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Legal Continuities and Intersections: A Critical Examination of Legal Processes and Judicial Review in the United Kingdom and India

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ABSTRACT

The rule of law is a fundamental principle of constitutionalism and a quality of democracy and sound government. It is considered the "lingua franca" of international moral philosophy and the pinnacle of human civilization and culture, it ties the legal systems of India and the United Kingdom.

The legal systems of the United Kingdom and India are critically analyzed in this research study, with an emphasis on the basic similarities and contrasts that have been shaped by their respective historical backgrounds and constitutional frameworks. Though they have the same colonial past, the two countries have different views on constitutionalism, government, and the rule of law. The nature of both constitutions is examined, comparing the UK's unwritten constitution—which is made up of laws, customs, and legal precedents—with India's extensive written constitution. It explores the complexities of citizenship, noting that dual citizenship is illegal in India yet legal in the UK. The study delves deeper into how India's federal system differs from the UK's unitary one in terms of how power is distributed and governance is carried out. Key themes include the functions of the parliamentary systems contrasting India's constitutional supremacy with the UK's clear parliamentary sovereignty. The study looks at basic rights as well, pointing out the broad protections included in the Indian Constitution as well as the UK's Human Rights Act of 1998. It also talks about the judiciary, with particular emphasis on India's integrated judicial system and its ability to uphold constitutional supremacy through judicial review, in contrast to the UK's many legal systems and lack of comparable authority. The last section of the article looks at the common values of judicial independence and the rule of law, even if there are different procedures for dismissing judges. The research demonstrates the dynamic character of the legal systems in both nations through this comparative analysis, providing insights into how modern changes shape their historical continuities and their different legal environments.

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By comparing the two nations' legal systems, the research sheds light on how they are changing and provides insights into how historical continuity and modern changes have shaped each nation's legal environments as well as keeping in mind the up-and-coming legal education in both countries.

Keywords: *Legal systems, Judicial Review, India, United Kingdom, The Rule of Law.*

I. INTRODUCTION

According to the World Justice Project which produces the Rule of Law Index- a numerical evaluation instrument that illustrates how closely nations follow the law in real-world situations, the United Kingdom secured a position of 15/142 (with an index score of 0.78), whereas India ended on the lower end of the list with a position of 79/142 (with an index score of 0.49) according to statistics posted in 2023. This discrepancy not only draws attention to the difficulties India faces in guaranteeing fair access to justice, protecting fundamental rights, and preserving the integrity of its legal system, but it also emphasizes how its legal system is still evolving. India's lower index score highlights the need for major advancements in several areas, such as the protection of individual rights, judicial independence, and law enforcement. These are important issues since India is a democratic country that is still developing and has a complicated legal system that is shaped by its past. The two nations' divergent approaches to judicial accountability, legal governance, and the defense of fundamental rights can all be seen through the prism of their differing legal systems.

An intriguing comparison of how historical legacies and cultural settings impact governance and the rule of law can be seen in the legal systems of the United Kingdom and India. Despite having similar colonial histories, the two countries' legal systems have developed differently as a result of their different political and social contexts. While India's Constitution, one of the world's longest-written constitutions, codifies a comprehensive set of rules and principles that govern its democratic framework, the United Kingdom's unwritten constitution is based on statutes and conventions.

The goal of this research paper is to examine a number of important facets of these legal systems, such as the future of legal education, the judiciary, the court system, the separation of powers, and fundamental rights and obligations. Through an analysis of these interrelated themes, the paper will shed light on the parallels and divergences between the legal systems of the United Kingdom and India, finally offering an understanding of how each system responds to current legal issues and changes with the times.

II. RULE OF LAW

A tenet of both Indian and British law is the Rule of Law, which states that all people are subject to the law and have a right to certain fundamental freedoms. This idea emphasizes that the use of power should not be based on the whims of the powerful, but rather on the application of the law. The Rule of Law represents a dedication to justice, equality, and fairness in both domains.

Essential components defining the Rule of Law:

1. *Rejecting Arbitrary Power:* Everyone is subject to the law, even public servants. The "ultra vires" doctrine guarantees that government agencies can only operate within the bounds of their lawfully granted jurisdiction, which means that people can only be punished for breaking the law as it currently stands.

2. *Equality Before the Law:* All people are entitled to the same treatment under the law, regardless of their color, class, money, or religion. Every accused person has the right to a fair trial, access to the charges against them, and the chance to present their case to unbiased judges.

An idea that has developed over millennia, Natural Law is also interpreted in a modern way by the Rule of Law. People have historically turned to higher ideals, such as the medieval "law of God" or the Roman "jus naturale." This idea was expressed by philosophers such as Hobbes, Locke, and Rousseau within the context of the social contract; in modern discourse, it is frequently referred to as the Rule of Law.

(A) The Indian Context

There is a notable distinction in India, where the Constitution is the ultimate charter defining the rights and safeguards of the individual. In addition to outlining people's rights, this constitutional framework upholds an egalitarian and just legal system. India's understanding of the Rule of Law has its historical roots in the *Upanishads* and other ancient philosophical writings, which said that "law is the king of kings," highlighting the superiority of law even over rulers. This antiquated philosophy sought to curtail the arbitrary authority of kings, whose rule was frequently justified by assertions of divine right. The Rule of Law has developed in a democratic setting to require accountability from public servants and to hold them accountable for using their authority in a way that complies with the law.

With its Constitution, India, widely regarded as the largest democracy in the world, embodies the values of the Rule of Law. This founding text establishes the basis for governance, guaranteeing that the rule of law controls society and that the rights of individuals are respected.

Civil liberties such as equality before the law, freedom of speech, and the ability to file a lawsuit are guaranteed by fundamental rights contained in the Constitution. Despite these strong constitutional safeguards, there have been obstacles to the effective implementation of the Rule of Law in India. Public interest litigation and judicial activism have become essential tools for protecting people's rights, while organizations like the National Human Rights Commission strive to stop violations. But historical occurrences, like the Constitutional changes that limited fundamental rights in times of emergency, have tested the integrity of the Rule of Law.

Significant rulings, including "*Keshavananda Bharati v. State of Kerala*", reaffirmed that although Parliament has broad authority to modify the Constitution, it is not permitted to change its fundamental framework, maintaining the core principles of the Rule of Law. Furthermore, during these difficult times, Justice H.R. Khanna's dissent highlighted the judiciary's crucial role in protecting individual rights against governmental intrusions. As much of the outcome of that tendency as we can force collectively, the Rule of Law nevertheless represents, despite its flaws and inconsistencies.

(B) Development of the Rule of Law in the United Kingdom

A key defense against arbitrary power in the UK has been the Rule of law, which has been greatly influenced by historical disputes between the monarchy and its citizens. The June 15, 1215, signing of the *Magna Carta* was a turning point in history because it set restrictions on the king's authority and gave the barons specific rights. The idea that everyone is subject to the law, even the sovereign, was established by this constitution. *Magna Carta*: A historic statement of English liberty, Winston Churchill emphasized the document's historical significance in holding the king accountable. This idea has stood the test of time and continues to act as a check on government overreach. The rebellion against the capricious rule of the Stuart monarchs is personified by Sir Edward Coke, the Lord Chief Justice, who contended that the king lacked the authority to independently decide cases. His fearless defiance of King James I brought to light the importance of judicial independence and the rule of law over royal decree. By defining three fundamental principles—that is, that government officials cannot use their discretionary power to punish people without a valid reason and that the courts must recognize customary laws as the source of individual rights—A.V. Dicey made a significant contribution to the modern understanding of the Rule of Law. Dicey outlined the distinctions between the French and British legal systems, stressing that preserving liberty requires rejecting arbitrary authority. He maintained that everyone is equally subject to the law, regardless of status, and

that the Rule of Law is an essential safeguard against the arbitrary nature of administrative power.

III. LEGAL STRUCTURES

As enshrined in their respective constitutions, the Rule of Law is a basic value in both India and the United Kingdom. India has the longest written constitution in the world, which describes in great detail the rights of the individual, the role of the government, and the composition of the government. The UK, on the other hand, relies on long-standing, gradually evolving conventions and traditions to function under an unwritten constitution. Indian nationals are not allowed to hold dual citizenship with citizens of another country, however, British citizens are allowed to hold dual citizenship with citizens of other nations.

While the UK retains a unitary governance model where Parliament is the ultimate legal authority, India's federal structure, which leans towards a unitary system, gives the central government considerable power. In India, the President is the head of state. He or she is chosen indirectly and has a wide range of authority, including the appointment of important officials. On the other hand, the British Monarch only has ceremonial authority and cannot reject laws or designate public servants. Another significant distinction between their political systems is that, whereas the prime minister of India normally sits in the lower house of Parliament, the UK has a shadow cabinet that examines government policy.

The legislative branches—the UK's House of Commons and House of Lords and India's Lok Sabha and Rajya Sabha—play vital roles in government in both nations. The Speaker's office is comparable to other offices, but there are some differences as well. For example, in India, the Speaker is not obliged to leave their political party, but in the UK, this is a requirement to maintain political neutrality. Lastly, the idea of ministerial responsibility highlights a key difference: in the UK, a minister countersigns each public act of government and is answerable to Parliament for their acts, whereas, in India, the Constitution does not explicitly provide for ministerial accountability.

IV. FUNDAMENTAL RIGHTS AND DUTIES

The Indian Constitution protects the rights of its inhabitants by enshrining a wide range of fundamental rights. These rights include the freedoms of speech, expression, and religion, as well as the rights to equality, equality, life, personal liberty, education, and property. In addition, the Directive Principles of State Policy, which establish standards for public programs meant to further social justice and the welfare of the populace, are incorporated into the

Constitution. These guiding principles demonstrate the state of India's dedication to promoting the general welfare of its populace as well as safeguarding individual liberties.

Unlike India, however, the United Kingdom lacks a single instrument that delineates fundamental rights. This is known as the Indian Constitution. Rather, the Human Rights Act of 1998, which incorporates the European Convention on Human Rights into national legislation, governs its operations. For UK citizens, this Act protects several fundamental rights, such as the freedom from torture, the right to a fair trial, the freedom of expression, and the right to assemble. In contrast to India, the UK does not have a constitutional framework that establishes fundamental duties or directive principles of state policy; in India, these are specified in Part IV and IV-A of the Constitution. This omission denotes a distinct strategy for striking a balance between governmental obligations and individual rights in the context of the UK.

V. SEPARATION OF POWERS

The phrase “separation of powers” or “trias-politica,” which translates to “three powers,” was originally used by Charles de Montesquieu. It was extensively adopted by the Roman Republic as its Constitution after being accepted by Greece, marking the first instance of this happening. Its earliest examples may be seen in the wonders of Aristotle and Plato, who contained this concept. During the 16th and 17th centuries, other scholars of the same era expressed their opinions on this concept, including French philosopher Justice Bodin and British politician Locke. The concept was initially presented in a scientific, correct, and systematic manner by Montesquieu in his published work "Esprit des Lois" (The Spirit of Laws) in 1785 and is considered the foundation of modern legal theory.

The concept of the separation of powers was initially introduced by Montesquieu in his 1747 book "Esprit des Lois." He was a French scientist as well. (This is the laws' intended meaning.) A dictatorial government emerges when authority is concentrated in the hands of one person or a small group of people, as Montesquieu showed. He proposed that the three departments of government—the legislative, executive, and judicial branches—should have a distinct allocation of powers to limit the arbitrary nature of the government rather than being stuck in this predicament.

India's amending procedure combines flexibility with rigidity. According to Article 368, changes to federal laws can only be made by a bill introduced in Parliament, which must get separate approval from each House and a simple majority vote from at least half of the state legislatures. The British Constitution, on the other hand, is quite adaptable and permits changes through regular laws that are approved by Parliament. The United Kingdom lacks a formal

amendment procedure due to its uncodified collection of laws and customs; yet, regular parliamentary legislation can be used to effect changes.

With codified laws like the Indian Penal Code (IPC), India's court is based on judicial review. The fundamental structure concept serves as the Supreme Court's direction and allows it to invalidate laws. The President appoints judges, following a formal procedure. On the other hand, there is no single legal system in the UK, with distinct legal systems in England and Wales, Scotland, and Northern Ireland. The highest court can review important activities for natural justice, but it cannot invalidate laws. The basic structure theory is not followed by the legal system in the United Kingdom.

To prevent the concentration of power, the Indian Constitution's Article 50 explicitly defines the functions of the executive and judiciary. On the other hand, while executive ministers can engage in legislative proceedings, the uncodified Constitution of the United Kingdom permits overlaps. As a result of this combination, Parliament now has significant control over its laws, illustrating a novel dynamic in the division of powers.

VI. THE COURT SYSTEM

In recent decades, there has been both convergence and divergence between the legal systems of India and the UK. The process of coming together from several angles to eventually generate a common end is referred to as convergence. This convergence is essential in the legal setting since disjointed rules and processes can cause ambiguity, hold up transactions, and raise their costs, which in turn can encourage divergence within the court system.

The efficacy of the criminal justice systems in both India and the UK is at risk due to substantial case backlogs. Both countries are working to remedy underfunding, and if cases are not resolved quickly, they run the risk of losing the public's faith. Even though the length of time needed to resolve cases varies greatly depending on the kind of case, judges in both nations frequently need consistent choices. This disparity is especially noticeable when it comes to the death sentence in India.

Positively, the UK court system has significantly improved the efficiency of legal procedures through digitisation. Indian courts have likewise made notable strides in this direction to expedite the administration of justice and lower backlogs. Notably, the highest court in the UK can assess whether activities of significant public and constitutional importance are valid, even though it still needs to have the authority to overturn legislation. This ensures that aspects of natural justice are maintained.

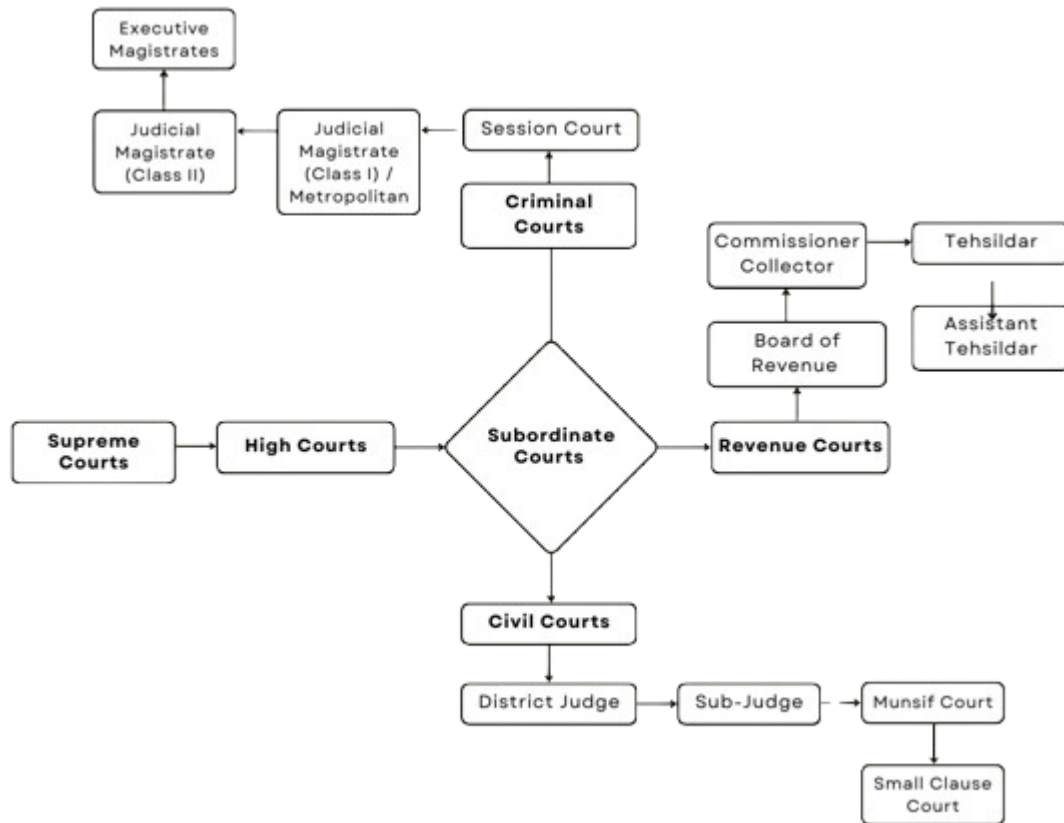


Fig (a)- Hierarchy of courts in India

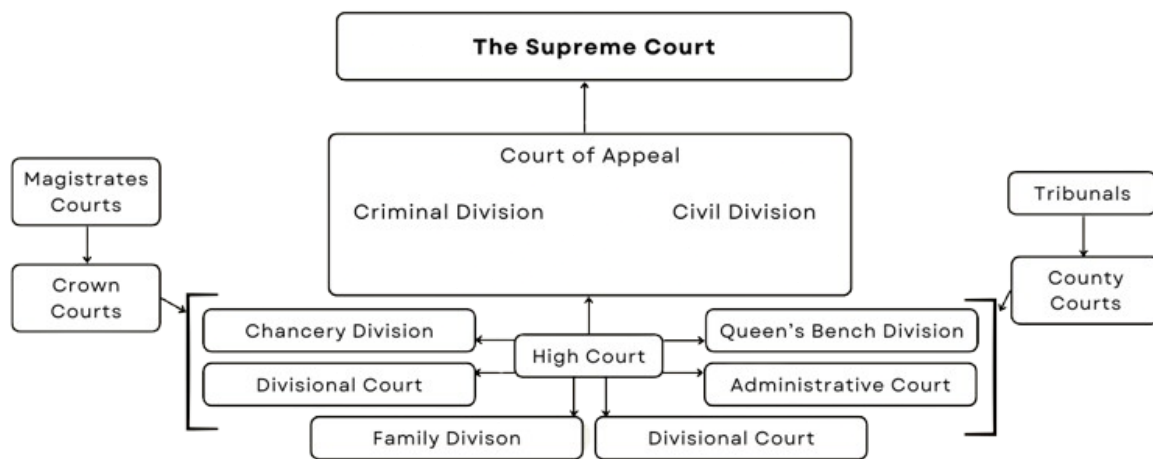


Fig (b)- Hierarchy of courts in the United Kingdom

VII. LEGAL EDUCATION AND THE FUTURE

Over time, the UK's legal education system has changed dramatically, moving from the ancient Inns of Court curriculum to the more modern norms set by esteemed universities like Cambridge and Oxford. The UK registered an astounding 146,953 solicitors with practice certificates in 2019, according to the Law Society's Annual Statistical Report, indicating a

strong demand for UK-based legal practitioners worldwide. With the curriculum's global perspective, the UK legal education system is now competitive in a world that is becoming more interconnected by the day.

Legal education in England and Wales is divided into three separate stages: academic, vocational, and continuing training. The majority of legal education in the UK is provided at the undergraduate level, where students must finish a three-year qualifying law degree or its equivalent. This curriculum includes theoretical components as well as practical abilities, readying graduates for careers in law. A succession of prominent law schools in London, including King's College and the London School of Economics, succeeded the first common law university, founded in 1758 at the Vinerian Chair at Oxford, in the gradual but steady evolution of legal education.

(A) Current State

On the other hand, India's legal education system has had difficulties throughout its history, as there weren't many organized options available until the early 1920s. Since the domestic legal education system was unable to adequately prepare ambitious legal professionals, many Indian lawyers received their education at universities such as Oxford or Cambridge. But a big change that made legal education more widely available was the founding of law colleges, like the Government Law College in Mumbai and the National Law School of India University in Bengaluru.

The Indian legal education system still struggles with a theory-practice divide despite these developments, which makes it difficult for it to compete internationally. To adequately prepare students for the legal challenges they will face in the real world, the curriculum frequently lacks practical training components like clinical legal education and legal workshops. A five-year integrated law degree has been instituted as a result of recent changes, but a dynamic curriculum that integrates multidisciplinary approaches is still desperately needed to prepare upcoming legal professionals for the demands of a globalized legal market.

(B) Future Prospects

Looking ahead, the legal education systems in the UK and India both face opportunities and difficulties. The Bar Vocational Course (BVC) and Legal Practice Course (LPC) are two programs that place a strong focus on vocational training in the UK, ensuring that aspiring barristers and solicitors are ready for the rigors of their respective professions. It is anticipated that legal education will continue to integrate technology and digitize, improving efficiency and accessibility.

The future of legal education in India depends on closing the current gaps between theoretical understanding and real-world application. Indian law schools can better educate students about the intricacies of the contemporary legal world by adopting a more hands-on approach and using new teaching methods. Interactions with foreign organizations and exposure to international legal norms can enhance the educational process even more, increasing the competitiveness of Indian solicitors globally.

The convergence of legal education standards can promote a more integrated legal community as both countries adjust to the changing demands of the legal profession, which will eventually benefit legal practitioners and society at large.

VIII. CONCLUSION

This study compares the legal systems of India with the United Kingdom, highlighting the differences in their various political and social environments as well as the historical legacies they have in common. In all countries, the rule of law is still a fundamental tenet that upholds the values of fairness, equality, and responsibility. However, the different approaches to constitutionalism, governance, and the defense of fundamental rights highlight important differences in how each nation handles the complexity of contemporary legal issues.

Compared to the UK's unwritten constitution, which is based on changing customs and precedents, India has a detailed written constitution that robustly protects individual rights. Their different approaches to legal education are indicative of this, with the UK benefiting from a theory-practice gap while India struggles with the same. The analysis emphasizes how important improvements are still needed in both nations. The UK has challenges linked to judicial independence and upholding the rule of law despite shifting political dynamics, while India must address concerns of judicial efficiency and access to justice.

A more connected international legal community may result from the convergence of legal education standards and practices in both countries as they continue to modify their legal systems to satisfy modern needs. In the end, this research offers insightful information for upcoming academics, legal professionals, and politicians, deepening our grasp of how historical continuity and contemporary changes influence the legal environments in India and the UK.

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