
THE BAR AND BENCH RELATIONSHIP: HOW THE BAR PROTECTS THE BENCH AND HOW THE BENCH PROTECTS DEMOCRACY IN INDIA

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ABSTRACT

The relationship between the Bar and the Bench in India occupies a unique and often underappreciated place in the country's constitutional order. This paper examines that relationship across three broad dimensions: its constitutional foundations, the Bar's role in protecting judicial independence, and the judiciary's role in sustaining democratic governance. Drawing on constitutional provisions, landmark judgments, and significant historical episodes, the paper argues that the Bar and the Bench are not merely complementary institutions but mutually constitutive ones. Each depends on the other for legitimacy, effectiveness, and long-term survival.

The paper traces how provisions like Articles 50, 124, and 217 established the structural conditions for judicial independence, and how that independence was later tested, defended, and refined through cases like *Kesavananda Bharati*, *ADM Jabalpur*, and the *Judges' Cases*. It also examines how the judiciary, through constitutional review, fundamental rights jurisprudence, and electoral oversight, has actively protected democratic institutions from legislative and executive overreach.

The central argument is straightforward: democratic constitutionalism in India has endured not because of any single institution, but because of the ongoing, sometimes strained, but ultimately resilient relationship between a vigilant Bar and an independent Bench. That relationship, this paper suggests, remains one of India's most important and least celebrated democratic assets.

Chapter 1: Constitutional Foundation of Bar-Bench Relationship

1.1 Historical Context and Constitutional Provisions

The foundation of the Bar-Bench relationship in India is deeply rooted in the constitutional framework established by the founding fathers of the nation. The framers of the Indian Constitution, recognizing the critical importance of an independent judiciary, incorporated several provisions that would ensure the separation of powers and protect judicial independence from executive interference. The relationship between the Bar and the Bench emerged as a natural consequence of this constitutional design, where lawyers (as officers of the court), became the primary interface between citizens seeking justice and the judicial system tasked with delivering it.

Article 50 of the Indian Constitution,¹ though placed under the Directive Principles of State Policy² and therefore non-justiciable, explicitly mandates the separation of judiciary from executive in public services. This provision reflects the constitutional aspiration to maintain judicial independence by ensuring that judges operate free from administrative control or influence. The article states: “*The State shall take steps to separate the judiciary from the executive in the public services of the State.*” This fundamental principle underlies the entire Bar-Bench relationship framework, as it establishes the constitutional basis for an independent judiciary that can function without external pressures or interference.

The constitutional provisions regarding judicial appointments, as outlined in *Articles 124* and *217*, establish the framework within which the Bar and Bench interact in matters of judicial selection and elevation. *Article 124* deals with the appointment of Supreme Court judges, while *Article 217* addresses High Court appointments. These provisions, though later interpreted and modified through landmark Supreme Court judgments,³ originally envisaged a consultative process involving the Chief Justice of India, other senior judges, and the executive. The evolution of these provisions through judicial interpretation has significantly strengthened the role of the judiciary in its own governance, thereby reinforcing the protective role that the Bar

¹ Constitution of India, adopted 26 November 1949, entered into force 26 January 1950, as amended.

² *Id.* at Part IV, Articles 36–51.

³ See *S.P. Gupta v. Union of India*, (1982) 2 SCC 365; *Supreme Court Advocates-on-Record Association v. Union of India*, (1993) 4 SCC 441; *In re Special Reference No. 1 of 1998*, (1998) 7 SCC 739; and *Supreme Court Advocates-on-Record Association v. Union of India*, (2016) 5 SCC 1.

plays in supporting judicial independence.

1.2 The Doctrine of Separation of Powers in Indian Context

The Indian Constitution, while not explicitly incorporating a rigid separation of powers doctrine like the American system, embodies a sophisticated system of checks and balances that ensures no single organ of government becomes omnipotent.⁴ This system is particularly evident in the Bar-Bench relationship, where the legal profession serves as a crucial link between the judiciary and the citizenry while simultaneously acting as a guardian of judicial independence. The separation of powers in the Indian context is characterized by functional specialization coupled with institutional interdependence, creating a framework where each organ can check the excesses of others while maintaining its core independence.

The judiciary's role as the interpreter of the Constitution and the protector of fundamental rights is facilitated and enhanced by the Bar's advocacy and representation. This symbiotic relationship ensures that constitutional principles are not merely theoretical constructs but living realities that affect the daily lives of citizens. The Bar's role in presenting legal arguments, challenging unconstitutional laws, and advocating for judicial independence creates a dynamic environment where constitutional democracy can flourish. The Bench, in turn, provides the institutional framework within which these constitutional principles can be enforced and protected.

Articles 121 and *211* of the Constitution provide specific protections for judicial independence by prohibiting legislative discussion of judicial conduct except in cases of impeachment. These provisions reflect the constitutional commitment to maintaining judicial independence and highlight the protective role that constitutional design plays in insulating the judiciary from undue political pressure. The Bar's understanding and advocacy of these constitutional provisions ensures that they remain meaningful protections rather than mere textual commitments.

⁴ See, for instance, *Articles 32* and *226*, which empower the Supreme Court and High Courts to exercise judicial review through writ jurisdiction over legislative and executive action; *Articles 75* and *164*, which make the Council of Ministers collectively responsible to the Lok Sabha and State Legislative Assemblies, respectively; *Article 148*, which establishes the Comptroller and Auditor General to audit government finances; *Article 102*, which provides for disqualification of MPs; and the Basic Structure Doctrine in *Kesavananda Bharati v. State of Kerala*, (1973) 4 SCC 225, which limits Parliament's amending power.

Chapter 2: How the Bar Protects the Bench

2.1 Historical Precedents: The Emergency Period (1975-1977)

The infamous *ADM Jabalpur v. Shivkant Shukla* case (1976),⁵ commonly known as the Habeas Corpus case, stands as a stark reminder of what can happen when institutional protections fail. In this case, a four-judge majority of the Supreme Court held that during an Emergency, even the right to seek habeas corpus was suspended, meaning that persons could be detained without legal recourse. The majority judgment, delivered by Chief Justice A.N. Ray and Justices M.H. Beg, Y.V. Chandrachud, and P.N. Bhagwati, ruled that the government could detain anyone without legitimate reason during an Emergency, and courts had no authority to intervene.

However, Justice H.R. Khanna's solitary dissent in the *ADM Jabalpur* case represents one of the most courageous stands in Indian judicial history and illustrates the complex relationship between individual judicial conscience and institutional pressure. Justice Khanna argued that even during an Emergency, no person could be deprived of life or liberty without legal justification, stating that "*What is at stake is the rule of law. The question is not whether personal liberty can be restricted, but whether the law speaking through the courts can be absolutely silenced and rendered mute.*"⁶ His principled stand cost him his career, as he was superseded for the position of Chief Justice despite being the senior-most judge, leading to his resignation from the Supreme Court.

The legal profession's support for Justice Khanna's dissent and their broader resistance to Emergency excesses demonstrated the Bar's crucial role in maintaining constitutional values even when institutional mechanisms were compromised. Senior advocates and bar associations across the country condemned the majority judgment and continued to argue for the restoration of fundamental rights and judicial independence. This period established an important precedent for the Bar's role as a guardian of judicial independence and constitutional democracy.

2.2 Defending Against Political Interference

The Bar's protective role in defending judicial independence extends far beyond crisis periods

⁵ *Additional District Magistrate, Jabalpur v. Shivkant Shukla*, (1976) 2 SCC 521.

⁶ *ADM, Jabalpur v. Shivakant Shukla*, (1976) 2 SCC 521, at ¶ 573.

to encompass the everyday challenges faced by the judiciary in maintaining its independence from political pressure and executive interference. This protective function manifests in various ways, including advocacy for judicial autonomy, support for transparent appointment processes, and resistance to attempts at political manipulation of judicial decisions.

One of the most significant examples of political interference in judicial functioning was the supersession of senior judges in April 1973, when the government appointed Justice A.N. Ray as Chief Justice of India, bypassing three more senior judges – Justices J.M. Shelat, K.S. Hegde, and A.N. Grover. This unprecedented action was widely perceived as an attempt to pack the judiciary with judges considered more amenable to government policies, particularly in light of the Supreme Court’s decisions in cases like *Kesavananda Bharati* (supra) that had constrained governmental power.

The legal profession’s response to this supersession was swift and uncompromising. The Supreme Court Bar Association, led by legal luminaries like C.K. Daphtary, organized protests and condemned the government’s action as a direct attack on judicial independence. Senior advocate Daphtary famously described April 25, 1973, the date of Justice Ray’s appointment, as “the blackest day in the history of democracy.” The Bar’s unified resistance to this political interference sent a clear message that the legal profession would not tolerate attempts to compromise judicial independence.

The collegium system for judicial appointments, which evolved through a series of Supreme Court judgments known as the Judges’ Cases, represents another area where the Bar has played a crucial protective role. The First Judges’ Case (*S.P. Gupta* (supra)) initially gave the executive greater say in judicial appointments, but subsequent cases (the Second and Third Judges’ Cases in 1993 and 1998 respectively) progressively strengthened judicial control over appointments. The Bar’s advocacy and legal arguments in these cases were instrumental in establishing the current system where the judiciary has primacy in judicial appointments, thereby reducing political interference.

The recent rejection of the National Judicial Appointments Commission (NJAC) Act in 2015 provides another example of how the Bar protects judicial independence. When the government attempted to replace the collegium system with the NJAC, which would have given the executive greater control over judicial appointments, the legal profession was divided but ultimately supported the Supreme Court’s decision to strike down the NJAC as

unconstitutional.⁷ The Court's ruling that executive involvement in judicial appointments violated the independence of the judiciary and the separation of powers was supported by significant sections of the Bar who argued that the NJAC would compromise judicial independence.

2.3 Professional Organizations and Institutional Support

The institutional framework of the legal profession, including bar associations, bar councils, and professional organizations, plays a crucial role in protecting judicial independence and supporting the Bench in maintaining its constitutional role. These organizations serve as collective voices for the legal profession and provide organized platforms for defending judicial independence against various threats and challenges.

The Bar Council of India, established under the Advocates Act of 1961,⁸ serves as the apex regulatory body for the legal profession and has consistently played a protective role in defending judicial independence. The BCI's various resolutions and statements over the years have emphasized the crucial importance of maintaining judicial independence and have condemned attempts to compromise the autonomy of the judiciary.⁹ The organization has been particularly vocal in opposing executive interference in judicial functioning and has supported measures to strengthen the independence of the judicial system.

State bar associations and local bar associations across the country have also played important protective roles, particularly during times of crisis or when local judicial independence is threatened. These organizations have organized protests, issued statements, and provided institutional support to judges facing undue pressure or interference. During the Emergency period, many state bar associations condemned the suspension of fundamental rights and supported judicial independence even when it was politically risky to do so.

The Supreme Court Bar Association has been particularly active in defending the independence of the apex court and has often served as a forum for expressing the legal profession's views on important constitutional and judicial issues. The SCBA's various resolutions and actions

⁷ *SCOARA V. UOI*, *supra* note 4.

⁸ *Advocates Act, 1961*, No. 25 of 1961, Acts of Parliament (India).

⁹ See *Bar Council of India (2021) Affidavit before the Supreme Court on the need for a specialised security force for safety of judges and lawyers*, cited in BCI urges Supreme Court to form special security force for safety of judges, lawyers, Bar & Bench, 24 August. Available at: <https://www.barandbench.com/news/litigation/bci-supreme-court-special-security-force-safety-of-judges-lawyers> (Accessed: 6 May 2026).

over the years reflect the Bar's commitment to protecting judicial independence and supporting the constitutional role of the judiciary. From its early opposition to constitutional amendments that would have limited judicial power to its more recent support for transparent judicial processes, the SCBA has consistently advocated for strengthening judicial independence.¹⁰

Chapter 3: How the Bench Protects Democracy in India

3.1 Constitutional Review and the Basic Structure Doctrine

The judiciary's role in protecting democracy in India is most fundamentally expressed through its power of constitutional review and the establishment of the Basic Structure Doctrine. This judicial power, while not explicitly mentioned in the Constitution, has evolved through interpretation and practice to become one of the most crucial mechanisms for protecting democratic institutions and preventing authoritarian overreach. The Basic Structure Doctrine, established in the landmark *Kesavananda Bharati* case (supra), represents the judiciary's most significant contribution to protecting democratic values and constitutional supremacy.

The Basic Structure Doctrine holds that while Parliament has the power to amend the Constitution under Article 368, it cannot alter or destroy the fundamental features or basic structure of the Constitution. These basic features, as identified by various Supreme Court judgments, include democracy, federalism, secularism, the rule of law, judicial independence, separation of powers, and the supremacy of the Constitution. This doctrine effectively places certain constitutional principles beyond the reach of ordinary legislative amendment, thereby protecting them from temporary political majorities that might seek to undermine democratic institutions.

The practical application of the Basic Structure Doctrine has been crucial in protecting democratic institutions from legislative assault. In numerous cases since *Kesavananda Bharati*, the Supreme Court has struck down constitutional amendments that were found to violate the basic structure. For example, in the *Minerva Mills* case (1980),¹¹ the Court struck down amendments that would have given Directive Principles precedence over Fundamental Rights

¹⁰ *Supreme Court Bar Association (SCBA) About the SCBA – early opposition to constitutional amendments*, available at: <https://scbaindia.org/aspx/about.aspx> (Accessed: 6 May 2026); *SCBA (2025) Resolution on preserving the independence of the judiciary and fair administration of justice*, Secretary's Notice No. 1705, 6 October 2025.

¹¹ *Minerva Mills Ltd. v. Union of India*, (1980) 3 SCC 625.

and removed judicial review of constitutional amendments. These decisions have effectively prevented the erosion of democratic safeguards through constitutional amendments.

3.2 Protection of Fundamental Rights

The protection of fundamental rights represents one of the judiciary's most direct and visible contributions to protecting democracy in India. *Articles 12-35* of the Constitution guarantee various fundamental rights to citizens, including the right to equality, freedom of speech and expression, freedom of religion, and the right to life and personal liberty. The judiciary's role in interpreting, expanding, and enforcing these rights has been crucial in maintaining the democratic character of the Indian state and protecting individual freedoms against state overreach.

Article 32, often called the "heart and soul" of the Constitution by Dr. B.R. Ambedkar, guarantees the right to approach the Supreme Court directly for the enforcement of fundamental rights. This provision makes the Supreme Court the primary guardian of fundamental rights and gives it the power to issue writs including habeas corpus, mandamus, prohibition, certiorari, and quo-warranto for the enforcement of these rights. The availability of these constitutional remedies ensures that citizens have effective legal recourse when their fundamental rights are violated.

The judiciary's expansive interpretation of fundamental rights has significantly enhanced their protective scope and democratic impact. For example, the Supreme Court's interpretation of *Article 21* (right to life and personal liberty) has evolved far beyond its original textual scope to include rights such as the right to privacy,¹² right to education,¹³ right to health,¹⁴ right to livelihood,¹⁵ and right to a clean environment.¹⁶ This evolutionary interpretation has ensured that fundamental rights remain relevant to contemporary challenges and continue to provide meaningful protection to citizens.

The development of Public Interest Litigation (PIL) has been particularly significant in expanding access to constitutional remedies and strengthening the judiciary's role in protecting

¹² *Justice K.S. Puttaswamy (Retd.) v. Union of India*, (2017) 10 SCC 1.

¹³ *Mohini Jain v. State of Karnataka*, (1992) 3 SCC 666.

¹⁴ *Paschim Banga Khet Mazdoor Samiti v. State of West Bengal*, (1996) 4 SCC 37.

¹⁵ *Olga Tellis v. Bombay Municipal Corporation*, (1985) 3 SCC 545.

¹⁶ *M.C. Mehta v. Union of India*, (1987) 1 SCC 395.

rights. PIL allows individuals and organizations to approach the courts on behalf of others, particularly marginalized groups who may not have the resources or capacity to seek legal remedies themselves.

3.3 Judicial Review of Legislative and Executive Actions

The power of judicial review, exercised by both the Supreme Court and High Courts, represents a fundamental mechanism through which the judiciary protects democratic governance by ensuring that legislative and executive actions conform to constitutional requirements. This power allows courts to examine the constitutionality of laws, executive orders, and administrative actions, and to strike down those that violate constitutional provisions or exceed governmental authority.

Article 13 of the Constitution explicitly provides that any law that contravenes fundamental rights shall be void to the extent of such contravention. This provision gives courts the explicit authority to review and invalidate laws that violate fundamental rights, ensuring that legislative majorities cannot override constitutional protections for individual rights and freedoms. The practical application of *Article 13* has resulted in numerous laws being struck down or modified to conform to constitutional requirements.

The judiciary's review of executive actions has been equally important in maintaining democratic accountability and preventing administrative overreach. Through writs such as mandamus and certiorari, courts can compel government agencies to perform their statutory duties and can quash administrative decisions that are illegal, irrational, or procedurally improper.

The development of doctrines such as proportionality, reasonableness, and procedural fairness has enhanced the judiciary's capacity to review governmental actions and ensure they meet constitutional standards. These doctrines require that governmental actions be proportionate to their objectives, reasonable in their application, and procedurally fair in their implementation.

The judiciary's role in reviewing emergency powers has been particularly significant in protecting democracy from authoritarian tendencies. The Supreme Court's decision in the *S.R. Bommai case (1994)* established important limitations on the use of *Article 356* (President's

Rule) and prevented its arbitrary use to dismiss state governments.¹⁷ This judgment has significantly strengthened federalism and prevented the misuse of constitutional emergency provisions for political purposes.

3.4 Electoral Jurisprudence and Democratic Process Protection

The judiciary's protection of democratic processes extends importantly to electoral law and the maintenance of free and fair elections. Through various judgments and interpretations, Indian courts have developed a comprehensive electoral jurisprudence that protects the integrity of the democratic process and ensures that elections remain meaningful exercises of popular sovereignty.

The Supreme Court's recent decision striking down the Electoral Bonds scheme as unconstitutional represents a significant contribution to protecting electoral transparency and democratic accountability.¹⁸ This decision demonstrates the judiciary's willingness to scrutinize electoral laws and ensure they meet constitutional standards of transparency and accountability.

The development of the "one person, one vote, one value" principle through judicial interpretation has been crucial in ensuring electoral equality and preventing the dilution of democratic representation. Courts have scrutinized delimitation processes and electoral arrangements to ensure they meet constitutional requirements of equality and fairness. This judicial oversight has prevented gerrymandering and other manipulations of electoral boundaries that could distort democratic representation.

The judiciary's protection of voting rights and electoral access has also been significant in ensuring that elections remain inclusive and representative. Court decisions protecting the rights of marginalized groups to participate in elections and requiring accessible voting procedures have strengthened the democratic character of Indian elections. The use of NOTA (None of the Above) option, mandated by the Supreme Court, has provided voters with a mechanism to express dissatisfaction with available candidates while still participating in the electoral process.

¹⁷ S.R. Bommai v. Union of India, (1994) 3 SCC 1.

¹⁸ Association for Democratic Reforms v. Union of India, (2024) 5 SCC 1.

Chapter 4: Conclusion

The relationship between the Bar and the Bench in India is not simply a professional arrangement between two branches of the legal system. It is something older and more consequential than that- a constitutional compact, really, through which the promise of democratic governance is continuously renewed and, at times, fiercely defended. This paper has tried to trace that relationship across its foundational, protective, and democratic dimensions, and what emerges is a picture of two institutions that are, in the deepest sense, dependent on each other.

The Bar's protective role is perhaps most vivid in moments of crisis. The Emergency years remain the starkest illustration of what becomes possible when institutional safeguards weaken and the legal profession is forced to choose between convenience and conscience. That many members of the Bar chose conscience, even at personal cost, is not a minor historical footnote. It reflects something essential about the profession's self-understanding as guardians of constitutional values rather than mere service providers to the court.

But the Bench's own contribution to sustaining democracy deserves equal recognition. Through the Basic Structure Doctrine, the expansive reading of fundamental rights, the development of public interest litigation, and the willingness to scrutinize even electoral financing arrangements, the judiciary has repeatedly demonstrated that constitutional democracy is not self-executing. It requires active, sometimes uncomfortable, institutional intervention.

What ties all of this together is a relationship built on mutual reinforcement rather than hierarchy. The Bar gives the Bench intellectual legitimacy and public support. The Bench gives the Bar's principles the force of enforceable law. Neither functions well without the other. And while the relationship is not without its tensions and contradictions, those tensions are arguably what keep it honest. India's constitutional democracy has survived not because its institutions are perfect, but because enough people within them have taken their responsibilities seriously. The Bar and the Bench, at their best, are the clearest expression of that commitment.