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ROLE OF THE JUDICIARY IN INDIAN DEMOCRACY: A CONSTITUTIONAL ANALYSIS

~ *Alena Mary Jacob*

ABSTRACT

In a constitutional democracy such as India, the judiciary plays a role beyond just interpretation of laws. It also acts as an active guardian of justice, freedom, and constitutional decency. This paper examines the constitutional status and democratic role of the Indian judiciary through judicial review, landmark judicial case laws, and judicial activism. It examines today's institutional issues faced by the judiciary, including judicial overextension, delays in the delivering of justice, accountability, and judicial appointments, while also evaluating how the judiciary has evolved its role in supporting democratic governance and rule of law.

KEYWORDS

Judiciary, law, constitutional, Indian Democracy, Judicial Review, Fundamental Rights, Judicial Activism, Rule of Law, Constitutional Governance, Judicial Accountability, Separation of Powers, transparency, justice, article.

1. INTRODUCTION

Judiciary is one of the three important pillars of democracy, as supported by the Constitution and administers justice, equality and liberty to its people. It is able to do this appropriately because, "*Justice consists not in being neutral between right and wrong, but in finding out the right and upholding it wherever found, against the wrong*" as stated by *Theodore Roosevelt*. It protects rule of the rights by providing remedies in case of violation of human rights. An efficient and smooth functioning of a judiciary is one of the major aspects for a democratic state. In case of encroachment of individual rights, addressing of persistent social issues, addressing the marginalized sections of society and the like are prime examples of Judicial

functions. The principle of separation of powers and accountability in governance is maintained by a system of checks and balances, exercised by the Judiciary.

1.1. Statement of the Problem

The importance of judiciary in a democratic state cannot be ignored. It is one of the three most important 'pillars of governance' with the legislature and the executive. In India, the Constitution has established the judiciary as the ultimate protector of the supremacy of the Constitution, to interpret the law, safeguard Fundamental Rights and to dispense justice for the general good. Principle of separation of powers empower judiciary to act independently and create a system of 'checks and balances'. The Indian Judiciary has a crucial role in preserve the rule of law and constitutional morality through the event of judicial review and judicial interpretation. The judiciary has been a champion of extending the scope of rights and liberties through a series of progressive judgments, PILs and activist interventions. The decisions taken by the Supreme Court as well as the High Courts have had a profound impact on the constitutional governance, social justice and democratic accountability. However, the judiciary still remains as the most crucial institution to preserve and protect the values of democracy and the Constitution.

1.2. Background of the Study

In order to understand the importance of an efficient judiciary for a robust democracy, the study helps in emphasizing the need for reforms to strengthen its role. Despite its constitutional positioning, the Indian judiciary is often faced with a number of challenges affecting its functioning, accountability and the confidence it inspires. The problems of pendency of cases, lack of judicial infrastructure, lack of transparency in judicial appointments, delay of cases and low accountability of judiciary is constantly increasing. Wider extending horizon of judicial activism, has brought about a few disagreements on the question of how far courts should interfere with the other organs, whether the courts are intruding upon the legislature and the executive. These questions highlight the need for a critical evaluation of the situation of judiciary constitutionally and its functions in promoting democracy, safeguarding rights and rule of law in the country.

1.3. Research Objectives

This research paper aims to study the following objectives in the context of Indian Judiciary:

- To investigate how Judiciary operates using constitutional framework.

- To examine the process of Judicial Review in India.
- To evaluate the influence of landmark judgments made by judiciary on Indian society.
- To analyze Judiciary's activism and Judiciary's accountability.

1.4. Research Questions

The study seeks to address the following questions:

1. What is the constitutional role of the judiciary in Indian democracy?
2. How does judicial review strengthen democratic governance?
3. How has the judiciary protected constitutional rights of citizens?
4. Does judicial activism strengthen or weaken democracy?

1.5. Scope & Methodology of the Study

The present study deals mainly with constitutional roles of judiciary in India, in concerned with Judiciary review, Fundamental Rights, Judicial activism, Landmark formal judicial decisions and Contemporary institutional challenges for the judiciary. The scope of the study is confined to Indian judiciary and its links with constitutional governance and democratic functioning.

In the study, a doctrinal and an analytical research-based approach has been used for the empirical analysis and for the data analysis, secondary sources has been used. The data has been gathered from constitutional provisions books journal articles, case laws, government reports, research papers and internet sources. Judicial orders and core constitutional doctrines have also been studied for the empirical analysis.

2. LITERATURE REVIEW

Many researchers have researched and written about the judiciary's role in maintaining the Constitution, ensuring proper governance and protecting people's rights in India. *Granville Austin* points out in his book "*The Indian Constitution: The Cornerstone of a Nation*" and "*Working A Democratic Constitution – A History of the Indian* " that the Indian judiciary is one of the earliest structures to support constitutional morals and to achieve a balance between many democratic elements that India embraces. He also states that the judiciary plays an extraordinary role in protecting justice, freedom, equality and the rule of law as articulated by the Constitution of India. *D.D. Basu* has also commented on these topics in his book, "*An Introduction to The Constitution of India*", which examines the various aspects of the Indian judiciary including the judicial review process, the division of powers and the idea of separation

of powers which is crucial in maintaining Constitutional Governance. In addition to these individuals, the editors of “*The Oxford Handbook of the Indian Constitution*” - Sujit Choudhry, Madhav Khosla and Pratap Bhanu Mehta discussed the role of the judicial branch of the Indian government, in relation to protecting democratic ideals and holding public institutions accountable for their behaviors. Three main themes emerge from this analysis of the literature on the role of the judiciary in safeguarding the Constitution via judicial review, specifically the fundamental rights and judicial review. D.D. Basu discussed how Articles 32 and 226 of the Indian Constitution establish the provisions for the judiciary, to preserve individual freedoms and uphold the rights protected by the Constitution. The findings of the literature on the role of judicial review as a mechanism for judging the constitutionality of arbitrary action by the legislative and executive branches of government help demonstrate that judicial review is a powerful means to promote the supremacy of the Constitution. Various authors have contributed to this literature by analyzing the expansion of judicial interpretation through public interest litigation, progressive interpretation of fundamental rights, and the activism of the judiciary in the promotion of social justice in India.¹ Recent academic and policy-oriented studies have centered on the systemic challenges faced by the Indian judiciary, including issues of judicial activism, overreach, accountability, and institutional capacity. Many periodicals and journals have published critical assessments of the tension between judicial interventionism and separation of powers principles. These studies help assess whether judicial activism helps or harms constitutional democracy by resulting into Judicial overreach into legislative or executive functions. A significant amount of literature is available on the judicial independence, judicial review, constitutional interpretation, and the concept of judicial activism. The judiciary's role in a democracy, landmark judgements, and the contemporary institutional challenges facing the judiciary is seen as an integrated whole. As a result, the present research paper will integrate constitutional provisions, judicial reviews, landmark judicial decisions, judicial activism, and current challenges to the judiciary to provide an analysis of how the judiciary operates in the context of Indian democracy.

3. CONSTITUTIONAL POSITION OF JUDICIARY IN INDIA

The Constituent Assembly declares its firm and solemn resolve to proclaim India as an Independent Sovereign Republic and to draw up for her future governance, a constitution. Wherein all power and authority of the sovereign independent India, its constituent parts, organs of the government, are derived from the people, and shall be guaranteed and secured to

¹ D.D. Basu, *Introduction to the Constitution of India* (27th ed. 2024).

all the people of India: justice, social, economic, and political; equality of status, of opportunity and before the law; freedom of thought, expression, belief, faith, worship, vocation, association, action, subject to law and public morality.² The promise for socio-economic and political justice to citizens made by the Constitution of India cannot condone policies that turn a blind eye to deliberate infliction of misery on large segments of our population. The Judiciary is the custodian of the Constitution, which is paramount in a democracy. Through elected representatives, democracy enables citizens to take part in the decision-making process. The three main branches of the government are separated by the separation of powers. Wherein the Legislature, enacts laws on behalf of the people, the Executive branch, is headed by a president or prime minister; and the Judiciary, interprets and administers laws to protect rights and ensure constitutional conformity. As a result, power concentration is avoided by this division. The legislature and executive branch are interconnected in parliamentary systems such as India. In order to maintain a balanced democratic system, the judiciary serves as an essential check, defending the Rule of Law and guarding against abuses of authority.³

3.1. Constitutional Framework & Independence of Judiciary

The Constituent Assembly's aimed to establish an independent Judiciary, with the power of Judicial review to uphold the Constitution. The members' interest centered on the Supreme Court, for it would be the final authority on the interpretation of the Constitution. The Constitution of India provides a framework for a unified judicial system consisting of the Supreme Court and High Courts. The judges are appointed by the President and enjoy a fixed tenure, fixed salaries, and constitutional protection to ensure judicial independence. The Supreme Court exercises original and appellate jurisdiction, and advisory jurisdiction. The High Court exercises writ jurisdiction for the enforcement of fundamental rights and other legal purposes. Independence of judicial system is an essential element of right to due process of law, the supremacy of law of the land, constitution and democracy as a whole. Judiciary holds the upmost position in the country. History is a witness that independent judicial system faces many obstacles in context to appointment of judges and transfer of cases from one court to another court. Judicial system has always vouched for the independent judiciary. An independent judiciary is vital and one of the most essential features of our Indian Constitution. Many legal jurists and court judges have vouched for an independent judiciary which is a basic

² Sujit Choudhry, Madhav Khosla & Pratap Bhanu Mehta eds., *The Oxford Handbook of the Indian Constitution* (Oxford Univ. Press 2016).

³ D.D. Basu, *Introduction to the Constitution of India* Ch. 3 (27th ed. 2024).

need for smooth functioning of constitutionalism and persistence of rule of law. In short, an Independent Judiciary acts as a fuel for Constitutionalism.⁴

SL. No	Articles	Description
1.	Article 50	Separation of judiciary from executive.
2.	Article 124	Establishment and constitution of Supreme Court.
3.	Article 136	Special leave to appeal by the Supreme Court.
4.	Article 141	Law declared by Supreme Court to be binding on all courts.
5.	Article 142	Enforcement of decrees and orders of Supreme Court and orders as to discovery, etc.
6.	Article 214	High Courts for States.

Table 1.1 Constitutional Provisions that ensure Judicial Independence in India

Article 50 of the Indian Constitutions is one of the significant articles, as Judiciary consistently regarded it as a vital decree for preserving judicial independence by mandating separation from the Executive.⁵ In the *Union of India v. Sankalchand Himatlal Sheth (1977)*, Justice Y.V. Chandrachud emphasized that by incorporating Article 50, the Constituent Assembly gave tangible form to the ideal of an independent judiciary, specifically through its separation from the executive in public services. Granville Austin in *'The Constitution: Cornerstone of a Nation'* describes Article 50 of the Constitution as 'the conscience of the Constitution'. Independence of Courts from the Executive and Legislature is fundamental to the rule of law. Nonetheless, the Indian Constitution does not provide any express provision for '*Separation of Higher Judiciary from Executive or Legislature*' like the Constitution of Bangladesh, Pakistan and West Germany. Article 50, as enshrined in Part IV of the Indian Constitution, provides that "*the State shall take steps to separate the Judiciary from the Executive in the public services of the State.*"⁶ Article 124(1) provides that there shall be a Supreme Court of India consisting of the Chief Justice of India and other judges as prescribed by Parliament. At present, the sanctioned strength of the Supreme Court is 34 judges including the Chief Justice of India. Article 214 of the Constitution provides the provisions of the establishment of a high court for each state. Article 142 provides a unique power to the Supreme Court, to do "complete justice" between the parties, when a law or statute may not provide a remedy i.e. it helps to effectively tackle through the existing provisions of law. It provides for the "*Enforcement of decrees and orders*

⁴ D.D. Basu, *Introduction to the Constitution of India* Ch. 4 (27th ed. 2024).

⁵ *The Constitution of India* (India Code)

⁶ Granville Austin, *The Indian Constitution: Cornerstone of a Nation* (Oxford Univ. Press 1966).

of the Supreme Court and orders as to discovery". Article 141 of Indian Constitution affirms the Supreme Court's position as the apex judicial authority in India, by mandating that its pronouncements are binding on all subordinate courts, it reinforces the doctrine of precedent and the hierarchical structure of the judiciary.⁷

3.2. Judiciary as Guardian of the Constitution

The Judiciary was to be an arm of the social revolution, upholding the equality that Indians had longed for during colonial days, but had not gained—not simply because the regime was colonial, and perforce repressive, but largely because the British had feared that social change would endanger their rule. The courts were idealized, considering as guardians of the Constitution, they act as an expression of the new law created by Indians for Indians. During the British period, despite the presence of Indians in government, Indians had limited role over law-making. Indians had neither law nor courts of their own, and both the courts and the law had been designed to meet the needs of the colonial power. Under the Constitution, all this would be changed. The courts were widely considered one of the most tangible pieces of evidence of independence. The members of the Constituent Assembly envisaged the Judiciary as a bastion of rights and of justice. The Assembly intended to keep the Judiciary out of any political influence. Judiciary ensures that the legislature and executive works to interpret and defend the Constitution. It can reinforce the rule of law through judicial review by invalidating legislation which breaches fundamental rules of the constitution. In the recent decades the judiciary has performed a number of much-needed functions through PILs and Judicial Activism. This ensures the judiciary's active involvement in affairs of the society and in fostering the rule of social justice by ensuring to hear the voice of the marginalized sections of the society.

4. ROLE OF THE JUDICIARY IN INDIAN DEMOCRACY

Indian Democracy works on the model of the people, for the people and by the people and. The Preamble summarizes the aims and objectives of the Constitution. The picture of a "democratic republic" which the Preamble envisages, is democratic not only from the *political* but also from the *social* standpoint. In other words, it envisages not only a democratic form of government but also a democratic society infused with the spirit of "*justice, liberty, equality, and fraternity*". The Judiciary plays an integral part of the parliamentary form of the Indian government. Decentralization of powers of judiciary was initiated with the independence of

⁷ Article 141 of Indian Constitution, Vajiram & Ravi <https://vajiramandravi.com/current-affairs/article-141-of-indian-constitution/> (last visited May 22, 2026).

India in 1947. Constitution of India, adopted in 1950, laid the foundation for independent judiciary as an essential element of democracy. The Supreme Court was instituted as apex body of judiciary, ensuring the separation of powers and judicial independence.

4.1 Judicial Review & the Safeguarding of Fundamental Rights

Judiciary has evolved into a powerful and an independent institution, and remains accessible, efficient, and equitable for all citizens. It is the guardian of individual rights in England, but there is a fundamental difference. In England, the courts have the fullest power to protect the individual against executive tyranny, the courts are powerless as against legislative aggression upon individual rights. The Constitution of India has embodied a number of Fundamental Rights in Part III of the Constitution, which are to act as limitations not only upon the powers of the executive but also upon the powers of the legislature. As the word '*fundamental*' suggests, under some constitutions, fundamental rights are immune from constitutional amendment, they are conferred a special sanctity as compared with other provisions of the constitution, but this principle has been rejected by the Indian Constitution as it stands interpreted by amendments of the constitution themselves and judicial decisions. Article 32 is often cited as the heart and soul of the Indian Constitution, guarantees the right to constitutional remedies. It empowers the Supreme Court to issue writs and the Parliament to confer the power to issue writs to other courts. Article 226 empowers the High Court to issue any person or authority, including in appropriate case any Government, directions, orders or writs, for the enforcement of any of the rights conferred by Part III and for "any other purpose." In the case of any emergency, Article 32 can be suspended, whereas Article 226 cannot be suspended in any situation. The essence of judiciary lies in the rule of law, i.e. the supremacy of law, which can be ensured by Articles 32 and 226 of the Indian Constitution respectively.⁸

4.2 Judicial Reforms & Constitutional Governance

The Judiciary in India forms an integral part of the country's democracy and has such an encompassing, complex history to put itself in perspective. It is the aggregation of myriad traditions, past and present, colonial and post-independence, a legal system that factors in the nuances of a diverse, relatively young nation, making it one of the most intriguing and exciting for the layman and academician alike. While, the last few decades have seen many administrative reforms and micro-innovations in India's long Judiciary system, it has also faced

⁸ Granville Austin, *The Indian Constitution: Cornerstone of a Nation* Ch. 7 (Oxford Univ. Press 1966).

some pressing challenges. The Indian Judiciary has incorporated advanced digital technology like e-courts, virtual hearings, people-friendly reforms like online removal of cases, online filing of suits, AI-Powered automated transcription systems, etc. During the pandemic period, creation of new tribunals and alternate dispute resolution (ADR) mechanisms, measures for increased transparency were initiated (like live-streaming on constitutional court hearings, digitization of judgments, etc.).⁹ All of these endeavors have stemmed from a will to reform its inherently colonial antiquated system, to address contemporary needs. The year 2023 has witnessed a momentous reform in decolonized, avant-garde and functional Indian criminal justice system with passage of three new legislations i.e. Bharatiya Nyaya Sanhita (BNS), Bharatiya Nagarik Suraksha Sanhita (BNSS) and Bharatiya Sakshya Adhinyam (BSA), lifting off the colonial Indian Penal Code of 1860, Criminal Procedure Code of 1973 and Indian Evidence Act of 1872, respectively. These legislations have focused on justice as citizen-centric, inclined towards technology and time bound, a sign of the time of contemporary-day democracy. The new legislations focus on the forensic investigation to take the process forward by highlighting electronic evidence, video recorded statement, digital summons, and e-FIRs. It also redefines crimes like terrorism, mob lynching, cyber offences and bring in innovative new concepts like community service and victim involvement in case procedures. Judicial intervention is one of the most dominant discretionary powers provided in the Indian constitution as conferred under Articles 136 & 226 where both the Articles grant discretionary powers of Judicial Interventions. Article 136 grants the Supreme Court of India the discretionary power to hear appeals, if no further appeal is possible or no other remedy is provided. Article 226 empowers the High Courts to issue certain writs for enforcement of Fundamental Rights or for any other purpose. The List of writs includes, habeas corpus, mandamus, prohibition, quo warranto and certiorari. Unlike Article 136, the writs provided under article 226 can be issued even if there is no jurisdictional limitation based on other appeal processes. The judgment of the *Madras High Court in The Management of Western India Match Company Ltd. Madras v. The Industrial Tribunal, Madras, And Another* is an important case to understand the power of discretion conferred by Articles 136 and 226. The

⁹ Press Information Bureau, Government of India, *Press Release* (Feb. 2025) <https://www.pib.gov.in/PressReleasePage.aspx?PRID=2106239®=48&lang=2> (last visited May 22, 2026).

Supreme Court's judgment is predicated on the doctrine that the availability or otherwise of an alternative remedy does not afford a ground for refusing to exercise Article 226 jurisdiction.¹⁰

4.3 Landmark Judicial Decisions

The Constitution enshrined the principle of judicial independence, guaranteeing that the judiciary could operate without undue influence from the executive or legislative branches. This separation of powers ensures that the judiciary can act as a check on the other branches of government, upholding the rule of law and protecting citizens' rights. In the historic case of ***Kesavananda Bharati vs. State of Kerala (1973)***, the Supreme Court upheld that the essential features of the Constitution cannot be altered by the Parliament. The struggle for supremacy culminated in its landmark ruling, possibly the most famous case in India's constitutional history. A 13-judge bench, the largest ever in the Supreme Court, in 11 separate opinions running over 600 pages, introduced for the first time the "basic structure" doctrine, which essentially said that Parliament did not have the mandate to "alter the basic structure or framework of the Constitution." In ***1981, Waman Rao v Union of India*** held that amendments to the Constitution made on or after 24 April 1973, by which time the Ninth Schedule was amended from time to time by inclusion of various statutes, were open to challenge on the ground that they damage the basic or essential features of the Constitution.⁸² The key question whether the basic structure test would include judicial review of the Ninth Schedule laws of the touchstone of fundamental rights was considered exhaustively by a recent nine-judge decision of the Supreme Court.⁸³ The issue was answered in the affirmative. ***Vishaka vs. State of Rajasthan (1997)***, Established guidelines for prevention of sexual harassment at workplaces, leading to the enactment of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013. Despite the various reforms and historic landmark judgements, enhancing access to justice for marginalized communities still remains a priority. The judiciary needs to address systemic barriers, such as cost, language, and geographical location, to ensure that all citizens have equal access to the justice system. The court held that the court has the power under Article 32 to lay down such guidelines for affective enforcement of fundamental rights of working women at their work places and declared that this would be treated as the law declared by the Supreme Court under Article 141 of the constitution.

¹⁰ *Interplay Between Articles 136 and 226: Judicial Discretion in Adjudicating Industrial Tribunal Awards*, CaseMine <https://www.casemine.com/commentary/in/interplay-between-articles-136-and-226%3A-judicial-discretion-in-adjudicating-industrial-tribunal-awards/view> (last visited May 22, 2026).

5. CONTEMPORARY CHALLENGES IN THE INDIAN JUDICIARY

The role of Indian judiciary has been in upholding the rule of law and in protecting the liberty of the people. There are several challenges to the Indian judiciary that has hindered in delivering its role in an effective manner. These challenges of efficiency, consistency, effectiveness, strength of the Indian judiciary and public opinion of the Indian judiciary are various. One of the most significant challenges which Indian judiciary faced was the overwhelming number of vacancies, which resulted in a lower ratio of judges to population.¹¹ Indian judiciary has been vital in ensuring the fate of the country's democracy, and providing justice to the people. Judicial delays, lack of special courts, underdeveloped infrastructure and judge shortages are some of the most pressing issues that are still felt in the functioning of the system. These challenges have a negative impact on public alienation towards the judiciary. Judicial activism from time-to-time lead to judicial and adventurism.¹²

5.1 Judicial Activism & Judicial Overreach

Judicial activism refers to the idea that judges should actively interpret and shape the law rather than simply applying it as it is written. This can involve interpreting the law in a way that expands or limits certain rights or protections or that resolves legal disputes in ways that are not explicitly provided for by the law. The legitimacy of an active judiciary is closely connected with the Constitutional limits enshrined in the Constitution which are based on a broad division of powers among the three organs of the state. In this set up, each organ is earmarked with certain specific functions any usurpation of such earmarked functions by other organs raises certain serious questions relating to the harmonious working of the Constitution. For these reasons, the primary objection that outs the concept of Judicial Activism is the doctrine of Separation of Powers. The judiciary faces longstanding challenges such as case backlogs, language barriers, and the need for digital modernization. AI-powered technologies—including Machine Learning (ML), Natural Language Processing (NLP), Optical Character Recognition (OCR), and Predictive Analytics are now being leveraged to automate administrative tasks, improve case tracking, and enhance crime prevention. Initiatives like e-Courts Project Phase III, AI-assisted legal translation, predictive policing, and AI-driven legal

¹¹ Granville Austin, *Working a Democratic Constitution: A History of the Indian Experience* (Oxford Univ. Press 1999).

¹² *Calling Out the Criticism of the Indian Judiciary*, Vision IAS (Oct. 7, 2025). <https://visionias.in/current-affairs/upsc-daily-news-summary/article/2025-10-07/the-hindu/polity-and-governance/calling-out-the-criticism-of-the-indian-judiciary> (last visited May 22, 2026).

chatbots are reshaping the legal landscape, making processes faster, smarter, and more transparent. While the adoption of AI presents challenges, particularly in data security, ethical governance, and legal adaptation, its potential to strengthen India's justice system is unparalleled. Judicial overreach occurs when the courts over step its boundaries. Thereby, resulting in a significant breach of the idea of separation of powers and can undermine the balance of power among the branches of government. This can lead to a breakdown of the checks and balances essential to maintaining a healthy democracy. ***Dr. Manmohan Singh said "The line between judicial activism and judicial overreach is a thin one...A takeover of the functions of another organ may become a case of over-reach."*** The Supreme Court, which had taken over legislative and executive responsibilities, was accused of judicial overreach by the then Prime Minister. There have been several occasions in which the courts have clearly overstepped their bounds and ordered the administration to carry out its responsibilities. Judicial activism has periodically resulted in judicial and adventurism. Judicial overreach has a detrimental influence on the constitutional foundation, which is separation of powers.¹³

5.2 Delay and Pendency of Cases

Judicial delays pose a significant challenge to the Indian courts. The backlog of ongoing cases and overworked courts are blamed for the delay in justice. Justice Ranjan Gogoi emphasized the problem of case pending and delays. About 2.68 crore cases are still waiting in India's district courts, while 44 lakh cases are in the country's high courts. Without assistance, the judicial backlog, which includes criminal appeals from the Delhi High judicial, would take generations to resolve. Additionally, the judiciary has infrastructural shortages and vacancies. The system is severely understaffed, with 250 of the 900 High Court judge posts unfilled and 3,000 judges lacking in other courts. Compared to other countries, such the USA, which has 130 judges per million, India's judge-to-population ratio of 15.4 judges per million is insignificant. Delays and inefficiencies are made worse by these gaps. In the Indian legal system, outdated legislation and ineffective procedural impediments make it difficult for the judiciary to operate effectively. There are several laws that have not been repealed or amended, resulting in unnecessary complications and obstacles. Furthermore, the intricacies of procedures can lead to the realization of substantive justice being subordinated to technicalities. Modernizing laws and streamlining legal processes are essential steps in reducing court workloads and enhancing judicial effectiveness.

¹³ *Judicial Accountability and Independence in India*, Int'l J. for Rsch. Trends & Innovation (IJRTI)

5.3 Collegium System and Judicial Appointments

In the mid-1980s, the government intended to appoint the chief justice of each high court from outside its jurisdiction. Law Minister Shiv Shankar tended to confirm this when he told the Lok Sabha that, although the government had no such policy, it believed *'the proposal merits favorable consideration in the interests of sound judicial administration and also the independence of the judiciary.'* Government officials at this time also were thinking in terms of one-third of all judges on a High Court coming from outside of the state, although this would emerge as a policy only in the summer of 1981. Judges could come from out of the state by initial appointment as well as by transfer. Public reactions, particularly to talk of transferring judges, ranged from approval to dire predictions. The ***First Judges Case (1981)*** held that in the appointment of a judge of the SC or the HC, the word "consultation" in Article 124(2) and in Article 217 of the Constitution does not mean "concurrence". It gave the executive primacy over the judiciary in judicial appointments. The Bar Council of India opposed one-third the number of judges coming from out of state as potentially dangerous to judicial independence. The Indian Express agreed, saying that *'the public would not trust the executive with unrestricted powers to transfer High Court judges against their wishes'*. In the ***Second Judges Case (1993)***, The Supreme Court overruled the First Judges Case and held that "consultation" in judicial appointments actually meant concurrence. It was ruled that the Chief Justice of India's advice on appointing judges is binding on the President. Before giving this advice, the CJI must consult their two senior-most colleagues. This judgment led to the creation of the Collegium System, giving primacy to the judiciary in the appointment of judges. The Supreme Court expanded the Collegium to include the Chief Justice of India (CJI) and the 4 most senior judges of the court after the CJI, in ***Third Judges Case (1998)***. The High Court Collegium includes the Chief Justice of the High Court and two senior-most High Court judges. The government can raise objections, but if Collegium reiterates, appointments are binding. A recent article published in *The Deccan Herald* stated that, The Supreme Court collegium has taken a "policy decision" that a judge, who is proposed to take over the high court as its chief justice, may be transferred well in advance, preferably two months before the vacancy arises. The collegium, headed by *Chief Justice of India Surya Kant*, said the decision was taken so that the judge, in the meantime, becomes well conversant with the affairs of that high court and assumes charge of the office of the chief justice on the retirement of the incumbent chief justice. "The collegium has taken a policy decision that in order to strengthen the efficiency and quality of administration of justice, a judge who is proposed to take over the high court as its chief

justice may be transferred well in advance, preferably two months before the vacancy arises," said a statement uploaded on the apex court website.¹⁴ The appointment of judges to the Supreme Court and High Courts, follows the constitutional framework as per Articles 124 and 217 in India. The President has the power to appoint judges in consultation with constitutional authorities such as the Chief Justice of India, Governors, and Chief Justices of High Courts. Articles 126, 127, and 128 helps in ensuring the continuous functioning and efficiency of the judiciary by providing the appointment of an acting Chief Justice, ad hoc judges, and retired judges. These provisions preserve judicial efficiency, independence, and institutional continuity with the Indian judiciary. The *National Judicial Appointments Commission (NJAC)* proposed constitutional body in India established by the 99th Constitutional Amendment Act, 2014, intended to replace the collegium system to create a more transparent process based on merit. However, the Supreme Court, in *Supreme Court Advocates-on-Record Association vs Union of India (commonly known as the Fourth Judges Case, 2015)*, struck down the 99th Constitutional Amendment and the NJAC, deeming them unconstitutional and a threat to judicial independence as they allowed greater executive involvement in judicial appointments. Judicial Appointments in India remain a contested arena between judicial independence and democratic accountability. The Collegium system, though criticized, remains a cornerstone of India's judicial independence.¹⁵

5.4 Judicial Accountability and Transparency

Accountability and transparency are still major issues. The credibility of the courts is called into question by claims of corruption and a lack of public trust. The lack of efficient case classification and management procedures exacerbates this problem by creating bottlenecks, especially in marriage conflicts and matters under Section 138 of the NI Act. Let's take a closer look at these problems. The Indian High Courts Act of 1861 further expanded the judicial system, creating High Courts that became pivotal in adjudicating civil, criminal, and constitutional matters. These High Courts served as intermediate courts of appeal, consolidating the judicial hierarchy and streamlining legal processes. This period marked a consolidation of legal administration under a unified structure that combined British legal principles with local practices. The Indian judiciary was restructured, with a more centralized

¹⁴ *Supreme Court collegium decides to transfer judges proposed to be CJs of High Courts well in advance*, Deccan Herald (Feb. 27, 2026) <https://www.deccanherald.com/india/supreme-court-collegium-decides-to-transfer-judges-proposed-to-be-cjs-of-high-courts-well-in-advance-3913791> (last visited May 22, 2026).

¹⁵ *Collegium System of Judicial Appointments in India*, Drishti IAS <https://www.drishtias.com/daily-updates/daily-news-analysis/collegium-system-of-judicial-appointments-in-india> (last visited May 22, 2026).

and hierarchical system emerging, reflecting the growing influence of English legal principles. Judicial accountability is in fact a corollary of the independence of the judiciary. Simply put, accountability refers to taking responsibilities for your actions and decisions. According to Article 235 of the Indian Constitution, for the 'control' of the High Court over the Subordinate Judiciary, it clearly indicates the provision for an effective mechanism to enforce accountability.¹⁶ Thus, entrustment of power over subordinate judiciary to the High Court preserves independence as it is neither accountable to the executive or the legislature. Transparency is facilitated through the process of accountability. The existing systems of accountability have failed, and the growing corruption is eating away the vitals of this branch of democracy. This lack of accountability has been best put forward by Pandit Jawaharlal Nehru in a diatribe, "*judges of the Supreme Court sit on ivory towers far removed from ordinary men and know nothing about them.*"

6. MAJOR FINDINGS AND SUGGESTIONS

This research paper finds that the Indian Judiciary is a participating vital Constitutional institution for safeguarding rights and rule of law in order to provide justice to a complex Indian society. Indian judiciary with the evolution of modernity continues to tackle the challenges and promoting towards progress with technological advancements through increased digitalization, and better facilities to improve judicial efficiency. Alternative dispute resolution (ADR) mechanisms and Lok Adalats should be encouraged to reduce the burdens on courts. In order to tackle pendency of cases, judicial vacancies must be filled promptly and speedy delivery of justice must be ensured. However, in India the Judiciary still grapples with massive pendency of cases, with more than five crore cases with all courts, lack of infrastructure and delay of delivery of justice, question of Judicial Appointments and contemporary role of cascading system, its transparency and executive interference, rising concern about judicial arbitrariness, judicial supremacy, judicial overreaching have given rise to ultimate introspections about the legitimacy of judiciary.

CONCLUSION

The Judicial system of India has been a part of the emerging administrative structure which has been adapting over the years through the influence of indigenous ethos of justice, the colonial influences and constitutional reforms. The historic beginning of judicial system also mentioned

¹⁶ Bibek Debroy & Laveesh Bhandari, *Judicial Accountability in India* (Ctr. for Civil Soc'y)

the importance of local authorities in administering justice. Panchayats, village councils and similar other community bodies were responsible for decision making and directing justice to the people within their jurisdiction.

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