

Administrative Accountability and Judicial Review: Balancing Executive Discretion with the Rule of Law

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Abstract

Background: Every modern administration depends on discretion, yet discretion unchecked by law is the classic route to arbitrary rule. Judicial review is the principal legal device through which courts police that boundary, but its capacity to deliver real accountability, rather than ritual scrutiny, remains contested. **Objective:** To examine, analytically and comparatively, how courts in the United Kingdom, India, the United States, the European Union and Germany, and South Africa reconcile executive discretion with the rule of law, and to expose the gap between doctrine and administrative reality. **Methods:** A PRISMA-informed structured doctrinal and empirical-literature review was conducted, restricted to sources published up to 2024, combining leading judgments, constitutional and statutory texts, empirical impact studies and comparative indices. **Results:** Five findings emerged. First, jurisdictions converge on structured, proportionality-type reasoning but diverge sharply on judicial deference. Second, empirical evidence indicates that the practical value of review lies less in quashing decisions than in settlement, administrative learning and deterrence. Third, legislatures and executives increasingly narrow review through ouster clauses, remedial limits and procedural barriers. Fourth, doctrine is volatile, as the reversal of Chevron deference in 2024 shows. Fifth, algorithmic and data-driven decision-making strains inherited review techniques. **Conclusions:** The balance between discretion and legality is not a settled equilibrium but a continuously renegotiated one. A calibrated, context-sensitive model of review, supported by internal accountability and transparency duties, offers a more defensible settlement than either judicial maximalism or deference.

Keywords: administrative accountability; judicial review; executive discretion; rule of law; proportionality; comparative administrative law; deference

1. Introduction

Government acts through people who must decide. Statutes seldom foresee every circumstance, and legislators deliberately leave room for officials to weigh facts, set priorities and choose between lawful options. Discretion, in the classic account, exists wherever the limits on an official's power leave real freedom to choose among possible courses of action or inaction [1]. That freedom is not an anomaly of the administrative state; it is its working medium. The difficulty is that the same freedom can be used to favour, to exclude, to delay or to punish without a reasoned basis. A legal order that tolerates unlimited discretion has, in Dicey's older formulation, surrendered the regular law to arbitrary power [2].

The rule of law supplies the normative counterweight. In its modern articulation it requires that public officers exercise their powers in good faith, fairly, for the purpose for which they were conferred, within the limits of those powers, and not unreasonably [3]. It also requires that the courts remain available to test whether those conditions were met [4]. Judicial review

is therefore not simply one institution among many; it is the point at which the legal system verifies its own claim that power is lawful power.

Accountability, however, is broader than adjudication. It is best understood as a relationship in which an actor is obliged to explain and justify conduct to a forum, the forum can question and pass judgment, and the actor may face consequences [5]. Courts are one such forum, alongside legislatures, auditors, ombudsmen, internal review bodies and the press. Administrative law scholarship has long cautioned that the courts' contribution should be assessed within this wider system rather than in isolation [6]. This paper accordingly asks not only what courts say about discretion, but what difference their intervention makes to the behaviour of administrators and the experience of citizens.

The question is pressing for three reasons. First, the constitutional status of review has been tested in several systems. In India, the Supreme Court has treated the power of judicial review as integral to the constitutional structure [7,8], and has read fairness and non-arbitrariness into the guarantee of life and personal liberty [9]. Second, doctrinal settlements once considered stable have moved: in 2024 the United States Supreme Court overruled the long-standing practice of deferring to reasonable agency readings of ambiguous statutes [10], while the United Kingdom Parliament, through the Judicial Review and Courts Act 2022, changed the remedies available to courts [11]. Third, transparency and accountability disputes have reached the highest courts, as when the Supreme Court of India struck down the electoral bonds scheme in 2024 [12]. Comparative indicators underline the stakes: in the 2024 World Justice Project index, countries differ widely both in overall rule-of-law performance and in the extent to which government powers are effectively constrained [13].

The paper pursues four research questions:

1. How do the leading doctrinal frameworks define the limits of executive discretion, and how do they differ?
2. What does empirical research reveal about the actual effects of judicial review on administrative behaviour?
3. Where do doctrine and administrative reality diverge, and why?
4. What model of review best balances executive discretion with the rule of law under contemporary conditions, including digital decision-making?

The principal contribution is an analytical one. Rather than restating well-known grounds of review, the paper brings doctrinal and empirical evidence into a single comparative frame, identifies seven recurrent gaps between legal theory and administrative practice, and advances five propositions that can be tested in later research.

2. Conceptual and Theoretical Framework

2.1 Rule of law: formal, substantive and institutional readings

Theories of the rule of law differ in how much they demand of law beyond regularity. Formal accounts emphasise that rules be general, public, prospective, clear, stable and applied as announced; Fuller's eight desiderata, including congruence between official action and declared rule, remain the best-known list [14]. A thin conception of this kind is compatible with many political arrangements, which is why scholars distinguish thin from thick versions, the latter importing commitments about rights and justice [15]. Raz warned that the rule of law

is a specific virtue and should not be inflated into a synonym for goodness; its core task is to ensure that law can guide conduct and that official power is bound by law [4].

Common-law constitutionalists press the argument further, contending that legality itself carries a substantive requirement of fairness and reason in the exercise of public power [16]. Jowell has argued that review in modern constitutions moves beyond the narrow question of legal authority towards a broader inquiry into whether decisions respect constitutional values [17]. At the institutional level, international instruments have translated these ideas into operational checklists. The Venice Commission's checklist, for example, treats legality, legal certainty, prevention of abuse of powers, equality before the law and access to justice as the core elements against which public authorities can be assessed [18]. For administrative law, the practical implication is that discretion is lawful only when it is conferred by law, bounded by law, exercised for purposes the law recognises, and reviewable by an independent tribunal.

2.2 Discretion and its legal control

English administrative law treats discretion as a power held on trust for statutory purposes. The foundational statement is that a minister's discretion, though framed in wide words, cannot be used to frustrate the policy and objects of the enabling Act [19,20]. Courts will also examine whether the decision-maker asked the right question and took reasonable steps to obtain the information needed to answer it [21]. The classic unreasonableness standard holds that a decision is unlawful if it is so unreasonable that no reasonable authority could have reached it [22]. The later tripartite classification of illegality, irrationality and procedural impropriety consolidated the grounds and signalled that proportionality might one day join them [23]. Two limits qualify these doctrines. Review addresses the lawfulness of the decision-making process and not the merits of the decision [24], and the intensity of scrutiny varies with the subject-matter, which is why the courts apply more searching standards where fundamental rights are engaged [25].

The leading Indian authorities follow a related but distinct path. The Constitution entrusts the Supreme Court and High Courts with powers to enforce fundamental rights and to issue writs, and the judiciary has built the doctrine of non-arbitrariness on the equality guarantee [7,26]. Procedure that affects personal liberty must be fair, just and reasonable [9]. Government is expected to act reasonably and fairly even when it contracts or distributes benefits [27], although in commercial matters the courts confine themselves to examining the decision-making process [28].

2.3 Accountability as a multi-forum relationship

Several taxonomies help to situate judicial review. Romzek and Dubnick distinguished bureaucratic, legal, professional and political accountability according to the source of control and its degree [29]. Mulgan developed an account in which external scrutiny, internal control and answerability to the public operate as complementary mechanisms [30]. Bovens, Schillemans and 't Hart proposed that accountability arrangements be evaluated from three perspectives: democratic control, constitutional integrity and organisational learning [31]. This last triad is especially useful here, because judicial review contributes strongly to the constitutional perspective, weakly to democratic control, and unevenly to learning.

Mashaw's study of social-security disability adjudication supplies a complementary insight.

Examining mass decision-making, he contrasted the models of bureaucratic rationality, professional treatment and moral judgment, and showed that the quality of routine administrative adjudication depends heavily on internal organisation, training and quality control rather than on occasional external correction [32]. For a system in which the overwhelming majority of decisions are never litigated, this observation matters: judicial review can shape the overall quality of administration only if its principles travel into administrative practice.

2.4 Red-light and green-light perspectives

Harlow and Rawlings offered a durable classification of public law thinking. Red-light theories regard law chiefly as a restraint on state power and therefore favour assertive judicial control. Green-light theories see law as a facilitator of effective public administration and therefore favour deference, political accountability and administrative expertise [33]. Cane's historical comparison reminds us that systems of control over administration develop from particular institutional settings and are never reducible to a single doctrinal style [34]. Rawlings has argued that judicial review is better modelled as a set of interacting actors, resources and strategies than as an abstract exercise in doctrine [35], and Loughlin has treated public law as an expression of political relationships and not merely a body of rules [36]. Taken together, these approaches justify the paper's methodological position: a defensible account of the discretion-legality balance must be at once doctrinal, empirical and comparative.

3. Methodology

3.1 Design and reporting standard

The study is a structured doctrinal and empirical-literature review with a comparative component. Its reporting follows the logic of the PRISMA 2020 statement, namely an explicit rationale, stated eligibility criteria, defined information sources, a transparent selection process and a described synthesis method [37]. Legal scholarship does not fit the numerical flow-diagram convention of clinical reviews, because authoritative judgments, statutes and monographs are located through citation chains and doctrinal knowledge rather than keyword harvests of bibliographic databases. The review therefore adopts a purposive, iterative selection strategy, beginning from landmark decisions and then moving outward to commentary, empirical studies and indices. For this reason a numerical flow diagram is not presented, and the implications are acknowledged in Section 9.

3.2 Eligibility criteria and review protocol

All sources, data points and legal developments are dated no later than 2024. Material that was published or decided after that date was excluded in full, even where it bore directly on the topic. The temporal limit was 31 December 2024.

The protocol had the following elements.

- **Review question:** How do courts and constitutional systems balance executive discretion with the rule of law, and what do doctrine and empirical research show about the effect of judicial review on administrative accountability?
- **Jurisdictions:** United Kingdom (England and Wales), India, United States, European Union and Germany, and South Africa.

- **Source types included:** appellate and constitutional judgments, constitutional and statutory provisions, peer-reviewed articles, scholarly monographs, empirical research reports, comparative indices, and scholarly work on regulatory accreditation in India.
- **Language:** English.
- **Exclusions:** commentary without scholarly or official basis, sources lacking identifiable authorship or publication details, and works addressing administrative law only incidentally.
- **Quality appraisal:** authority of the court (apex or appellate preferred), peer review or institutional publication, transparency of method in empirical studies, and relevance to the research questions.
- **Synthesis:** narrative thematic synthesis, a comparative matrix (Table 2) and a gap analysis (Section 6).

3.3 Analytical procedure

The analysis proceeded in four steps. First, doctrinal rules were extracted from each jurisdiction and coded according to constitutional anchor, grounds of review, standard of scrutiny and remedies. Second, empirical and theoretical studies were read for their design, findings and limits, and were grouped by the dimension of accountability they illuminate. Third, doctrinal and empirical strands were compared to detect points at which stated legal principles were not matched by observed administrative behaviour. Fourth, the resulting gaps were consolidated into propositions framed so that they can be falsified by future work.

Comparative evidence on the wider legal environment was drawn from the 2024 edition of the World Justice Project index, which ranks 142 jurisdictions and includes a factor measuring constraints on government powers [13]. Index values are reported only as contextual indicators, because they capture expert and public perception and are not direct measurements of judicial review.

3.4 Research integrity

The study uses published and public sources only and involved no human participants. Reporting followed accepted ethical principles for social-science research, including accurate attribution, fair representation of opposing views and disclosure of limitations [38]. Since a synthesis of this kind carries a particular risk of unattributed borrowing, the safeguards identified in the literature on plagiarism detection were applied: paraphrase in the author's own analytic voice, attribution of every borrowed idea, restriction of direct quotation, and similarity screening before submission [39].

4. Related Research Reviews, Their Results and Outputs

This section reviews the principal bodies of related work, reports what each found, and draws out what each implies for the discretion-legality balance. Table 1 summarises the evidence.

4.1 Empirical studies of the impact of judicial review

The most substantial recent empirical study of judicial review in England and Wales was conducted by Bondy, Platt and Sunkin. It drew on a complete data set of cases that reached a final hearing over a twenty-month period, supplemented by surveys of claimant and defendant

solicitors and by interviews with practitioners and informed observers [40]. The results contradicted two common assumptions, namely that claimants largely abuse the process and that review impairs public administration. Most claimants were individuals pursuing their own disputes and only a small fraction of claims were brought by interest groups, while public bodies were reported to have engaged constructively with the issues raised, and tangible benefits followed for claimants even where the legal challenge itself failed [40]. The study thus shifts the evaluative focus from the formal verdict to the downstream administrative response.

Earlier work by Platt, Sunkin and Calvo analysed judicial review litigation against local authorities and reported evidence consistent with litigation functioning as an incentive to improve public services [41]. Halliday's study of homelessness decision-making explored why administrative bodies sometimes comply with legal norms and sometimes do not, and concluded that the effect of judicial review is filtered through organisational features of the decision-making body, including its legal awareness, resources and internal culture [42]. A comparative collection edited by Hertogh and Halliday extended the inquiry across jurisdictions and disciplines and underlined that bureaucratic responses to review are heterogeneous and context-dependent [43]. The cumulative lesson is that judicial review changes administration through channels that are partly indirect.

4.2 Evaluations of accountability arrangements

Mashaw's analysis of disability adjudication showed that high-volume administrative justice depends on internal design and not only on external review [32]. The assessment tool proposed by Bovens and colleagues provided a structured way to test whether an accountability arrangement achieves democratic control, constitutional integrity and learning [31], and the broader conceptual account of accountability supplies the common vocabulary on which the two are built [5]. Comparative indices, particularly the World Justice Project data, add a cross-national dimension. In the 2024 index the overall ranks of the jurisdictions studied here range from fifth for Germany to 79th for India among 142 jurisdictions, and India's rank on constraints on government powers is 60th [13].

4.3 Indian scholarship on activism, access and regulatory evaluation

Indian public-law scholarship has concentrated on the expansion of judicial power through public interest litigation. Baxi's early analysis described how social action litigation relaxed traditional rules on standing and procedure and thereby opened the courts to groups previously excluded from them [44]. Cassels questioned whether the courts, having assumed broad supervisory tasks, possessed the institutional capacity to ensure that their orders were implemented, and described the venture as an attempt at something close to the impossible [45]. Sathe traced the growth of judicial activism and the limits that the Supreme Court has set on its own role [46]. This literature establishes that Indian review is simultaneously expansive in access and uncertain in implementation.

A further cluster of Indian studies concerns the National Assessment and Accreditation Council (NAAC), an expert evaluative body whose judgments on institutions carry significant reputational and funding consequences. Recent studies assess its reforms and implementation challenges [47], its quality indicators and comparative best practice [48], its outcome-based approach [49], its role in quality assurance [50], the effectiveness of accreditation in

improving academic performance [51], strategic planning for accreditation [52], its role in promoting research and innovation [53] and its relationship to student learning outcomes [54]. On the basis of their stated scope, these works concern quality-assurance practice and institutional performance, not the legal control of accreditation decisions. They are therefore used here as contextual evidence of how evaluative discretion is exercised through standards, indicators and outcome criteria by expert regulators in India, and they point to an under-explored research question about the standards of fairness, reason-giving and review that should accompany such evaluative powers.

4.4 Deference and institutional competence in American scholarship

American debates have centred on how far courts should defer to agencies. Sunstein's analysis of the threshold question of whether deference doctrine applies at all showed that the law of deference turned as much on the antecedent categorisation of administrative action as on the substantive review that followed [55]. Sunstein and Vermeule argued that interpretive choices should be assessed in light of the institutional capacities of judges, and thereby gave a structured defence of deference grounded in competence and not in abdication [56]. These contributions frame the stakes of the 2024 reversal discussed in Section 5.3.

4.5 Technology and automated decision-making

Coglianese and Lehr argued that machine-learning tools can in principle be accommodated within existing American administrative law if they are properly designed, documented and validated [57]. Citron had earlier warned that automated administrative systems threaten notice, hearing and reasoned decision, and proposed safeguards under the heading of technological due process, including audit trails and meaningful opportunities for challenge [58]. The two positions are less opposed than they appear; both treat transparency and contestability as the conditions of legitimacy.

4.6 Courts, politics and the limits of legal accountability

Hirschl argued that political elites may transfer contested questions to courts for strategic reasons, which complicates the assumption that expanding judicial power always strengthens accountability [59]. The comparative study by Ginsburg and Moustafa of courts in authoritarian regimes showed that judicial institutions may also serve regime consolidation and legitimacy rather than restraint [60]. These findings caution that review is only as meaningful as the political and institutional environment in which it operates.

Table 1. Summary of related research, results and implications

Study	Design and context	Principal result	Implication for this paper
Bondy et al. [40]	Complete final-hearing data set, England and Wales; solicitor surveys and interviews	Claimants were mostly individuals; benefits arose even from unsuccessful claims; public bodies engaged with issues	Value of review lies partly in settlement and learning

Study	Design and context	Principal result	Implication for this paper
Platt et al. [41]	Quantitative analysis of litigation against local authorities	Evidence consistent with litigation as an incentive to improve services	Review can have deterrent and performance effects
Halliday [42]	Study of homelessness decision-making	Legal impact is mediated by organisational features	Compliance requires internal absorption of legal norms
Hertogh and Halliday [43]	Comparative, interdisciplinary collection	Bureaucratic responses to review vary by context	Generalisations about impact need caution
Mashaw [32]	Study of mass adjudication in disability claims	Internal design drives quality of routine decisions	Accountability must extend inside the administration
Bovens et al. [31]	Conceptual assessment tool	Three perspectives: democratic, constitutional, learning	Framework for evaluating review in Section 8
Baxi [44]; Cassels [45]; Sathe [46]	Analyses of Indian public interest litigation and activism	Wider access but doubts about implementation capacity	Expansion of review does not guarantee compliance
Sunstein [55]; Sunstein and Vermeule [56]	Doctrinal and institutional analysis, United States	Deference law depends on threshold categorisation and institutional competence	Context for the 2024 reversal
Coglianesse and Lehr [57]; Citron [58]	Analyses of algorithmic administration	Legitimacy depends on transparency and contestability	Basis for digital-era propositions
Hirschl [59]; Ginsburg and Moustafa [60]	Comparative political analyses of courts	Courts may serve strategic or regime-legitimizing roles	Review depends on political context
Indian NAAC studies [47-54]	Studies of accreditation reform, indicators, outcomes and impact	Focus on quality-assurance practice and institutional performance	Contextual evidence on evaluative discretion by expert regulators
World Justice Project [13]	Index of 142 jurisdictions	Overall and sub-factor ranks vary widely	Contextual comparative indicator

4.7 Synthesis of the reviewed outputs

Three conclusions follow from the literature. First, the empirical evidence that is available is richer for England and Wales than for the other jurisdictions studied, and its findings are more favourable to judicial review than political rhetoric about the process has suggested. Second, the best evidence on whether review changes administrative behaviour is largely indirect and

mediated by organisational factors, so that the legal rule and its practical effect cannot be equated. Third, the literature on technology and on political context shows that the underlying assumptions of review, namely transparent reasons, an independent forum and a politically secure judiciary, can no longer be taken for granted.

5. Comparative Analysis of Review Regimes

5.1 United Kingdom (England and Wales)

The English model is common-law in origin and has been reshaped by statute and by human-rights adjudication. The courts revived procedural fairness in the mid-twentieth century by holding that a public officer could not be dismissed without a fair hearing [61]. Substantive control developed through the purposive reading of discretion [19], the unreasonableness standard [22] and the three grounds of illegality, irrationality and procedural impropriety [23]. Where rights are engaged, the courts have moved towards proportionality, culminating in a structured inquiry into whether a measure pursues a sufficiently important objective, is rationally connected to it, goes no further than necessary and strikes a fair balance between individual and community interests [62]. Constitutional review has also reached the highest levels of executive power: the Supreme Court held that the prorogation of Parliament was justiciable and unlawful because it frustrated Parliament's constitutional functions without reasonable justification [63].

The courts have also defended their own jurisdiction. A statutory clause that purports to oust review did not protect a decision that was a nullity in law [64], and in 2019 a majority of the Supreme Court refused to read a comparable provision as excluding review of errors of law by a specialist tribunal, treating the rule of law as a limit on what Parliament could be taken to have intended [65]. Review of decisions of the Upper Tribunal was confined to narrow second-tier criteria [66], and Parliament subsequently removed even that route and introduced suspended and prospective-only quashing orders [11]. The English story is therefore one of a judiciary that has expanded its supervisory techniques while the legislature has recalibrated remedies.

5.2 India

The Indian system derives its authority from the Constitution. The Supreme Court and the High Courts may issue writs to enforce fundamental rights and, in the case of the High Courts, for other purposes as well [7]. The Court has held that the power of judicial review belongs to the basic structure and that tribunals cannot oust the High Courts' supervisory jurisdiction [8,67]. The equality guarantee was read to prohibit arbitrariness in state action [26], and the Court insisted that any procedure depriving a person of liberty must be fair, just and reasonable [9]. State bodies dealing with contracts and public benefits must likewise act without arbitrariness [27].

Standards of scrutiny are explicitly differentiated. Where administrative action affects fundamental freedoms the Court applies proportionality as the primary reviewer, whereas in ordinary discretionary matters it applies a more restrained standard of rationality [68]. In commercial and tender matters the Court has stated that it examines the decision-making process and does not sit as an appellate authority over the merits [28]. Proportionality was given greater prominence in the privacy decision, which required that any restriction of the

right satisfy legality, legitimate aim and proportionality [69]. In litigation on prolonged suspension of internet services, the Court required that restrictions be necessary and proportionate and that the orders imposing them be published and open to review [70]. At the constitutional-federal level, proclamations of presidential rule were held to be justiciable [71]. In 2024 the Court struck down the electoral bonds scheme on the ground that it infringed the voters' right to information [12]. Outside the courts, the Right to Information Act 2005 provides a transparency mechanism that supports accountability by exposing the reasons and records behind administrative decisions [72], and the Second Administrative Reforms Commission linked ethical governance to institutional safeguards and accountability mechanisms [73].

5.3 United States

The judicial power to review executive action is traced to the early assertion that it is the province of the judiciary to say what the law is [74]. The Administrative Procedure Act supplies the statutory framework, including the requirement that courts set aside agency action that is arbitrary, capricious or contrary to law [75]. The hard look doctrine requires an agency to examine relevant data and give a satisfactory explanation connecting facts to the choice made [76], and procedural due process is assessed through a balancing test that weighs the private interest, the risk of error and the value of further safeguards against the government's interest [77].

For forty years the question of statutory ambiguity was governed by the two-step deference framework, under which courts upheld reasonable agency interpretations of ambiguous statutes [78]. In 2024 that framework was overruled; the Supreme Court held that courts must exercise independent judgment in deciding whether an agency acted within its statutory authority and may not defer merely because a statute is ambiguous [10]. As the earlier literature predicted, the underlying disagreement concerned institutional competence and the allocation of interpretive authority [55,56]. The reversal illustrates that the balance between discretion and legality can shift sharply through judicial reinterpretation alone.

5.4 European Union and Germany

German law guarantees recourse to the courts to anyone whose rights are violated by public authority [79]. The doctrine of discretion errors distinguishes failure to exercise discretion, exceeding its limits and using it in a manner inconsistent with its purpose, and proportionality operates as a structured, multi-stage test [80]. At European Union level the Treaty provides annulment review on grounds of lack of competence, infringement of an essential procedural requirement, infringement of the Treaties or of any rule of law relating to their application, and misuse of powers [81]. Proportionality is a general principle of Union law, and the Union courts have developed intensities of review that vary with the complexity of the assessment and the margin of appreciation conferred on the institution [82]. This model places relatively strong emphasis on codified grounds and structured reasoning, with comparatively less reliance on a deferential-versus-interventionist dichotomy.

5.5 South Africa

The post-apartheid Constitution guarantees administrative action that is lawful, reasonable and procedurally fair, and Parliament enacted legislation to give those guarantees operational

content [83,84]. Where executive action falls outside that statute, the Constitutional Court has located a residual duty of legality and rationality in the rule of law itself, holding that an exercise of public power must be rationally related to the purpose for which it was given [85]. The court has also developed reasonableness review of the state's socio-economic programmes, finding a housing programme unreasonable because it failed to cater for people in desperate need [86] and ordering the extension of a treatment programme where the state's policy was found unreasonable [87]. South Africa thus offers an example of review that is explicitly oriented to rights fulfilment and not only to restraint.

5.6 Comparative matrix and indicators

Table 2 compares the five regimes on constitutional anchor, grounds, intensity of scrutiny and the most recent significant development within the study period.

Table 2. Comparative matrix of judicial review regimes (sources up to 2024)

Jurisdiction	Constitutional or statutory anchor	Principal grounds	Intensity of scrutiny	Recent development
United Kingdom	Common law; statute; human-rights framework [11]	Illegality, irrationality, procedural impropriety; proportionality for rights [23,62]	Variable with subject-matter [25]	Remedial reform and abolition of second-tier route [11]
India	Constitution, arts. 32 and 226 [7]	Non-arbitrariness, fairness, proportionality, rationality [9,26,68]	Proportionality for rights; restraint in commercial matters [28,68]	Electoral bonds scheme invalidated, 2024 [12]
United States	Constitution; Administrative Procedure Act [75]	Arbitrary and capricious; contrary to law; due process [76,77]	Hard look on reasons; independent judgment on law [10]	Deference framework overruled, 2024 [10]
EU and Germany	Basic Law art. 19(4); TFEU art. 263 [79,81]	Discretion errors; competence; procedure; misuse of powers [80,81]	Structured proportionality; margin varies [82]	Continued consolidation of proportionality [82]
South Africa	Constitution s. 33; PAJA [83,84]	Lawfulness, reasonableness, fairness; legality and rationality [85]	Reasonableness for socio-economic programmes [86,87]	Entrenched legality review beyond statute [85]

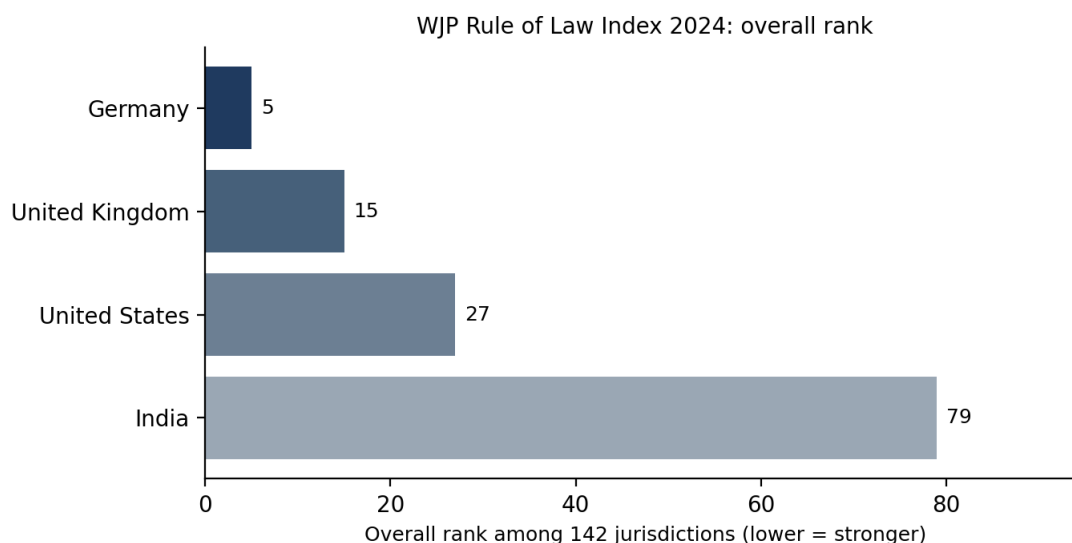


Figure 2. Overall rank in the WJP Rule of Law Index 2024 (142 jurisdictions; lower rank is stronger). Data from the World Justice Project.

Figure 2 positions four of the jurisdictions on overall rule-of-law rank in the 2024 index, in which Germany ranks fifth, the United Kingdom fifteenth, the United States twenty-seventh and India seventy-ninth among 142 jurisdictions [13]. India's rank on the factor measuring constraints on government powers is sixtieth, markedly better than its overall position [13]. Two cautions apply. The index records perceptions of experts and the public and is not a measure of judicial review as such, and the rank ordering says nothing about the quality of any single doctrine. What the data do suggest is that a sophisticated body of review doctrine, as exists in India, can coexist with moderate overall performance, which supports the central argument of this paper that doctrine alone does not determine the practical strength of accountability.

5.7 Comparative observations

Three patterns emerge. The first is convergence on structured reasoning. Proportionality, in some form, now figures in English, Indian, German, European and South African practice [62,68,80,82,86], while the American hard look doctrine imposes a comparable discipline of reasons [76]. The second is divergence in deference. Indian courts differentiate sharply between rights-based and commercial review [28,68], English courts vary intensity with context [25], and American courts have just moved from deference to independent judgment on questions of law [10]. The third is that every system is exposed to counter-pressure from the political branches, whether through legislative restriction of remedies [11], through institutional channelling into tribunals [67], or through the contested boundaries of executive power [63,71].

6. Exposing the Analytical Reality: Seven Gaps between Doctrine and Practice

Doctrine describes what courts say they will do. Empirical research and comparative evidence describe what happens. The following seven gaps arise where the two diverge.

Gap 1: The access gap. Review is only as effective as the capacity to bring it. The expansion of standing and relaxation of procedure in Indian public interest litigation opened the courts to disadvantaged groups [44], and the English evidence shows that most claimants are individuals seeking solutions to their own problems and not organised groups [40]. Yet a legal remedy that is costly or procedurally demanding is largely a theoretical right for those with the least power. Where evaluative bodies such as accreditation councils make decisions with serious institutional consequences, the affected institutions often lack both the resources and the doctrinal clarity to challenge them, which is why scholarship on such bodies stresses indicators, planning and compliance with standards more than legal remedy [48,52].

Gap 2: The remedial gap. A finding of unlawfulness does not automatically produce a better decision. Cases are frequently remitted for fresh determination, and the administration may reach the same result lawfully. The English evidence nonetheless suggests that benefits can flow even from unsuccessful claims through settlement and changed practice [40], which implies that the measure of success should not be restricted to quashing orders. The statutory introduction of suspended and prospective-only remedies shows the legislature taking a different view of the cost of immediate invalidity [11].

Gap 3: The deference asymmetry. Courts calibrate intensity, but the calibration is rarely articulated in transparent criteria. The Indian distinction between rights-based proportionality and restrained review of commercial choices is explicit [28,68], while English courts speak of variable intensity without a fixed taxonomy [25]. Expert evaluative bodies sit at the margin of this calibration. Studies of NAAC describe a regime in which standards, quality indicators and outcome criteria shape institutional behaviour [49,50], yet the legal standards by which such expert judgments would be reviewed are not what those studies address. The result is a zone of consequential discretion in which accountability rests principally on professional norms and internal procedures.

Gap 4: The structural gap. Governments can channel disputes into forums that limit judicial supervision. The English courts have resisted ouster clauses [64,65] but accepted narrow second-tier review [66], and the legislature has since withdrawn that route [11]. In India, the Supreme Court prevented the exclusion of High Court supervision over tribunals [67]. The structural lesson is that the formal availability of review depends on the architecture of dispute-resolution, which is shaped by legislation as much as by courts.

Gap 5: The implementation gap. Courts can declare principles and still fail to change behaviour. Halliday's work shows that legal norms are filtered through organisational features [42], and Cassels' scepticism about the capacity of the Indian courts to supervise implementation of far-reaching orders expresses the same problem on a larger scale [45]. Mashaw's study points to the remedy: internal quality assurance, training and structured decision-making that translate legal norms into routine practice [32].

Gap 6: The volatility gap. Doctrinal settlements are less secure than they appear. The American shift from deference to independent judgment within a single judicial decision illustrates that the allocation of power between courts and agencies can be reconfigured

abruptly [10,78]. For administrators, volatility increases uncertainty about the legal standards they must anticipate; for litigants, it changes the odds of success without any change in statute.

Gap 7: The digital opacity gap. Traditional review presupposes an identifiable decision, an identifiable decision-maker and reasons that can be examined. Automated and data-driven systems can undermine each of these assumptions. Citron identified the threat to notice, hearing and reasoned decision in automated administration [58], and Coglianese and Lehr argued that such systems can be lawful if properly designed and validated [57]. Courts have so far responded cautiously: the Wisconsin Supreme Court allowed the use of a proprietary risk-assessment tool in sentencing subject to stated limitations [88], and the English Court of Appeal held that a facial-recognition deployment by police was unlawful because its legal framework left too much discretion to individual officers and an equality assessment was inadequate [89]. In India, data-protection legislation and the proportionality standard from the privacy decision provide a basis for challenge, though the legislative framework was enacted only in 2023 and its practical operation remained untested within the study period [69,90].

6.1 Propositions for future testing

On the basis of these gaps, five propositions are advanced as the author's analytical contribution. They are framed as testable claims.

- **Proposition 1 (Calibration).** Judicial review will be more legitimate and predictable where courts disclose the criteria that determine the intensity of review, namely rights impact, institutional competence and democratic pedigree of the decision.
- **Proposition 2 (Reasons as hinge).** The duty to give adequate reasons is the strongest single determinant of whether judicial review changes administrative practice beyond the individual case.
- **Proposition 3 (Bounded remedial flexibility).** Flexible remedies improve the fit between legality and administrative continuity, but only if accompanied by a duty to correct the unlawfulness within a defined period.
- **Proposition 4 (Internal complement).** Where internal review and quality assurance are weak, judicial review will be disproportionately burdened and less effective.
- **Proposition 5 (Digital transparency).** Automated decisions affecting legal rights require disclosure of the decision logic, an audit trail and access to human reconsideration if review is to remain meaningful.

6.2 Reading the gaps together

The seven gaps are not independent. Access and remedy interact, because a litigant who can reach court but obtains only a declaration or a remittal has gained little, and a legislature that narrows remedies reduces the incentive to litigate at all [11,40]. Structure and volatility interact, because when disputes are channelled into specialist forums the interpretive questions that shape deference are decided by bodies with different institutional characteristics from the generalist courts [56,66,67]. Implementation and digital opacity interact, because the same organisational filters that determine whether lawyers' reasoning reaches front-line officials also determine whether software developers and procurement officers understand the legal constraints on the systems they build [42,57].

The comparative evidence also indicates that no jurisdiction has closed all seven gaps. The

English system has strong remedial and procedural traditions and some of the best empirical evidence, but has experienced legislative narrowing of remedies and routes of challenge [11,40]. The Indian system has unusually broad access and a sophisticated rights jurisprudence, but faces doubts about implementation and about the reach of review into evaluative and regulatory decision-making [44,45,68]. The American system has a well-developed reasons requirement, but doctrinal volatility is its most conspicuous feature [10,76]. The German and European systems offer structured grounds and codified guarantees, but their strength depends on a particular institutional culture of reasoned administration [80,82]. The South African system integrates review with socio-economic rights, but the reasonableness standard depends on the capacity of the state to respond to judicial findings [86,87].

A final observation concerns evaluation. Because the benefits of review are partly indirect, the performance of any system cannot be assessed solely by counting successful claims. A fuller assessment would examine settlement patterns, changes in guidance and practice after judgments, the rate of repeat unlawful conduct and the experience of claimants, which are precisely the indicators used in the most informative empirical work available [40,41]. Systems that do not collect such data cannot easily know whether review is functioning as an accountability mechanism or as an occasional and symbolic event. Accordingly, the collection and publication of administrative-justice data is itself a condition of accountability, and it should be regarded as part of the duty of transparency that is owed by public authorities [72].

7. Analysis from Different Perspectives

A balanced assessment must test the argument against rival viewpoints. Five are considered.

The liberal-legalist perspective. From this standpoint, judicial review is the guarantor of legality and protector of the individual against arbitrary power. The tradition runs from Dicey's insistence on the supremacy of regular law [2] through the common-law constitutionalism of Allan [16] to Bingham's statement of the requirements of lawful public power [3]. This perspective reads the empirical evidence of Bondy and colleagues as vindication, because it shows that review is neither abused nor harmful to administration [40]. Its weakness lies in a tendency to treat the judicial verdict as the end of the matter, which the implementation studies show it is not [42].

The political-constitutionalist perspective. Critics argue that strong judicial review is hard to reconcile with democratic equality, because unelected judges overrule decisions of accountable institutions on questions on which citizens disagree reasonably [91,92]. Defenders of dialogue models respond that judicial decisions may prompt, and not preclude, legislative reconsideration [93]. The English reaction to review, including legislative restriction of remedies [11], can be read as an example of this tension. The perspective is valuable because it forces courts to justify their intensity of scrutiny, as the first proposition suggests, but it understates the vulnerability of individuals within majoritarian processes.

The administrative-efficiency perspective. Public-administration scholarship stresses that accountability has a cost and that excessive control may produce defensive administration. The three-perspective model of democratic control, constitutional integrity and learning is a way of balancing these considerations [31]. The institutional-competence argument for deference is likewise a claim about capacity and not about status [56]. The perspective is correct to insist that review be evaluated by its effects, yet the empirical evidence reviewed above does not support the claim that review is typically obstructive [40,41].

The Global South and critical-political perspective. Scholars in this tradition emphasise that courts act within unequal social and political structures. Public interest litigation in India was a deliberate attempt to widen access for the poor [44], but it has been questioned for overreaching institutional capacity [45], and political analyses warn that judicial empowerment can serve elite strategies [59] or consolidate authoritarian power [60]. The perspective explains why the same doctrine can have very different effects across political environments, and it supports the cautious reading of index data offered in Section 5.6 [13].

The security and emergency perspective. Governments argue that urgent threats require executive latitude. The legal response, articulated by Dyzenhaus, is that legality must remain operative in emergencies, because the alternative is a legal vacuum in which officials act without effective constraint [94]. Cases on prorogation, internet shutdowns and presidential proclamations demonstrate that courts have increasingly treated even high-policy decisions as reviewable [63,70,71]. Their reasoning is often structured by proportionality and by insistence on reasons and publication, which allows courts to scrutinise executive choice without substituting their own security judgments.

7.1 Reconciling the perspectives

The perspectives agree on more than their rhetoric suggests. All accept that discretion is inescapable. All accept that reasons, procedure and independent scrutiny are conditions of legitimacy, and most accept that context determines how much scrutiny is appropriate. They disagree chiefly on who should decide the degree of scrutiny and on how to value individual protection against democratic and administrative values. A calibrated model, which makes the criteria of calibration explicit and spreads accountability across several forums, can accommodate this convergence better than either of the extreme positions.

8. A Calibrated Accountability Model

Drawing on the propositions advanced in Section 6.1, the paper proposes a four-layer model of review that connects judicial scrutiny with internal and political accountability (Figure 1).

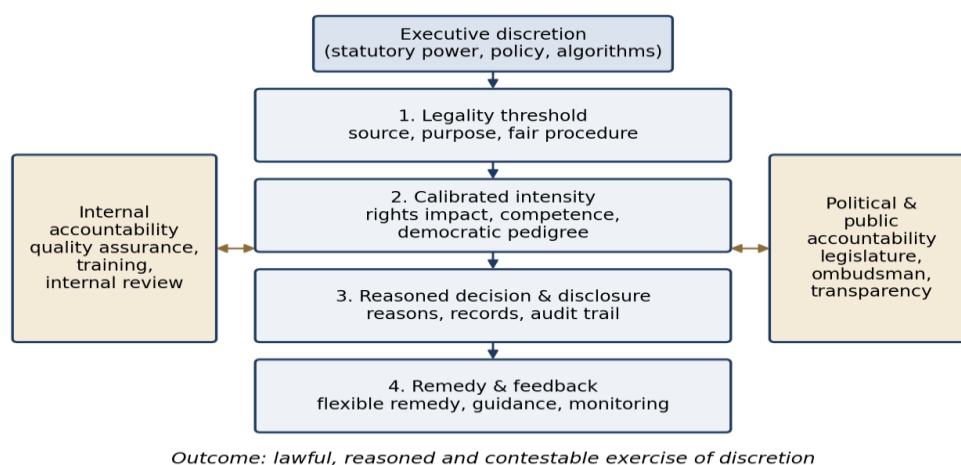


Figure 1. Calibrated accountability model linking executive discretion, judicial review and internal and political accountability. Source: author's conceptual synthesis.

Layer 1: Legality threshold. The decision must have a lawful source, be exercised for proper purposes and respect procedural fairness. This layer corresponds to the established core of review [19,23] and the constitutional guarantees of fair procedure [9].

Layer 2: Calibrated intensity. The court states the intensity of review on the basis of disclosed criteria: the right or interest affected, the institutional competence of the decision-maker, and the political accountability of the measure. This is consistent with variable-intensity approaches in English and Indian law [25,68] and with the institutional analysis of deference [56]. After the American reversal, it also offers a way of avoiding an all-or-nothing choice between deference and independent judgment [10].

Layer 3: Reasoned decision and disclosure. The administration is required to give reasons that are intelligible, accessible and, for automated decisions, accompanied by disclosure of the logic and an audit trail [58,76]. Transparency legislation, such as the Indian right-to-information regime, shows how access to records can operate as a pre-condition of effective review [72].

Layer 4: Remedy and feedback. Remedies should secure lawful outcomes without unnecessary disruption, and judgments should feed back into administrative practice through guidance, training and monitoring [32,40]. Flexible remedies, if adopted, should be accompanied by an obligation to correct within a set time [11].

Internal accountability sits beside these layers. Internal review, quality assurance and professional standards are the mechanisms most likely to apply legal norms in mass decision-making [32], and the Indian experience of accreditation regimes shows how indicator-based internal and external quality systems can structure the behaviour of institutions [49,51]. The model does not displace the courts. It positions them as the guarantor of the system, intervening decisively where rights are at stake and relying on other forums where competence and democratic legitimacy are stronger.

8.1 Practical implications

For legislators, the model suggests drafting enabling statutes that state purposes and decision criteria with sufficient clarity to allow principled review, and avoiding ouster provisions that invite a conflict with the rule of law [64,65]. For administrators, it suggests that the quality of reasons and records is both a legal safeguard and a performance asset. For courts, it suggests that transparency about the criteria of deference will improve the predictability and legitimacy of review. For researchers, it suggests that impact studies of the kind carried out in England and Wales should be replicated in India and elsewhere [40].

9. Limitations

Several limitations qualify the conclusions. First, the review was purposive and iterative rather than a database-driven systematic search, so a numerical PRISMA flow diagram was not produced, and some relevant sources may have been missed [37]. Second, the empirical evidence is concentrated in England and Wales and in the United States, and generalisation to other systems must be cautious. Third, rule-of-law indices measure perceptions and not the performance of judicial review [13]. Fourth, the Indian accreditation literature was used as contextual evidence on evaluative discretion and is not a body of authority on the legal review of accreditation decisions [47,48,50]. Fifth, the temporal limit of 2024 means that later developments are not captured. Finally, the five propositions are analytical conjectures and have not been empirically tested.

10. Conclusion

Executive discretion cannot be eliminated, and no serious account of the rule of law demands that it should be. The question is how discretion is structured, explained and checked. The comparative evidence shows that courts in very different systems have converged on structured reasoning, with proportionality and reasoned-decision requirements as common instruments [62,68,76]. It also shows persistent divergence in the degree of deference, and ongoing counter-pressure from political institutions on the scope and remedies of review [10,11].

The empirical evidence reviewed here suggests that the contribution of judicial review to accountability is real but often indirect. It is visible in settlements, in administrative learning and in deterrence, as well as in decisions that quash unlawful acts [40,41]. It also depends on organisational absorption of legal norms [32,42] and on access to the courts in the first place [44]. Seven gaps separate doctrine from practice: access, remedy, deference calibration, structure, implementation, volatility and digital opacity. Closing them requires a coordinated strategy and not only more assertive adjudication.

The calibrated model proposed in this paper offers such a strategy. It asks courts to be explicit about the criteria that govern the intensity of review, asks administrations to build reasoned decision-making and internal quality control, asks legislatures to preserve effective access to review, and asks all institutions to extend the safeguards of transparency and contestability to automated decisions. If these conditions are met, the rule of law and executive discretion are complementary and not opposed: legality gives discretion its authority, and discretion gives legality its practical reach. Future research should test the propositions advanced here, in particular through comparative empirical studies of the administrative impact of review in India and other jurisdictions.

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