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Q4

The judicial systems in India and UK seem to be converging as well as diverging in the recent times. Highlight the key points of convergence and divergence between the two nations in terms of their judicial practices.

UPSC Civil Services Mains 2020 · GS II · 10 marks · Governance and Policy

Government policies and interventions for development in various sectors and issues arising out of their design and implementation.

Core demand of the question

- The judicial systems in India and UK seem to be converging as well as diverging in recent times. Highlight the key points of convergence and divergence between the two nations in terms of their judicial practices
- Honour the official stem. Contrast parliamentary sovereignty with constitutional supremacy, and the 2009 UK Supreme Court with India's collegium and PIL
- Keep the answer within a 10-mark length

Revision summary

Both systems are common-law, precedent-based, and now fronted by a public Supreme Court.

The UK's 2009 **Supreme Court and Human Rights Act** moved it toward India's rights-review look.

India can strike down statutes and even test amendments against basic structure; the UK cannot.

- **Appointments diverge:** JAC in Britain, collegium in India after NJAC fell in 2015.

PIL and a written Constitution keep Indian judicial practice more managerial of the executive.

Introduction

India inherited the common-law court, the adversarial trial, and a professional Bar from Britain. In recent decades the two systems have moved closer on a Supreme Court as a public institution and on rights review, and further apart on who appoints judges and whether Parliament is supreme. Convergence and divergence are both real.

Body**Convergence**

- The **UK Constitutional Reform Act, 2005**, and the **UK Supreme Court (2009)** separated the highest appeal from the House of Lords, which looks more like India's distinct Supreme Court under **Articles 124-147**.
- An independent **Judicial Appointments Commission** in the UK and India's declared commitment to judicial independence are the same family of concern, even if the machinery differs.

- **Human Rights Act, 1998**, in the UK and India's long **Article 21** expansion both made rights a daily judicial practice, not only a political gift.
- Both systems use common-law reasoning, precedent, and a strong culture of judicial review of executive action.
- Open judgments, live streaming experiments, and a public-facing apex court are a shared twenty-first-century style.

Divergence

- **Parliamentary sovereignty remains the UK's first principle:** courts may issue a declaration of incompatibility under the HRA; they do not strike down a primary Act as India does under **Articles 13 and 32**.
- India has a written Constitution, basic structure (**Kesavananda Bharati, 1973**), and PIL; the UK has no equivalent constituent document or social-action docket of the Bandhua Mukti / MC Mehta type.
- **Appointments:** UK JAC and Lord Chancellor process versus India's collegium after the Three Judges Cases and the striking down of NJAC in Supreme Court Advocates-on-**Record Association (2015)**.
- India combines a Union Supreme Court with High Courts as constitutional courts; the UK's devolution jurisdictions (Scotland, Northern Ireland) are a different map.
- Contempt, court-pack size, and the political heat of the collegium have no full UK twin.

Key point

- They converge as professional common-law apex courts that check the executive. They diverge because India is a constitutional state with judicial supremacy over amendments' basic structure, while the UK remains a parliamentary state with a new but still bounded Supreme Court.

Flow diagram

Common law Bar review -> Convergence
UK SC 2009 HRA SC 2009 HRA -> Convergence
Art 13 PIL basic structure -> Divergence
Collegium versus JAC -> Divergence

Conclusion

Recent times pulled India and the UK together in having a visible Supreme Court and a rights-based review of government. They pulled apart on appointments, PIL, and the power to invalidate primary legislation. The shared common-law skin now covers two different constitutional bodies.

Facts & figures

Constitutional Reform Act, 2005

Created the UK Supreme Court and recast the Lord Chancellor; end of the Law Lords as the final court inside Parliament.

Human Rights Act, 1998

Lets UK courts declare incompatibility with Convention rights without voiding the Act.

Kesavananda Bharati (1973)

Basic-structure doctrine; no UK analogue of judicial limits on the constituent power.

NJAC Case (2015)

Supreme Court struck down the 99th Amendment and NJAC, restoring the collegium.

Article 32 / PIL

Indian original jurisdiction for fundamental rights and public-interest dockets unknown in UK practice at that scale.

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