



CONSTITUTIONALISM OR PARLIAMENTARY SOVEREIGNTY? ANALYSING ARTICLE 368 AGAINST THE BRITISH DOCTRINE OF PARLIAMENTARY SUPREMACY

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ABSTRACT

Can an elected legislature be trusted with unlimited power to amend the constitution, or does a constitutional democracy need limits that survive even a landslide majority? That question sits at the heart of any comparison between India and the United Kingdom. India's Parliament can amend the Constitution under Article 368, but the Basic Structure doctrine that grew out of decades of litigation has fenced off a core of principles that the Parliament cannot touch. The UK took a different route. Parliamentary sovereignty held that Parliament could legislate on anything and that no court could strike its work down, though EU membership, the Human Rights Act and a string of constitutional statutes have since complicated that picture considerably. This article sets the two systems side by side, tracing the case law, statutes, and political episodes that shaped each.

Keywords: Article 368, Basic Structure Doctrine, Parliamentary Sovereignty, Constitutionalism.

INTRODUCTION

Few comparisons showcase the tension between parliamentary supremacy and constitutionalism as clearly as India and the United Kingdom do. Both states built very different houses on the foundation of very similar legal heritage. Britain's constitution grew statute by statute, over the years out of political practice rather than a single codified text. Parliamentary sovereignty is its core identity. Parliament could legislate on any subject, and no court had the standing to overturn what it decided. Constitutional change, in the UK, was more a political issue than a judicial one.

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India had a different trajectory. After independence, the framers produced a detailed written Constitution¹ meant to keep the Government in check, safeguard individual rights and form institutions. Constitutional supremacy became the doctrine of India. Article 368 gives Parliament broad power to amend the Constitution, but that power was never meant to be unlimited and overrule federalism, judicial independence and fundamental rights.

Neither doctrine has ever stayed rigid. Twentieth-century British Parliament saw its freedom get narrowed by international regulations and by the involvement of courts on constitutional matters. India has been reshaped continuously throughout the years based on judicial interpretation rather than formal rewriting. Many of those changes emerged out of a running argument between Parliament and the Supreme Court: could Parliament touch the Fundamental Rights at all? Was Article 368 simply procedural, or did it hand Parliament constituent power of amendment? Could those amendments at all be reviewed by courts? These issues still shape the Doctrine's interpretation even today.

The *I.C. Golak Nath v The State of Punjab* case and, more significantly, the *Kesavananda Bharati v The State of Kerala* case, shaped how Article 368 was interpreted. Instead of a radical extreme between unlimited amending power and no amending power at all, the Supreme Court found a third way: Parliament's constituent power was real and wide, but it could not be used to alter the Constitution's essence. That forms the Basic Structure doctrine, which has anchored nearly every major judgment since.

Britain's path is extremely different. Parliamentary sovereignty was habitually accepted as the traditional doctrine, yet the Parliament Acts of 1911 and 1949, the European Communities Act 1972 and the Human Rights Act 1998 all pushed British governance well past the theoretical version of this principle. The question, hence, is not whether either country has some doctrine governing legislative power. It is how the Legislative authority actually operates. India enforces its limits through the courts, while the UK has traditionally leaned on political accountability and legislative supremacy.

METHODOLOGY

This is a comparative doctrinal study. Rather than simply listing similarities and differences, it analyses how each system balances Parliament, the constitutional provisions and the judiciary. For India, the analysis works through Articles 13 and 368, the birth of the Basic Structure doctrine, followed by several Supreme Court decisions that have shaped Parliament's

amendment power over time. For the UK, it works through statutes and judgments that have reshaped the principle of parliamentary sovereignty. India has a written constitution, and the UK does not. Yet both face the same underlying issue on how far legislative power reaches and what role courts play in limiting that reach and how constitutional provisions are protected.

ARTICLE 368 AND THE LIMITS ON INDIA'S AMENDMENT POWER

Article 368 and its Character: Article 368 recognises the changing nature of the Constitution and gives Parliament a procedure for amendment, with a special majority required for constitutional amendments apart from ordinary legislation. What Article 368 sparked was how far that power reached. Was it bounded only by the procedural steps written into the text, or did it provide a constituent power? Article 13 declared that any "law" inconsistent with Fundamental Rights is void. Now if constitutional amendments are accounted as "law", Parliament's power to alter Fundamental Rights would be subject to judicial review. But if it did not, Parliament could rewrite even the Fundamental Rights. This forms the core of this issue between Parliamentary Supremacy and Constitutional Supremacy.

From Property Disputes to Constitutional Crisis: The earliest questions over amending power arose out of land reform. Amendments passed to support redistribution of land and welfare measures led to resistance from property owners, and courts were forced to ask a deeper question along the way: was Parliament, when it amended the Constitution, exercising ordinary legislative power or a separate constituent power provided under Article 368 whose extent was still vague?

Golak Nath: The first real Ceiling: In the case of *I.C. Golak Nath v The State of Punjab*, the Supreme Court held, by majority, that Parliament had no power to amend Fundamental Rights at all, that those rights were foundational and even a democratically elected Parliament had no authority to amend them. It also created a new issue. If these rights could never be altered, how would Parliament implement necessary social and economic reform? Rather than being resolved, the tension increased between constitutional permanence and democratic supremacy.

Parliament's Answer: the Twenty-Fourth Amendment: Parliament responded with the Twenty-Fourth Amendment Act 1971, inserting a new clause into Article 368 [clause (3)] to make it explicit that Parliament could amend any part of the Constitution, including Fundamental Rights and that such amendments would be outside Article 13's limitations. The aim was to restore Parliament's dominance, on the theory that judicial limitation would strangle

needed reform. But the amendment didn't end the argument; instead, it reframed it. After 1971, the question was no longer of the existence of the amendment powers of the Parliament. It was whether that power had any limit at all.

Kesavananda Bharati and the Emergence of the Basic Structure Doctrine: The case of Kesavananda Bharati v The State of Kerala took that question straight up. This was not just about Fundamental Rights anymore; rather, it was about whether anything in the Constitution was beyond Parliament's reach.

The Court balanced between the two extremes. It rejected both the ideas that Parliament had no power to amend Fundamental Rights, and also that Parliament's amendment powers were unlimited. The majority held that Parliament could amend essentially any provision, but it could not alter the Constitution's Basic Structure or its essence.

This holding balanced the relation between Parliament and the judiciary. Before Kesavananda, amendments were read as something Parliament simply could do. Afterwards, every amendment became subjective under the court's scrutiny of constitutionality.

The court described the Basic Structure as including constitutional supremacy, democratic government, judicial review, federalism and the protection of fundamental rights, yet deliberately did not reduce the doctrine to a rigid checklist. The doctrine has always adhered to this principle rather than being an inventory.

Indira Gandhi v Raj Narain: Elections join the Basic Structure: The doctrine was brought up in the case of Indira Nehru Gandhi v Raj Narain when Parliament again tried, through the Thirty-Ninth Amendment 1975¹⁹, to remove judicial scrutiny from certain election disputes. Applying Kesavananda's logic, the Court held that free and fair elections form part of the Basic Structure and cannot be shielded from amendment. The Court reasoned that a democratic system is not just periodical elections and also requires functioning mechanisms of accountability, and Parliament could not amend those out of existence.

Minerva Mills: Limited Amending Power as itself a Basic Feature: The case of Minerva Mills v The Union of India took a step further to this holding that the limited nature of the amendment power is itself part of the Basic Structure. In other words, the Parliament cannot use Article 368 to convert its own restrictions into unlimited ones. This runs deep; the Parliament's amending power exists only because the Constitution grants it, so Parliament

cannot use the same provision to erase the very limits that define it. If left unchecked, Article 368 would become a loophole to constitutional destruction, an outcome which the Court considered inconsistent with constitutional supremacy itself.

Waman Rao and I.R. Coelho: Applying the Doctrine over time: The case of Waman Rao and I.R. Coelho addressed how the Basic Structure doctrine applies to amendments enacted before the Kesavananda case, distinguishing pre- and post-1973 additions to the Ninth Schedule in the interest of legality and doctrinal alliance. I.R. Coelho v State of Tamil Nadu then confirmed that judicial review is itself part of the Basic Structure, asserting that laws placed in the Ninth Schedule after the relevant constitutional developments remain subject to judicial review on the grounds of doctrinal consistency.

A doctrine still being worked out. The Basic Structure Doctrine is not at all a finished project. Judicial benches later have continued to test it, asking questions such as how the doctrine applies to amendments touching judicial appointments. Each of these disputes forces the Court back to the same underlying question: is this a legitimate exercise of constituent power, or does it quietly blow out an essential part of the constitution? The doctrine persists because of its very alive nature; it stays useful precisely by remaining open to new argument, rather than crystallising into a fixed checklist.

Article 368: The Doctrine of Basic Structure does not interfere with the Parliament's powers to amend the Constitution, but the Basic Structure doctrine does insist that some characteristics of the government cannot be dismantled.

Federalism as an Unwritten thread through the Doctrine: A comparatively silent feature of the Doctrine of Basic Structure is how consistently federalism is talked about throughout the case law. Even though the relationship between the Union and the states is written in the Constitution, courts have repeatedly implied that Parliament cannot abuse Article 368 to disturb that federal balance, even if a particular amendment seems legitimate on paper.

PARLIAMENTARY SOVEREIGNTY IN THE UNITED KINGDOM

The Starting Point: The UK never adopted a single codified text of a constitution. It rather grew out of statutes, case law, conventions and institutional habit. Within that structure, parliamentary sovereignty is most famously articulated by A.V. Dicey, the core principles of

which are that Parliament could make or unmake any law, no court could overrule an Act of Parliament, and no Parliament could bind its successors.

This placed Parliament at the top of the UK's legal order, a striking contrast with India, where Parliament's authority is itself derived from and restricted by the Constitution itself. This doctrine reflected the UK's history of a long conflict between Parliament and the Monarch, which ended in Parliament having the ultimate authority and not the Monarch. But the doctrine carries an obvious risk. If Parliament's legal power really has no ceiling, what even stops a parliamentary majority from legislating away rights? The traditional answer had a political angle rather than a legal one: public opinion, elections and international conventions would discourage abuse, even where law alone could not prevent it.

Acts of 1911 and 1949: Self-Regulation: The Parliament Act 1911 curtailed the House of Lords' power to delay any legislation passed by the House of Commons and the Parliament Act 1949 shortened that delay even further. Neither Act limited Parliament as a whole, but if anything, they illustrated Parliament reshaping its own internal machinery through ordinary legislation. But these acts also raised a deeper question that remained unaddressed: if Parliament can restructure its own procedures, can it also bind future Parliaments in more significant ways?

Judicial Restraint: British Railway Board v Pickin: The British Railway Board v Pickin case illustrated the traditional and orthodox positions of the court. When a litigant argued that a private Act should be treated as invalid because Parliament had not followed its due procedure when passing it, the House of Lords simply declined to look behind the legislative process at all. The House of Lords, which at that time was also considered the highest court of appeal, said that it had no business reviewing the proceedings of Parliament.

The European Communities Act 1972: the First Real Dent: The UK's entry into the European Communities mattered significantly. The European Communities Act 1972 marked the entry of European law into the domestic legal order of the UK and directed courts to give it priority over conflicting domestic legislation in the areas it prevailed. This created an obvious puzzle in front of the classical sovereignty theory: if a later Parliament passed a statute inconsistent with EU regulations, could the courts simply disregard the 1972 Act's commitment? The 1972 Act didn't strip Parliament of legal authority; Parliament could still repeal it, but as long as it remained in force, it shaped how every other statute, existing and future too, operated. Sovereignty, now in the UK, had started to depend on how different

categories of legislation interacted with one another, not just on Parliament's abstract legal capacity of parliamentary sovereignty.

Factortame: Courts set aside an Act of Parliament: This tension became concrete in the judgment of the Regina v Secretary of State for Transport, Ex Parte Factortame Ltd. Case, where the House of Lords accepted that domestic courts carried powers to give effective protection to European Union-derived rights and regulations, even if doing so meant limiting the application of a statute passed by the UK's Parliament. Seen through a strictly "Diceyan" lens, this looked like the courts overruling Parliament and undermining its sovereignty. The ironic explanation is that Parliament itself had built the framework that produced this result through the 1972 Act, and courts weren't defying Parliament so much as enforcing an earlier parliamentary choice. Still, the Factortame case made it clear that sovereignty is not just purely a question of raw legislative power, but it also depends on the constitutional context in which that power operates.

Thoburn: Constitutional Statutes: Thoburn v Sunderland City Council pushed this new perspective further by suggesting that certain statutes carry constitutional weight and cannot be repealed as implied; they need express language to be undone. Under the older doctrine, any later Act could override an earlier one regardless of its subject matter. Recognising a category of "constitutional statutes" didn't formally create a legal hierarchy comparable to India's system, and Parliament could still expressly repeal such statutes, but it showed that constitutional values were beginning to shape how legislative authority functioned even inside a parliamentary sovereignty-based system.

Devolution: sovereignty meets self-restraint: The Scotland Act 1998 and the Northern Ireland Act 1998 created delegated legislatures for Scotland and Northern Ireland without making them sovereign in their own right. Westminster (the UK Parliament) kept the legal power to legislate for the whole of the UK, yet political expectations quickly grew around their delegated competence. Legally, sovereignty stayed intact; in practice, its exercise became shaped by cooperation and institutional restraint rather than an absolute eradication of identity and complete absolutism, a reminder that constitutional limits don't only operate through strict legal invalidity.

The Human Rights Act 1998: Dialogue, not Invalidation: The Human Rights Act 1998 incorporated European Convention rights into the UK's domestic law but stopped giving courts the power to strike down primary parliamentary domestic legislation. Instead, courts were

given the power that they could interpret statutes compatibly with rights or issue a declaration of incompatibility for statutes nonaligned with the EU's conventions, leaving Parliament the final call on whether to amend the law. This was a genuine compromise, stronger judicial engagement with rights, without undermining parliamentary sovereignty. It stands in clear contrast to the Indian model, where the courts can ever so easily invalidate amendments that offend the Basic Structure.

The Constitutional Reform Act 2005: This Act didn't engage with the principle of parliamentary sovereignty directly, but it reshaped institutional relationships by creating a UK Supreme Court separate from the House of Lords, strengthening judicial independence and clearly demonstrating the growing recognition that constitutional governance benefits from distinct institutional roles, even without formal or written judicial supremacy over Parliament.

The creation of an independent Supreme Court also had a quieter, more symbolic effect; it made the separation between legislative and judicial power visible in a way the old arrangement, with senior judges sitting inside the House of Lords being a part of the judiciary and legislation, never could quite manage. The Constitutional Reform Act 2005^[31] institutional signalling arguably did as much long-term work for judicial independence as its formal legal provisions.

Jackson v Attorney General: The case of Jackson v The Attorney General tested the validity of legislation passed under the Parliament Act procedure and, more importantly, triggered several judges to reflect openly on whether sovereignty was truly unconditional. Some suggested that fundamental principles like the rule of law might constrain the principle of Parliamentary Supremacy and also how legislative authority operates, even without a formal Basic Structure equivalent. The Court upheld the legislation, but the judicial reasoning behind that outcome revealed a doctrine under quiet reconsideration.

Miller and the role of Parliament in Brexit: The case of R (Miller) v Secretary of State for Exiting the European Union held that the government could not trigger EU withdrawal using its authoritative power alone, since doing so would affect rights created by that legislation. The ruling reinforced that major legal change must run through Parliament rather than executive discretion, which is not a limit on Parliament's power, but rather a reaffirmation of its central constitutional role.

The Withdrawal: Sovereignty Reasserted: The European Union (Withdrawal) Act 2018 and the European Union (Withdrawal Agreement) Act 2020 basically reversed the domestic effect of the 1972 Act and built the legal framework required for leaving the EU. In one sense, this was parliamentary sovereignty acquired as Parliament reversed a decades-old constitutional arrangement simply by legislating. In another sense, it showed how much institutional and procedural machinery is now needed to exercise that power in practice, sovereignty operating within, not outside, a dense constitutional environment.

Devolution's Second Act: The devolution story did not end in 1998 with the Scotland and Northern Ireland Acts. Successive Scotland Acts and further Northern Ireland legislation has deepened devolved competence over time and each expansion has reinforced the same underlying pattern, Westminster retains the legal last word, but exercising that legal autonomy of the last word against the grain of delegated institutions carries a political weight that grows heavier with each passing year. The Sewel Convention of 2005, under which Westminster does not usually legislate on devolved matters without the relevant devolved legislature's consent, captures this well. It has no strict legal force, at least as the courts have confirmed. Yet ignoring it would be politically costly enough that in practice, it functions as something close to a constitutional constraint despite carrying none of the formal weight of Indian-style entrenchment. This is possibly the clearest illustration in the whole British system of how constitutional limits can operate through expectation and convention rather than through law.

Sovereignty Today: The UK's constitutional history shows sovereignty bending without breaking. Parliament remains, in the strict legal sense, supreme and does not strike down its Acts. But constitutional statutes, judicial reasoning about the rule of law, and entrenched political conventions around devolution have all narrowed the gap between British practice and something resembling constitutionalism, even without a supreme written text behind it.

COMPARING THE TWO MODELS

Both countries face the same underlying challenge: how to let democratic institutions govern without letting them govern without limit? They answer it differently.

Source of Authority: In India, the Parliament derives its power from the Constitution. It cannot under any circumstance claim authority independent of that source, and the Basic Structure doctrine flows naturally from these provisions, as an institution cannot destroy the very document that created its existence and powers into being. In the UK, Parliament has often

traditionally been the ultimate source of authority in its own right of independence, with courts deriving their power from legislation rather than the legislation deriving its powers from judicial decisions or the constitution.

Amendment Power: India formally distinguishes between an ‘ordinary law’ and a ‘constitutional amendment’ and further distinguishes ‘acceptable amendments’ from ‘impermissible destruction of the Constitution’s identity’. Britain draws no such equivalent legal line; constitutional change from devolution to ‘Brexit’ has customarily travelled through ordinary legislative procedure. That is what gives the UK real parliamentary sovereignty, but it also indicates that there’s no formal legal barrier stopping Parliament from reversing any constitutional protections the same way it built them through ordinary legislative procedures.

Judicial Review: Indian courts can, in all their authority, invalidate constitutional amendments that offend or go against the Basic Structure doctrine, making the judiciary of India a genuine guardian of constitutional identity, although it’s constrained to policing the destruction rather than second-guessing incompetent policies. The courts of the UK, by contrast, generally cannot invalidate Acts of Parliament; their tools are only interpretation, declarations of incompatibility and dialogue rather than invalidation of any statute passed by Parliament. The Human Rights Act captures this difference very well as courts flag inconsistency, but Parliament decides what to do about it and has the final and ultimate say on it.

Democratic Legitimacy: the UK Parliament’s Sovereignty’s strongest argument is that elected representatives and not judges should have final say too. But constitutional democracy asks for more than majority rule alone. It depends on things like judicial independence and functioning elections that majorities should not be able to vote away on their own discretion. The *Indira Nehru Gandhi v Raj Narain* case captures this logic directly: free elections were treated as a precondition for a democracy, not merely a product of it.

Protection of Rights: India establishes Fundamental Rights constitutionally, while the UK protects rights through ordinary legislative statute, softened by interpretive obligations under the Human Rights Act. The deep-rootedness of the Fundamental Rights offers stronger resistance to sudden political reversal, and statutory protection offers more room for democratic adjustment.

Flexibility versus Stability: This is really the core of the issue. The UK can move fast: devolution, human rights protection and EU withdrawal, all of which happened through

ordinary legislative channels. India moves more slowly and unevenly, constrained by a doctrine whose boundaries are not fully fixed in advance, which transfers significant interpretive weight to the judiciary. Neither system escapes the cost. The UK risks depending too heavily on political restraint that might not always hold, while India risks judicial overreach into what looks like policy judgment dressed as constitutional principle at times.

Federalism: India's federal balance is constitutionally protected and cannot be dismantled by ordinary amendment at all. The UK's devolution rests on ordinary statute, softened in practice by political convention rather than legal guarantee, which again, is more flexible, but less certain in the long run.

Institutional Trust: The two systems also reflect drastically different levels of trust placed in different institutions. The UK's model assumes that the Parliament, checked by elections and convention, can generally be trusted more to respect constitutional norms even without a court standing over it for supervision. India's model assumes the exact opposite: that political majorities, however legitimately elected, need an independent institutional check precisely because they cannot always be trusted to police their own limits, especially during periods of crisis when the temptation to expand power is strongest, and the risk of corruption is the highest. Neither assumption is unreasonable on its face; the Emergency period in India and the more recent strains around 'Brexit' and executive power in the UK each offer some support for the respective more cautious view of each state.

Looked at overall, the UK opts for responsiveness and legislative freedom while India chooses continuity and enforceable limits on power. Both are coherent answers to a question genuinely difficult to address, and neither is obviously wrong. But when the question is which system better resists the erosion of democratic government itself, India's model, built on the idea that Parliament cannot legally destroy the framework that gives it authority, undoubtedly has the stronger claim.

IS ENTRENCHMENT ACTUALLY BETTER?

The Case for Entrenchment: Constitutional democracy is not simply a majority rule with few extra steps. Winning an election gives a government the authority to govern; it doesn't automatically give it authority to dismantle judicial independence, federal structure, or the functional mechanisms that make future elections meaningful. The Basic Structure doctrine

draws exactly that line. The Parliament may amend, but not destroy, and that distinction matters most precisely when political pressure to cross it is at its highest.

Guarding against Constitutional Self-destruction: A constitution both creates power and also limits it. If the body that power creates could also erase every limit on itself, the distinction between constitutional government and simple majority rule collapses on itself, destroying the entire system. Article 368 works because Parliament can amend the Constitution without that amending power ever being turned against the Constitution's own foundations.

The Objection of Legitimacy and its Answer: Critics have throughout the years reasonably asked why unelected judges should get to override elected representatives over questions addressing constitutional amendments. But judicial review under the Basic Structure doctrine isn't meant to second-guess whether an amendment is wise policy, only whether it destroys the Constitution's essential character. That's a narrower, more defensible role than the critics suggest, though it does depend on judicial restraint holding steady over time.

The case for Sovereignty: Parliamentary sovereignty's strongest argument is precisely that elected representatives should have the final word and that voters, not courts, are the right check on legislative works. The UK's flexibility, visible across devolution, human rights reform and 'Brexit', is a genuine institutional strength, not an accident.

Sovereignty's Limits: The problem is that legal authority alone doesn't stop Parliament from weakening constitutional norms if it chooses to. The UK has no formal legal mechanism equivalent to Basic Structure review; it relies on convention and political restraint, both of which can erode under sustained political pressure. The gradual development of constitutional statutes and judicial reasoning about the rule of law suggests that the UK itself has recognised this gap and quietly worked to narrow it.

Can the Two Coexist? To some degree, yes. British courts increasingly treat certain statutes as carrying constitutional weight, and judicial reasoning in cases like Jackson shows real discomfort with treating sovereignty as entirely unconditional. But these are interpretive and political constraints, not legal ones; with the force that India's doctrine carries a meaningful difference in kind, not just degree.

The Risk of Judicial Overreach: None of this makes the Indian model costless. Because the Basic Structure doctrine has no fixed or closed list of protected features, the courts carry real interpretive discretion that can drift toward political judgment if not carefully bounded. The

doctrine's legitimacy depends on courts policing destruction of constitutional identity, not simply disagreement with Parliament's decisions out of their own choice.

Lessons Each Side might borrow from the Other: None of this need be read as a closed contest with a single winner. India's experience suggests that Britain's political safeguards, however durable they have proven so far, would benefit more with a clearer institutional anchoring, something the slow accumulation of "constitutional statutes" and conventions like Sewel already gestures towards even without a formal amendment procedure to formalise it.

The UK's experience, in turn, suggests that India's courts should stay alert to the risk of the Basic Structure doctrine drifting from a shield against destruction into a broader veto over ordinary policy disagreement a risk that is manageable but never fully eliminated once judicial review of amendments becomes routine. Comparative constitutional law rarely produces a single correct answer; rather it more often clarifies the price each choice extracts, so that a system can decide, with open eyes, which price it is willing to pay.

Where the Balance Lands: A workable constitutional order needs both flexibility and permanence. The UK's leans toward the former, increasingly supplemented by soft constitutional constraints, while India leans toward the latter, with amendment still possible though bounded. On balance, the Indian approach offers a comparatively slightly more durable safeguard, because it treats the preservation of democratic conditions as a legal requirement rather than a matter of political goodwill. Though it depends, in turn, on the courts exercising that power with real discipline.

CONCLUSION

India and the UK answer the same question of how to let democratic power operate without letting it destroy the conditions that make democracy meaningful. Britain built its constitution through practice, statute and convention, with Parliament sitting at the top of the legal order. The result has been genuine adaptability, but also a system where constitutional protection ultimately rests on unfixed political restraint rather than a clear legal guarantee.

India built its constitution the other way around, placing supreme legal authority in the constitutional text itself. Article 368 grants the Parliament real amending power, but the Basic Structure doctrine, forged through the Golak Nath case, the Kesavananda Bharati case, the Indira Nehru Gandhi case, the Minerva Mills case, the Waman Rao case, along with the I.R.

Coelho case, drew a clear line between legitimate amendment and constitutional destruction that the Parliament cannot cross.

Neither model comes without a cost. While India risks handing courts significant interpretive power over what counts as “essential” to the Constitution, the UK risks depending on political conventions that may not hold under sufficient pressure. But the British constitutional practice has itself moved, gradually and unevenly, towards recognising that some statutes and some principles deserve more protection than ordinary law, providing evidence that even a Parliamentary Sovereignty-based system eventually feels the pull toward Constitutionalism.

There is also a practical lesson buried in how each system has actually behaved under pressure, rather than how it describes itself on paper. Britain’s constitutional safeguards held up reasonably well through Brexit, in large part because the Miller case insisted that major change run through Parliament rather than executive fiat leads to a result that owed as much to judicial reasoning about the rule of law as to sovereignty doctrine itself. India’s safeguards held up during the Emergency only after considerable strain, and only because the judiciary was ultimately willing to stand behind the Basic Structure doctrine even against significant political pressure. Both episodes suggest that formal doctrine matters less on its own than the willingness of institutions, courts especially, to actually enforce it when the stakes are at their highest. A doctrine on paper is only as strong as the judiciary prepared to apply it under pressure, which is itself a reason to treat neither Article 368 nor parliamentary sovereignty as a permanent source that has ever provided a settled answer.

The strongest conclusion this comparison supports is a modest one. A constitutional democracy needs both democratic responsiveness and enforceable limits, while a system that treats the second as merely optional leaves itself exposed precisely when it matters most. Article 368, read through the Basic Structure doctrine, does not restrict democracy so much as protect the conditions that make democracy worth having in the first place. That is why, between the two models examined here, India offers the sturdier long-term foundation not because flexibility is worthless, but because permanence, when it is legally guaranteed rather than politically hoped for, tends to hold up better when it is tested.

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