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Q4

Compare and contrast the British and Indian approaches to Parliamentary sovereignty.

UPSC Civil Services Mains 2023 · GS II · 10 marks · Parliament and State Legislatures

Parliament and State legislatures - structure, functioning, conduct of business, powers and privileges and issues arising out of these.

Core demand of the question

- Compare the British and Indian approaches to Parliamentary sovereignty
- Contrast Dicey's doctrine with the Indian basic-structure limit after Kesavananda Bharati

Revision summary

Dicey's British doctrine makes Parliament legally unlimited and bars courts from voiding an Act.

India's Parliament is created by the Constitution and bound by **Articles 13 and 245**.

Kesavananda Bharati (1973) placed basic structure beyond **Article 368**.

Westminster political forms are shared; legal sovereignty is not.

Indian parliamentary sovereignty is therefore limited, unlike the classical British model.

Introduction

- **A.V. Dicey treated the United Kingdom Parliament as legally unlimited:** it could make or unmake any law, and no court could void an Act. India copied parliamentary government but not that unlimited sovereignty, because a written Constitution, fundamental rights, and judicial review sit above ordinary statutes.

Body

The British approach

- Dicey's Parliamentary sovereignty means that Parliament is the supreme legal authority, that it can legislate on any subject, and that no Parliament can bind its successor.
- There is no single coded Constitution with a higher-law status in the Diceyan model; courts interpret statutes, they do not strike them down as unconstitutional.
- **Political checks exist:** elections, convention, the House of Lords' delaying power after the Parliament Acts, and now the **Human Rights Act, 1998**, which allows a declaration of incompatibility without voiding the statute.
- Even after **Jackson v. Attorney General** and debate on common-law constitutionalism, the orthodox teaching remains that a clear Act of Parliament is law.

The Indian approach

- **Article 245** allows Parliament and State legislatures to make laws, but only subject to the provisions of the Constitution.

- Articles 13, 32, 136, 141, 142 and 226 create judicial review; an ordinary Act that violates Part III is void.
- **Kesavananda Bharati v. State of Kerala (1973)** held that the amending power under Article 368 cannot destroy the basic structure, so even a constitutional amendment is not sovereign in Dicey's sense.
- Later cases - **Indira Nehru Gandhi v. Raj Narain**, **Minerva Mills**, **I.R. Coelho**, and the **NJAC case** - applied that limit to election disputes, rights, judicial review, and appointments.
- India therefore has parliamentary government (collective responsibility, money bills, no-confidence) without parliamentary legal omnipotence.

Comparison and contrast

- Both systems centre debate, budget, and the executive in an elected lower House; that is the shared Westminster political form.
- Britain locates legal sovereignty in Parliament; India locates it in the Constitution, of which Parliament is a creature.
- Britain has no basic-structure doctrine; India uses it to police Article 368.
- Emergency and the 42nd Amendment showed how far an Indian Parliament can try to go; **Minerva Mills** showed the Court pulling that power back.
- The contrast is therefore not about the existence of Parliament, but about whether Parliament or the Constitution has the last legal word.

Flow diagram

Dicey UK Parliament -> No court strikes an Act
Indian Parliament -> Constitution higher law
Constitution higher law -> Kesavananda basic structure
Kesavananda basic structure -> Judicial review of statute and amendment

Conclusion

Britain, in Dicey's teaching, gives Parliament the last legal word. India gives that word to the Constitution, as read by the Court in **Kesavananda Bharati**, so Indian parliamentary sovereignty is political and procedural, not absolute.

Facts & figures

A.V. Dicey

Stated the orthodox rule that the UK Parliament can make or unmake any law and that no court can override an Act.

Kesavananda Bharati v. State of Kerala (1973)

Held that Parliament cannot amend the Constitution so as to destroy its basic structure.

Minerva Mills v. Union of India (1980)

Struck down clauses of the 42nd Amendment that tried to give unlimited amending power and to oust judicial review.

Article 368

Power to amend the Constitution; in India this power is wide but not absolute after Kesavananda.

Human Rights Act, 1998 (UK)

Allows courts to declare incompatibility with Convention rights; it does not empower them to strike down the statute.

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