
THE INTERPLAY OF CONSTITUTIONAL LAW AND ADMINISTRATIVE LAW IN DEMOCRATIC GOVERNANCE: A COMPARATIVE PERSPECTIVE

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ABSTRACT

This article examines the core principles of comparative public law and evaluates their significance for modern constitutional governance with particular emphasis on the Indian legal framework. It analyses various foundational doctrines such as constitutional supremacy, separation of powers, fundamental rights, judicial review, rule of law and the independence of judiciary through a comparative study of India, the United Kingdom and the United States. This article through the legal provisions and case laws demonstrates how these concepts function as structural safeguards against arbitrary state power. It further explores the complementary roles of constitutional law and administrative law in ensuring accountable, transparent and rights based governance. Special focus has been laid upon India's constitutional framework. Through comparative insights, the Article demonstrates that while institutional arrangements differ across jurisdiction, the commitment to rule of law, judicial independence, and adherence to the Constitution remains universal. Together, these principles form the bedrock of democratic governance and provide essential frameworks for strengthening institutional legitimacy in different jurisdictions.

INTRODUCTION

Public law is a branch of law that governs the relationship between the government and the people, ensuring that the exercise of public power remains within the constitutional limits. It encompasses Constitutional Law, Administrative Law, and Criminal Law, all of which regulate the structure of government, its powers and the rights and duties of individuals vis á vis the State. It is distinct from private law in the sense that private law regulates relationships between individuals or private entities in areas such as contracts, property family, and torts. The scope of comparative public law lies in systematically studying how different nations design and implement their constitutional and administrative frameworks. It is not merely an academic exercise, but it is a scientific practical method of identifying universal principles and borrowing such principles that have proved effective elsewhere.¹ It does not view a single legal system in isolation, rather, it seeks to understand patterns and contrasts by drawing similarities and differences emerging from jurisdictions in light of historical, political and cultural contexts.

CORE PRINCIPLES OF COMPARATIVE PUBLIC LAW

Comparative Public Law looks at how different jurisdictions operate their system of governance and interpret constitutional mechanisms by drawing similarities, differences and understanding the underlying principles. While the Constitutional designs vary in different jurisdictions - there are certain recurring foundational aspects in diverse legal systems.² These shared principles act as benchmarks for evaluating legitimacy, accountability and efficiency of governance. They are as follows:-

1. Supremacy of the Constitution

Constitutional supremacy means that the constitution is at the apex and all governmental agencies must act in conformity to the Constitution. The Constitution of India declares that laws which are inconsistent or derogation of Fundamental Rights must be struck down to that extent to which they are inconsistent.³ Moreover, Articles 32 and 226, guarantee this Supremacy. However, the watershed moment came in *Keshvananda Bharati v. State of Kerala*,

¹ Blerton Sinani & Sami Mehmeti, *The Importance of Comparative Law for the Development of Contemporary Law*, Juridical Tribune – Review of Comparative and International Law, Vol. 15, No. 1 (Apr. 2025), at 6.

² Vicki C. Jackson & Mark Tushnet, *Comparative Constitutional Law* 1-5 (3rd ed. 2014)

³ India Const arts. 13.

where the Supreme Court propounded the doctrine of Basic Structure holding that while Parliament may amend the constitution under Article 368, it cannot alter its Basic Structure.⁴

2. Constitutionalism

Constitutionalism is distinct from merely having a constitution. It requires that political power is exercised within the constitutional limit ensuring limited government and protection of rights. In India, Constitutionalism is reflected in the provisions such as Part III on Fundamental Rights, Part IV on Directive Principles of State Policy and the Basic Structure Doctrine. The Supreme Court further expanded constitutionalism through the principle of substantive due process in *Maneka Gandhi v. Union of India* requiring that laws restricting personal liberty must be just fair and reasonable.⁵

3. Rule of Law

The Rule of Law is one of the universal principles of public law, signifying that all individuals and institutions are bound by law. It is based on the principle of *Lex Rex* which means 'The Law is King.' All the actions of the State must be within the limits of law and not transgress it. The government and the people at large are all equally bound by law. Therefore, it embodies equality before law, fairness and legal procedures and restrictions on the arbitrary use of power. Comparative public law demonstrates that while the idea of Rule of Law is universal, its application takes distinct shapes in different jurisdictions, reflecting their legal traditions and constitutional framework. This concept finds its historical roots through the writings of A.V. Dicey.⁶ In India, the concept of Rule of Law is constitutionalised through Articles 14, 21 and the enforceability of rights under Article 32 and 226 (writ remedies).⁷ Courts have also read this principle into the Basic Structure in *Indira Gandhi v. Raj Narain*.⁸

4. Separation of powers

The Doctrine of separation of powers rooted in Montesquieu's classic articulation in *The Spirit of the Laws*, aims to prevent the concentration of power in a single organ of the government

⁴ Kesavananda Bharti v. State of Kerala, (1973) 4 SCC 225 (India).

⁵ Maneka Gandhi v. Union of India, (1978) 1 SCC 248 (India).

⁶ A.V. Dicey, *Introduction to the Study of the Law of Constitution* 193-95 (10th ed. 1959).

⁷ India Const arts. 14, 21, 32 and 226

⁸ Indira Nehru Gandhi v. Raj Narain, 1975 Supp. SCC 1 (India).

and to secure liberty through a system of distributed authority. While its purest form envisions watertight compartments between the three branches, comparative practice reveals that each constitutional system envisages balancing autonomy with coordination. India does not have rigid separation of powers. Although the Constitution does not expressly enshrine the Doctrine, its essence can be found in Articles 50, 121 and 122 which safeguard judicial independence and legislative privileges. In *Keshvananda Bharati v. State of Kerala*, the court affirmed that separation of powers is integral to the basic structure doctrine.

Feature	India	United Kingdom (UK)	United States (US)
System Type	Parliamentary Democracy (Republic)	Parliamentary Democracy (Constitutional Monarchy)	Presidential Democracy (Republic)
Executive	President (Ceremonial) + Prime Minister & Council of Ministers	Monarch (Ceremonial) + Prime Minister & Cabinet	President (Head of State & Govt.) + Cabinet
Legislature	Parliament (Lok Sabha + Rajya Sabha)	Parliament (House of Commons + House of Lords)	Congress (Senate + House of Representatives)
Judiciary	Independent (Supreme Court, High Courts, Subordinate Courts)	Independent (UK Supreme Court since 2009)	Independent (Supreme Court, Federal Courts)
Executive–Legislature Relationship	Fusion (PM & Ministers are members of Parliament)	Fusion (Executive drawn from Parliament)	Strict Separation (Executive not part of Legislature)
Judicial Independence	Strong (Judicial Review powers)	Moderate (Parliamentary sovereignty limits courts)	Strong (Judicial Review since <i>Marbury v. Madison</i>)

Comparative Table on Separation of Powers for India, UK and US

5. Fundamental rights

Fundamental rights limit government power and secure liberties. In India, Part III (Articles 12 to 35) of the Constitution enumerates six Fundamental Rights. In *Keshavananda Bharati case*⁹, the court recognised the protection of fundamental rights as part of the Basic Structure of the Constitution. The judiciary has expanded their scope, notably in *Maneka Gandhi*¹⁰ (procedural

⁹ Keshvananda, supra note 4.

¹⁰ Maneka Gandhi supra note 5.

fairness under Art. 21) and *Olga Tellis v. Bombay Municipal Corp.* (right to livelihood).¹¹ In the U.S., rights are entrenched in the Bill of Rights and the 14th Amendment, with courts applying varying levels of scrutiny. In the UK, the Human Rights Act 1998 incorporates the ECHR, empowering courts to issue “declarations of incompatibility” where laws conflict with rights.¹² Across jurisdictions, the principle of Fundamental Rights operates within a framework of permissible limitations - India through explicit constitutional provisions of reasonable restrictions, the US through judicially evolved standards of review and the UK through proportionality analysis under the Human Rights Act.

6. Judicial Review

Judicial Review empowers courts to invalidate those laws or executive acts, which are inconsistent with the constitution safeguarding against arbitrary power. Its essence lies in the idea of limited government: that no organ of the state is above the Constitution, and that all actions must be in consonance with the constitutional mandates. In the US, Judicial Review was first established in *Marbury v. Madison*.¹³ In India, Articles 13, 32 and 226 empower courts to strike down unconstitutional laws. The *Keshavananda Bharati case* categorically established Judicial Review as part of the Basic Structure Doctrine. In the United Kingdom, judicial review is limited due to the absence of a written constitution, and the doctrine of Parliamentary sovereignty.

7. Independence of Judiciary -

The Independence of Judiciary is recognised as one of the core principles of Comparative Public Law, which ensures that courts remain free from external pressures, particularly from the executive and the legislative branches in order to safeguard rule of law and constitutional supremacy. In India, Part III guarantees rights such as equality (Art. 14) and liberty (Art. 21). The judiciary has expanded their scope, notably in *Maneka Gandhi* (procedural fairness under Art. 21) and *Olga Tellis v. Bombay Municipal Corp.* (right to livelihood).¹⁴ In the U.S., rights are entrenched in the Bill of Rights and the 14th Amendment.

¹¹ *Olga Tellis v. Bombay Mun. Corp.*, (1985) 3 SCC 545 (India).

¹² Human Rights Act 1998, c. 42, § 4 (UK)

¹³ *Marbury v. Madison*, 5 U.S. (1 Cranch) 137 (1803).

¹⁴ *Olga Tellis*, supra note 10

8. Accountability and transparency -

Those who exercise public power must remain answerable to the people and operate in a manner that is open to scrutiny. The underlying rationale is that legitimacy of governance cannot rest merely on authority, but on the trust, created through visible fairness and justification of decisions. In India, accountability is secured through Parliamentary oversight, judicial review, and the right to information under the Right to Information Act 2005. Judicial recognition of transparency as an essential part of governance can be seen in the *State of Uttar Pradesh v. Raj Narain*, where the Supreme Court declared that the people have a right to know how they are governed.¹⁵ Similarly, the court struck down arbitrary allocation of natural resources in the *2G spectrum case* reinforcing that state power must be exercised in a manner that is accountable and transparent.¹⁶ Accountability and transparency are closely linked to the principles of natural justice and rule of Law. Transparency fosters public participation and criticism while accountability provides the remedial framework when governance fails. Together they function as mechanisms for preventing abuse of power and fostering public confidence in institutions.

9. Federalism and Distribution of powers -

Federalism reflects the Constitutional arrangement by which sovereignty is shared between a central authority and constituent units of government. The distribution of powers between these levels of governance ensures that political authority is not monopolized, thereby protecting liberty and fostering effective administration. In India, it operates through the Union, State and Concurrent list under the Seventh Schedule with Articles 246 and 254, resolving conflicts of jurisdiction. The Supreme Court has stated federalism to be a part of the Basic Structure, Doctrine.¹⁷

IMPORTANCE OF CONSTITUTIONAL LAW AND ADMINISTRATIVE LAW IN GOVERNANCE WITH SPECIAL REFERENCE TO RULE OF LAW AND INDEPENDENCE OF JUDICIARY

Constitutional Law and Administrative Law are fundamental to the governance of any nation,

¹⁵ *State of Uttar Pradesh v. Raj Narain*, (1975) 4 SCC 428 (India).

¹⁶ *Centre for Public Interest Litigation v. Union of India*, (2012) 3 SCC 1 (India).

¹⁷ *SR Bommai versus Union of India*, (1994) 3 SCC 1(India).

its relevance cannot be overstated. While Constitutional Law provides the structure of government, its powers and limitations, and guarantees fundamental rights, the administrative law ensures that day to day tasks of the various organs of the government do not transgress the limits of law but ensure fairness and accountability. The importance of Constitutional Law lies in its ability to serve both as a foundation and as a safeguard. It provides mechanisms such as separation of power, Judicial Review, etc, which calls for a check and balance approach. On the other hand, Administrative Law complements Constitutional Law by regulating the exercise of governmental power at the operation level. The combined importance of constitutional and administrative law lies in their complimentary functions. Together, they embody the essence of good governance - Legitimacy, accountability, fairness, and protection of individual rights against state, arbitrariness. Without them, governance risk is revolving into authoritarianism or inefficiency; With them, it is anchored in legality and justice.

Rule of Law

The Rule of Law has long been regarded as a cornerstone for the organization of just societies and accountable governance. It embodies the principle that power must be exercised according to law, not arbitrary will, and that both rulers and the ruled are bound by the same legal order. The Rule of Law has developed through centuries of constitutional experience and judicial interpretation, adapting itself to different legal systems and political traditions.

Its genesis owes much to the Magna Carta (1215) in England, which limited the powers of the monarchy and asserted that even the sovereign was subject to the law.¹⁸ Over centuries, this idea matured into a guiding principle of English constitutionalism. A.V. Dicey, in his seminal work *Introduction to the Study of the Law of the Constitution* (1885), famously articulated the doctrine in three dimensions: (i) the absolute supremacy of regular law over arbitrary power, (ii) equality before the law, and (iii) the predominance of legal spirit guaranteed by the ordinary courts.¹⁹ While Dicey's formulation reflected the 19th-century liberal ethos, it laid the groundwork for the global acceptance of the Rule of Law as an essential feature of constitutional governance.

¹⁸ Magna Carta, ch. 39 (1215), reprinted in English historical documents, 1042-1189 (David C. Douglas ed., 1953).

¹⁹ A.V. DICEY, INTRODUCTION TO THE STUDY OF THE LAW OF THE CONSTITUTION 110-15 (10th ed. 1959) (1st ed. 1885).

The UK, as the birthplace of Dicey's doctrine, has historically treated the Rule of Law as a constitutional convention. While Parliament is sovereign, the Rule of Law has provided a check against arbitrary executive action. Landmark cases such as *Entick v. Carrington* (1765) established that state officials cannot interfere with individual liberty without legal authority.²⁰ The incorporation of the ECHR through the Human Rights Act 1998 has strengthened judicial scrutiny of executive power, embedding rights and proportionality within the Rule of Law framework.

In the US, the Rule of Law finds its constitutional anchor in the Due Process Clauses of the Fifth and Fourteenth Amendments, as well as in the principle of separation of powers. The U.S. Supreme Court in *Marbury v. Madison* (1803) established judicial review as the mechanism to ensure that governmental action conforms to the Constitution. Later, in *Brown v. Board of Education* (1954),²¹ the Court invoked the principle of equal protection to strike down racial segregation, demonstrating the Rule of Law as a tool of social transformation. The decision in *United States v. Nixon* (1974)²² further confirmed that no office, not even the President, stands above the law, strengthening democratic accountability.

The Indian Constitution explicitly incorporates the Rule of Law as a central tenet. Article 14 enshrines 'equality before the law' and 'equal protection of laws,' echoing Dicey's principle. In *Kesavananda Bharati v. State of Kerala* (1973),¹¹ the Supreme Court identified the Rule of Law as part of the basic structure doctrine, making it immune from amendment. The Court's jurisprudence has consistently linked the Rule of Law to protection of fundamental rights. In *Maneka Gandhi v. Union of India* (1978), the Court expanded the interpretation of "procedure established by law" under Article 21 to mean just, fair, and reasonable procedure, aligning it with substantive due process. Importantly, the infamous *ADM Jabalpur v. Shivkant Shukla* (1976),²³ which denied habeas corpus during Emergency, was later repudiated in *Justice K.S. Puttaswamy v. Union of India* (2017),²⁴ reaffirming that the Rule of Law cannot be suspended even in extraordinary circumstances.

In recent times, issues such as corruption, arbitrary arrests, and prolonged delays in justice delivery weaken citizens' faith in the law. Another major challenge is socio-economic

²⁰ *Entick v. Carrington*, (1765) 19 Howell's State Trials 1029 (Eng.).

²¹ *Brown v. Bd. of Educ.*, 347 U.S. 483 (1954).

²² *United States v. Nixon*, 418 U.S. 683 (1974).

²³ *ADM Jabalpur v. Shiv Kant Shukla*, (1976) 2 SCC 521 (India).

²⁴ *Justice K.S. Puttuswamy (Retd.) v. Union of India*, (2017) 10 SCC 1 (India).

inequality preventing vulnerable groups from accessing justice. As Amartya Sen has argued, the Rule of Law cannot be meaningful without addressing structural deprivations that inhibit equal participation in governance.²⁵ Ergo, it remains the *sine qua non* of good governance, ensuring that the exercise of power is consistent, accountable, and just. Its historical evolution from Magna Carta to modern constitutional democracies reflects an enduring quest to place law above arbitrary will.

Independence of Judiciary

The independence of the judiciary is one of the most vital principles of comparative public law, ensuring that courts can administer justice free from external pressures, political interference, or influence from other branches of government. It guarantees that disputes are resolved impartially and that fundamental rights and constitutional principles are protected even against the might of the state. The idea of an independent judiciary is rooted in the larger democratic philosophy that no organ of government should exercise unchecked power. Without this principle, the Rule of Law, constitutional supremacy, and protection of rights would remain futile.

The origins of judicial independence can be traced to Magna Carta (1215). In modern constitutional thought, Montesquieu's theory of separation of powers in *The Spirit of Laws* (1748) profoundly shaped the principle, arguing that liberty could not exist if the judicial function were joined with legislative or executive power.²⁶ Over time, this principle evolved into the recognition that judges must have security of tenure, financial autonomy, and freedom from arbitrary removal to ensure impartial adjudication.

Most constitutional democracies embed judicial independence explicitly or implicitly within their legal framework. In India, Articles 124–147 (Supreme Court) and Articles 214–231 (High Courts) establish structural guarantees for independence, while the removal of judges is restricted to the process of impeachment under Articles 124(4) and (5).²⁷ The Indian judiciary has developed a rich jurisprudence on independence. The *Second Judges Case*²⁸ established the collegium system, vesting primacy in judicial appointments with the judiciary itself to safeguard against executive dominance. While this system has been criticized for lack of

²⁵ Amartya Sen, *Development as Freedom* 152-53 (1999).

²⁶ Montesquieu, *The Spirit of Laws* by. XI, ch. 6 (1748).

²⁷ India Const. Arts. 124-147, 214-231.

²⁸ *Supreme Court Advocates-on-Record Ass'n v. Union of India*, 1993 4 SCC 441 (India).

transparency, the Court in *NJAC Case*²⁹ struck down the National Judicial Appointments Commission Act, reaffirming that judicial primacy in appointments is part of the basic structure of the Constitution. The judiciary has also resisted attempts to curb its independence during political crises, as seen in its post-Emergency jurisprudence repudiating *ADM Jabalpur v. Shivkant Shukla* (1976).³⁰

In the UK, the Constitutional Reform Act 2005 created the Supreme Court of the United Kingdom and reinforced the independence of the judiciary by separating the judicial function from the House of Lords.

In the United States, Article III of the Constitution provides that judges “hold their offices during good behaviour,” effectively ensuring life tenure and protecting judicial salaries from diminution.³¹ In *United States v. Nixon* (1974),³² the Court unanimously ordered President Nixon to hand over the Watergate tapes, underscoring that even the highest executive office is not immune from judicial scrutiny.

However, there are certain challenges such as transparency concerns in India’s collegium system, politicisation of US appointments and constraint by Parliamentary sovereignty on UK courts. Despite these challenges, independence of the judiciary is the bedrock of constitutional democracy. By acting as the guardian of fundamental rights, the interpreter of constitutional boundaries, and a check on arbitrary power, an independent judiciary ensures that governance remains anchored in legality and justice.

Principles	INDIA	UK	USA
Rule of Law	Constitution is supreme	Parliamentary Sovereignty	Constitution is supreme
Independence of Judiciary	Lifetime tenure for judges; protected from political influence; strict separation from executive/legislature	Strong separation since Constitutional Reform Act 2005	Separation from executive and legislature; collegium system for appointments in higher courts; constitutional protections

Comparative Table on Rule of Law and Independence of Judiciary for India, US and UK

²⁹ Supreme Court Advocates-on-Record Ass’n v. Union of India, 2015) 6 SCC 1 (India).

³⁰ ADM Jabalpur v. Shivkant Shukla, (1976) 2 SCC 521 (India).

³¹ U.S. Const. Art. III, § 1.

³² Nixon, supra note 21.

CONCLUSION

Each country faces unique challenges, but Comparative public law, through its foundational principles such as constitutional supremacy, rule of law, separation of powers, fundamental rights, judicial review, and independence of the judiciary, establishes the framework of democratic governance. The doctrines and judicial pronouncements in India, alongside comparative insights from the UK and USA, reveal that while institutional structures may differ, the commitment to justice, accountability, and constitutionalism remains universal. Therefore, Comparative Public Law on one hand, preserves the legitimacy of state action by binding it within constitutional frameworks and on the other, it equips nations with comparative insights to build better institutions and to ensure that governance is both effective and accountable.