



The Role of Judiciary in Upholding the Constitution

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Abstract

Judiciary is considered to be the most critical role in terms of the protection of constitutional values and the constitutional supremacy of the Constitution in a democratic model. This paper discusses the various roles of Indian judiciary in exercising its constitutional interpretations, guarding the rights in the constitution, keeping to the rule of law through the doctrine of judicial review. It discusses how judicial activism and the Basic Structure Doctrine have evolved as it assesses landmark cases that have played an important role in constitutional jurisprudence of India. Issues affecting the judiciary today like judicial sluggishness, secrecy of appointments, claims of judicial excesses, and absence of transparency and accountability are also being discussed in the paper. The work proposes institutional variants of reform based on the critical and dogmatic focus of study usage in the context of improving the organization of transparent judicial work, efficiency, and accessibility. Finally the paper has once again confirmed the invaluable contribution or the role of a judiciary in supporting democratic spirit and in sustaining constitutional governance in India.

Keywords:

Judiciary, Constitution of India, Judicial Review, Fundamental Rights, Rule of Law, Separation of Powers, Judicial Activism, Basic Structure Doctrine, Judicial Reforms, Constitutional Governance

Introduction

Any democratic society has the judiciary as the foundation of constitutional governance. It is important in interpreting the Constitution, protection of fundamental rights and that the rule of law remains the order of the day. In India the judiciary is not only a body which adjudicates and decides cases but also the protector and interpreter of the Constitution. The judiciary determines the range and interpretations of the provisions put in the constitution, which affect the policies of the nation and affect the

ideal of democracy. In line with how the makers of the Indian Constitution envisioned the role of the judiciary, the judicial branch of the state has been positioned as a completely independent and neutral institution whose primary responsibility is ensuring the delicate balance between the legislature, the executive, and the rights of the people (Choudhry, Khosla, & Mehta, 2019)¹. The constitutional precedence upholds the notion that any legislation and any executive initiatives ought to comply with the requirements mentioned in the

¹ Choudhry, S., Khosla, M., & Mehta, P. B. (2019). *The Oxford Handbook of the Indian Constitution*. Oxford University Press.

constitution and that the judicial system is entitled to abolish those that will contravene this precept.

The Indian judiciary today is a different arbiter that it used to be decades back, as it has become a force of social reform and change. This can be seen in the ground-breaking judgments throughout which the courts broadened the rights scope of fundamental rights, developed a doctrine such as the Basic Structure (Shankar & Mehta, 2008)². PILs and judicial activism have brought courts in touch with the masses enabling the courts to overcome the injustices in the society and government lethargy.

The rising assertiveness of the judiciary has not gone without criticism however. The issues regarding judicial overreach, backlog in the cases, lack of transparency regarding appointments, and politicization have become major challenges to the credibility and performance of the judiciary system (Verma, 2021)³. These concerns require a stern review concerning the extent to which judiciary has done its part ordained by the constitution in the context of modifying political and social environments.

The paper will help understand and explore this multidimensional role of the judiciary in ensuring that the Constitution is enforced by looking at constitutional provisions, judicial doctrines along with landmark cases. It is also reconsiderate of the institutional difficulties and give suggestions to enhance

the role of judiciary towards the pillars of constitutional democracy.

Research Objectives

- To examine the constitutional position and authority of the Indian judiciary.
- To analyze the development and application of judicial review in India.
- To study the role of the judiciary in the enforcement of fundamental rights.
- To evaluate contemporary challenges and criticisms faced by the judiciary.
- To suggest reforms for enhancing the judiciary's effectiveness in a constitutional democracy.

2. Constitutional Status and Structure of Judiciary in India

The constitution of India has vested the powers and authority of the Indian judiciary since it gives a comprehensive and hierarchical format to the administration of justice in the entire nation.

The judiciary, which takes the form of a unified judicial hierarchy consisting of the Supreme Court of India, High Courts and subordinate courts, also instituted by the Constitution under Part V (Articles 124 to 147), Part VI (Articles 214 to 231) (Baxi, 2012)⁴.

Supreme Court of India

At the apex lies the **Supreme Court**, established under **Article 124**. It is the final

² Shankar, S., & Mehta, P. B. (2008). *Courts and the Development of the Indian State: A Comparative Approach*. Oxford University Press

³ Verma, A. (2021). *Judicial Overreach and Accountability: A Critical Analysis*. Indian Law Journal, 8(2), 45–58.

⁴ Baxi, U. (2012). *The Indian Supreme Court and the Crisis of the Constitutional Democracy*. Oxford University Press.

interpreter and guardian of the Constitution. Its jurisdiction includes:

- **Original jurisdiction** (Article 131): for disputes between the Union and States.
- **Appellate jurisdiction** (Articles 132–136): for civil, criminal, and constitutional appeals.
- **Advisory jurisdiction** (Article 143): where the President can seek its opinion on legal questions.
- **Writ jurisdiction** (Article 32): to enforce fundamental rights.

Basic Structure Doctrine is also guarded by the Supreme Court as it was established in *Kesavananda Bharati v The State of Kerala* (1973) that restricts amendment of the Parliament. The Chief Justice of India (CJI), the other judges have powerful influence in matters of jurisprudence, state policy and administration in the country.

High Courts and Subordinate Judiciary

Articles 214 to 231 provide a High Court to each state (or group of states) with similar powers to those of the Supreme Court, particularly the ability (under Article 226) to issue writs in order to enforce the fundamental rights and legal rights. Article 227 is a provision that allows High Court to supervise the subordinate courts that are within their jurisdiction. The court lower in ranks than the High Courts is the district courts, sessions courts, civil courts, and magistrate courts, which are subject to both the Code of Civil Procedure, 1908, and the Code of Criminal Procedure, 1973, and state rules founded at the local level.

Independence of Judiciary

The independence of the judiciary is a cornerstone of constitutional democracy. The Constitution provides for:

- Security of tenure for judges (Article 124(4))
- Fixed service conditions
- Separation of powers (Article 50 – Directive Principles)
- Prohibition on discussion of judges' conduct in Parliament (Article 121)
- Financial autonomy to a certain extent

Also, there is collegium system (which was developed by decision of the court, such as *Second Judges Case* and *Third Judges Case*) which regulates appointment and transferring judges, which has received both criticism and applause because it is considered secretive.

The institution of the judiciary is that it is placed as an independent, neutral, and constitutional body, which makes it central to constitutionalism and the rule of the law. Nevertheless, this structure becomes overloaded, and docket, resource constraints and sometimes even conflicts with the other organs of government can weaken it (Bhuwania, 2017)⁵.

3. Judicial Review and Constitutional Interpretation

Perhaps among the most important duties that have been bestowed upon the judiciary is the judicial review- the ability to review the constitutionality of the action of legislature and the executive. Although this principle is not specifically stated in the Indian constitution, it has been legally accepted and

⁵ Bhuwania, A. (2017). *Courting the People: Public Interest Litigation in Post-Emergency India*. Cambridge University Press.

legally set in stone according to precedents and practices. The judicial review is necessary in order to ensure that the legislative and the executive operate within the confines of the constitutional boundaries (Sathe, 2002)⁶.

Evolution of Judicial Review in India

Articles 13, 32, 131, 136 and 226 in the Constitution of India act as the source of inspiration to the concept of judicial review in India. The provision in Article 13(2) does not allow the State to enact laws that violate the Fundamental Rights and hence paves the way to invalidation of the laws by the Courts. It is in this power that the judiciary, which especially includes the Supreme Court and the High Courts, has dismantled laws and policies, which are in conflict with the provision of the constitution.

The landmark case in this connection was *A.K. Gopalan v. State of Madras* (1950) in which the Court followed a strict interpretation of fundamental rights and nevertheless, in the *Maneka Gandhi v. Union of India* (1978), which was inclined to the liberal interpretation, favoring a harmonious construction of rights, thereby supporting the doctrine of the judicial review as an antagonistic process.

The Basic Structure Doctrine

The real turning point in the application of constitution was the *Kesavananda Bharati v. Writ petition (c) no. 23 of 1973* case. With a majority of 7:6, the Supreme Court has stated that the Parliament under Article 368, has large powers to amend the Constitution,

however, basic structure of the Constitution cannot be interfered with. The doctrine was converted to be a judicial protection against excessive parliamentary powers. *Indira Gandhi v.*, and later on the scope of the basic structure was reiterated and made clear in *Raj Narain* (1975) and *Minerva Mills Ltd. v. Union of India* (1980) where attention was narrowed to some of the main values of the constitution like judicial independence, separation of power, federalism and secularism.

Dynamic Interpretation and Transformative Constitutionalism

The recent years have seen the Indian judiciary step out of textualism and take up a transformative approach to constitutionalism. It has also applied the Constitution in such a way that it did take account of the changes and developments in thinking in society and seen it as a living document (Bhatia, 2019). As an example, in the case of *Navtej Singh Johar v. Union of India* (2018), the Supreme Court decriminalized homosexuality, and the Constitution was viewed in the context of dignity and privacy. Just as in, *Justice K.S. Puttaswamy v. Union of India* (2017), the Court has established the Right to Privacy as a fundamental right under Article 21 to broaden protection of the Constitution in the digital era.

Through these interpretations, the judiciary has proven that they believe in progressive realization of rights and values even at the expense of the strict textual interpretations in order to do justice, equality and liberty.

⁶ Sathe, S. P. (2002). *Judicial Activism in India: Transgressing Borders and Enforcing Limits*. Oxford University Press.

4. Role in Protection of Fundamental Rights

One of the most prominent and also effective roles of judiciary is the protection and enforcement of fundamental rights as envisaged in Part III of Indian Constitution. The framers foresaw the courts, particularly the Supreme Court and High Courts as being the main guardians of individual freedoms. The Constitution provided an effective redressal through Article 32 and other Article 226 mechanism through which citizens could directly access these courts and seek redress of the violation of rights committed by State.

Article 32 and 226: The Right to Constitutional Remedies

Article 32, which Dr. B.R. Ambedkar described as the heart and soul of the Constitution, gives them a right to go directly to Supreme Court in the event their fundamental rights are suppressed. Likewise Article 226 vests powers within the High Courts to issue writs in exercise of enforcing not only fundamental rights but any other rights under law as well. The writs like habeas corpus, mandamus, certiorari, prohibition or quo warranto have helped courts tremendously to afford relief in the case of unlawful detention, refusal of services or in cases of misuse of power. Such powers make sure that the State proceeds with its laws in a truthful as well as in a fair and righteous manner (Sridhar, 2021)⁷.

Judicial Expansion of Rights

Indian judiciary has been a trend-setter in stretching the boundaries of the fundamental rights by imaginative interpretations of the same. First, there was a shrinking conception

of rights as was observed in A.K. Gopalan (1950). Nevertheless, in the major decisions since the 1970s, the paradigm has changed.

- **In Maneka Gandhi v. Union of India (1978)**, the Court interpreted Article 21 (Right to Life and Personal Liberty) to include the right to travel, due process, **and** natural justice, making it a gateway for the expansion of several other rights.
- **In Francis Coralie Mullin (1981)** and **Olga Tellis (1985)**, the right to life was held to include dignity, livelihood, and shelter, reflecting a rights-based approach to social justice.

More recently:

- **Justice K.S. Puttaswamy v. Union of India (2017)** declared the **Right to Privacy** as intrinsic to Article 21.
- **Navtej Singh Johar v. Union of India (2018)** read down Section 377 IPC, recognizing LGBTQ+ rights under Articles 14, 15, and 21.
- **Shayara Bano v. Union of India (2017)** struck down triple talaq, protecting Muslim women's rights under constitutional principles of equality and non-discrimination.

These judgments exemplify the judiciary's commitment to **transformative constitutionalism**—where the Constitution is not just a legal document but a tool for promoting justice and human dignity (Rajagopal, 2020)⁸.

Public Interest Litigation (PIL) and Access to Justice

⁷ Sridhar, M. (2021). *Fundamental Rights and the Indian Judiciary: Guardians of Liberty*. Eastern Book Company.

⁸ Rajagopal, K. (2020). *Transformative Constitutionalism in India: Reimagining Rights and Justice*. Routledge.

Transition of Public Interest Litigation (PIL) in the eighties gave the courts the ability to address wrongs committed against large parts of the population, particularly the marginalized members of the society. Judiciary has used PILs to focus on the right of undertrials, custodial deaths, environmental destruction, and bonded labor (Bhuwania, 2017)⁹. Through PILs the gap between law and justice has therefore been filled and the avenues of seeking constitutional remedies have been democratized.

5. Judiciary as the Guardian of Rule of Law and Separation of Powers

The Indian court exercises an important constitutional role that is to be the custodian of the rule of law and the concept of separation of powers. These two doctrines are the pillars of constitutional democracy because they limit the arbitrary exercise of power and makes sure that all the organs of the state operate within the confines of their mandate.

Rule of Law and Judicial Supremacy

The rule of law means that the law governs every person and every institution as well as the State. The judiciary takes up the role of ensuring that the laws and the activities of the executive are adhering to the requirements of the constitution, which is dictated by the power of review and interpretation of law. The doctrine has been affirmed in a number of occasions like in case of *Kesavananda Bharati v. State of Kerala* (1973), *I.R. Coelho v. State of Tamil Nadu* (2007) the judiciary stressed that the laws that do not meet the basic tenets of constitution are not

tenable, not even by the enactment of the legislature.

The *SR Bommai v. Union of India* (1994) case the Supreme Court safeguarded constitutional order by not allowing the misuse Article 356 (President Rule) and emphasized the authority of constitutional morality, federalism, and rule of law over the political expediency.

Separation of Powers and Judicial Restraint

The Indian Constitution is not strictly susceptible to the doctrine of separation of powers observed in the U. S Constitution but its implication suggests functional separation amidst the legislature, executive, and judiciary. The other two branches are also balanced by the judiciary especially when such an action poses danger to the constitutionalism and individual freedoms (Sharma, 2015)¹⁰.

The Indian judiciary on the other hand is accused of having a problem of judicial overreach i.e. the judiciary intrudes into the policy-making or into the executive decision-making areas. Case in point would be *Vishaka v. State of Rajasthan* (1997), the Court established the rules on sexual harassment when there is no legislation. Such activities have been proclaimed as a worthy attempt yet it has triggered arguments on the boundaries of judicial activism and judicial restraint (Mehta, 2019)¹¹.

Balancing Activism with Accountability

⁹ Bhuwania, A. (2017). *Courting the People: Public Interest Litigation in Post-Emergency India*. Cambridge University Press.

¹⁰ Sharma, A. (2015). *Doctrine of Separation of Powers in Indian Context*. Journal of Constitutional Law and Governance, 3(1), 45–59

¹¹ Mehta, P. B. (2019). *The Burden of Democracy*. Penguin India.

The activist-like role by the Indian judiciary in the spheres such as environmental protection (e.g., *MC Mehta v. Union of India*). However, the growing dimension of its interventions needs the existence of means to adjust the judicial activism and the institutional responsibility. The openness of the judicial appointments, ethics and internal checks are also being considered more as a requirement to sustain the credibility of independence of judiciary (Gupta, 2020)¹².

Consequently, as much as the judiciary needs to be aggressive in enforcing the Constitution, it would be wise to keep within limits of its mandate; otherwise, this will either destroy the balance of powers or face the wrath of the political establishment.

6. Contemporary Challenges and Criticisms

Although Indian judiciary has been critical in securing and preserving the ideals of the constitution, it has several recent issues that have cast doubt on its effectiveness, fairness and responsibility. Such issues, which may include judicial delays and pendency of cases, absence of transparency and criticism of overreach, have far reaching effects to its credibility and operation within a democratic society.

Case Backlog and Delayed Justice

This is one of the greatest problems, as there is a very high number of the cases awaiting to be considered in Indian courts. By early

2025, there have been over 5 crores pending judgments at different tiers of the judiciary (National Judicial Data Grid, 2025). Delays in delivering justice do not only shake the confidence of people with the nationally built justice mechanism but also violate the guarantee of delivery of justice within a reasonable time as envisaged under the Article 21 (Right to Life and Personal Liberty), which also extends to the right to speedy trial (*Hussainara Khatoon v. Bihar State*, 1979).

This is an inefficient system caused by lack of judges, poor infrastructure including insufficient court buildings, and other medieval rules of procedure. Regardless of setting up fast-track courts/tribunals, the gap between the inflow and disposal of cases is significant (Kumar, 2023)¹³.

Judicial Overreach and Activism

The common question is one of law to which is referred the overreach of the judiciary which is seen to overstep the powers of the legislature or the executive. In supporting the cause of social justice, judicial activism has proved to be necessary; however, courts passing policy decisions or getting them involved in administrative matters, where they lack any direct constitutional mandate, raise questions related to the principle of the separation of power (Mehta, 2021)¹⁴.

Also ignored was the Vishaka Guidelines (1997), which was issued in lieu of legislation on sexual harassment as it was considered to leap frog the process of

¹² Gupta, R. (2020). *Judicial Accountability and Reforms in India: Issues and Perspectives*. Indian Bar Review, 47(2), 67–88.

¹³ Kumar, N. (2023). *Judicial Delays and Pendency in India: Causes and Remedies*. Indian Journal of Law and Justice, 14(1), 32–47.

¹⁴ Mehta, P. B. (2021). *Between Activism and Restraint: Rethinking Judicial Power in India*. Constitutional Studies Review, 8(2), 14–29.

legislation. In the same way, orders to regulate the environment, educational policies, or even controlling COVID-19 triggered the discussion of whether judiciary wings were adopting the role of super-legislature.

Opacity in Appointments and the Collegium System

The system of judicial appointments, especially the collegium system, has become a subject of criticism and the absence of transparency and institutional accountability. It works in the collegium with the role of the senior judges proposing judicial appointments and the collegium lacks published standards so this has been accused of nepotism and favoritism (Bhushan, 2022)¹⁵. Although the National Judicial Appointments Commission (NJAC) was passed as a constitutional amendment in 2015 to make the appointment process better, the Supreme Court removed it on the basis that it interfered with judicial independence (Supreme Court Advocates-on-Record Association v. (Union of India, 2015). Although this decision maintains autonomy, it did not comply with the need of openness and faith of the system in the public.

Ethical Concerns and Lack of Accountability

Cases of suspected corruption, conflict of interest as well as the absence of formal code of conduct of judges, have on rare occasions been reported in the public media. As there is no severe system of accountability, the branch of the judiciary is mostly free of any

outside checks unlike other bodies such as the legislature or the executive (Chakraborty, 2023)¹⁶.

Further, being rare, impeachment proceedings, as presented in the Article 124(4), are almost impossible to obtain the removal of the judges even in case of serious misconduct. Although the internal machineries such as in-house procedures are existent, they hardly become transparent and conclusive.

7. Suggestions and Way Forward

To maintain the legitimacy and effectiveness, the Indian judiciary needs to overcome institutional and systematic problems but also strengthen its base contribution with relevance as the protector of the Constitution. The judiciary should also adopt a multi-pronged approach by synchronizing judicial infrastructure, judicial transparency, and effective accountability in order to maintain a constitutional democracy and dispense justice in time.

1. Strengthening Judicial Infrastructure and Reducing Pendency

The government should also invest in the increase of judicial capacity, not only on the amount of judges but even also on the number of buildings. According to the Law Commission recommendations (2014), India requires at least 50 judges per one million, moreover, India has less than 20. The efficiency can be boosted by increasing the permitted strength of judges, digitalization of the court, and automating systems of case management (Singh & Rao, 2022)¹⁷. Also,

¹⁵ Bhushan, P. (2022). *Judiciary on Trial: Transparency, Accountability and Reforms*. Gyan Publishing House.

¹⁶ Chakraborty, S. (2023). *Ethics and Accountability in the Indian Judiciary: Institutional Challenges*. Law and Governance Review, 11(1), 58–71.

¹⁷ Singh, R., & Rao, A. (2022). *Judicial Reforms in India: Infrastructure, Pendency and Innovation*. National Law Review, 10(3), 25–40.

formulating the method of utilizing the Alternative Dispute Resolution (ADR) mechanisms like mediation and arbitration in a more organizational manner can ease the workload on the ordinary courts and further the occurrence of a quicker decision of the civil and commercial cases.

2. Reforming the Judicial Appointments Process

The **collegium system**, while protecting judicial independence, must evolve into a more transparent and accountable mechanism. Institutionalizing a **Judicial Appointments Commission** with clear eligibility criteria, public disclosures, and external oversight—without compromising judicial autonomy—would strengthen public confidence in the judiciary (Narain, 2023)¹⁸. Judicial reforms must also include **diversity in appointments**, ensuring that the bench reflects India's social, regional, and gender diversity to foster inclusive justice.

3. Enhancing Judicial Accountability and Ethics

Ethical standards must be maintained without posing a challenge to judicial independence and a sound and independent judicial complaints mechanism is necessary. The formation of an autonomous Judicial Complaint Commission (IJCC) comprising of retired judges and legal experts and members of the population could lead to the objective examination of any evidence supporting allegations of misconduct (Sen, 2021)¹⁹. They should also be expected to

publish a code of conduct governing their behaviour, and asset declarations made on a yearly basis should be compulsory, though with adequate protection in terms of confidentiality.

4. Promoting Legal Literacy and Access to Justice

There should be parallel steps in enhancing legal awareness among the citizens especially the marginal and rural sections in developing judicial reforms. That legal literacy camps, mobile courts, and paralegal trainings should be planned in cooperation with state legal aid authority, law schools, and civil society organizations (Das, 2020)²⁰. Access to justice would also require that the legal services be made available to the vulnerable groups, also in reference to Article 39A of the Constitution.

5. Encouraging Judicial Restraint and Constitutional Patriotism

While judicial activism has been a source of progressive change, it must be tempered with constitutional humility. Courts must respect the domain-specific expertise of the legislature and executive, intervening only when constitutional violations are evident. Adherence to reasoned judgments, **limited use of suo motu powers**, and periodic judicial training on emerging socio-legal issues can reinforce balanced judicial conduct.

Research Methodology

This paper adopts a doctrinal and qualitative research methodology, relying on the interpretation of constitutional provisions,

¹⁸ Narain, V. (2023). *Rethinking Collegium: The Case for a Transparent Judicial Appointments Commission*. Constitutional Governance Journal, 6(2), 59–73.

¹⁹ Sen, A. (2021). *Judicial Ethics and Accountability in India: Principles and Practice*. Indian Bar Review, 48(1), 92–105.

²⁰ Das, P. (2020). *Legal Literacy and Access to Justice: Grassroots Interventions in India*. Journal of Law and Society, 7(2), 41–57.

landmark judicial pronouncements, and scholarly literature. Sources include:

- Primary sources: Constitution of India, Supreme Court and High Court decisions.
- Secondary sources: Books, journals, reports, and commentaries. The approach is analytical, aimed at understanding and critiquing the evolving role of the judiciary within the Indian constitutional framework.

Scope of the study

The scope of this study is limited to the analysis of constitutional provisions related to the judiciary and landmark decisions of the higher judiciary (Supreme Court and High Courts) in India. The study focuses on judicial actions that have influenced constitutional governance, especially in the domains of fundamental rights, rule of law, and separation of powers.

Limitation of the study

- The study is limited to doctrinal legal analysis and does not include empirical data collection.
- It excludes a micro-level analysis of lower courts or district judiciary.
- International comparisons are limited and used only for conceptual clarity.
- The paper focuses on post-independence judicial developments in India, particularly from 1950 to 2025.

8. Conclusion

The Indian judiciary plays a significant role as being a pillar within the constitutional setup of India and has a sacred responsibility of ensuring the rule of law and maintenance of the state of balance of power and

safeguarding the rights of individuals. Being the interpreter and keeper of Constitution, it no longer remains an orthodox adjudicator, but it is actively an institution that influences the general discussion, social reforms, and it neutralizes the excessiveness of institutions. The judicial review, constitutional interpretation, writ jurisdiction and some other such mechanisms have guaranteed the judiciary that they can work effectively to maintain constitutional provisions constantly above all others, even when confronted by the forces of majoritarian or political opinion. The judicial interpretations that have really transformed the life of the marginalized are the landmark judgments which provided the right of expansion to the fundamental rights and provided justice to the marginalized in the society. Nonetheless, the courts in the current scenario are faced with severe problems, and these include pendency and delay, to transparency and overreach. It has to be independent, effective and accountable in order to be credible. To retain its crucial place in the constitution, these problems have to be considered and checked with the help of effective changes in judicial infrastructure, appointment procedure and ethical regulation.

The judicial system in India, in the true sense, is not a configuration that stands upright in the framework of governance but it is a backbone of the democratic and constitutional spirit of India. Its resilience, neutrality and its dedication to justice are very necessary in preserving the Constitution and making it a living document which promotes and maintains liberty, equality and justice to all.