHQ framework in the UK extended its review of prerogative powers, but its determination of which executive actions courts can review creates a situation where some executive actions exist in a space between judicial control and complete judicial independence.³⁷ The Indian-style constitutional benchmark which does not exist creates a situation where executive legislative systems must rely on statutory interpretation and political authority for their functioning.

The courts face an irreversibility challenge as their final decision requires permanent commitment. The Ordinance establishes operational binding power which creates legal effects through its executive appointments and financial activities and its built-in legal responsibilities. The instrument invalidation process disrupts established legal outcomes because it retroactively affects all cases.³⁸ The article's original contribution establishes that effective control needs two different systems because searching constitutional review requires additional procedural systems which protect legislative review from becoming permanent through executive lawmaking activities.

10. FINDINGS, SUGGESTIONS AND CONCLUSION

10.1 Findings

The study demonstrates that India's constitutional ordinance power exists as a right which Article 123 and Article 213 grant to the country while the UK executive lawmaking process functions through parliamentary delegation and royal prerogative authority.³⁹ The review powers of Indian courts extend beyond their assessment of legislative competence and fundamental rights to their examination of all constitutional procedural and substantive limitations. The main legal standards used by UK courts for their decisions are ultra vires and legality and rationality and procedural review.⁴⁰ Thirdly, this divergence arises from the doctrine of Constitutional Supremacy in India and the doctrine of Parliamentary Sovereignty in the UK.⁴¹ The two systems show their complementary strengths through their different

strengths because India provides stronger judicially binding restrictions whereas the UK system shows the vital need for both legislative and political examination.

10.2 Suggestions

India should strengthen its procedural safeguards through legislation which requires all government agencies to present structured public documentation that explains the constitutional requirement for each Ordinance.⁴² The statutory framework needs to establish more precise time limits which require municipalities to present their Ordinances to the legislature and to obtain legislative approval for their Ordinances. The Parliament and State Legislatures should create special post-legislative scrutiny committees which will use the UK system of delegated legislation review to assess whether an Ordinance still needed to exist.⁴³

10.3 CONCLUSION

The Indian legal system gains more effective control over executive lawmaking through written constitutionalism which reached its highest doctrinal development after the Krishna Kumar Singh decision. The existing institutional practices together with actual operational challenges show that judicial review needs to function as an additional mechanism to protect legislative accountability. The UK system provides political and parliamentary protections which enable government flexibility, but these protections remain weaker than executive expansion because parliamentary sovereignty restricts extensive constitutional assessment. The comparative lesson shows that institutions should work together instead of adopting institutional systems from other countries.

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