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THE JUDICIARY'S ROLE IN AUTHORITARIAN AND DEMOCRATIC SYSTEMS OF GOVERNANCE

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ABSTRACT:

The judiciary is at the centre of constitutional governance, as it promotes legality, accountability, and upholds fundamental rights. This research paper provides a comparative analysis of the judiciary system in parliamentary and authoritarian systems, examining its independence, functions, and relevance to the institution. In parliamentary democracies, the judiciary is usually an independent, counter-majoritarian institution that scrutinises the executive and legislative activity and protects civil liberties. Conversely, authoritarian governments tend to keep the courts at the executive's behest, mitigate judicial review, undermine the enforcement of rights, and use the courts to legitimise their authority. The paper discusses the adaptation of judicial structures to the dynamics of politics, issues of judicial independence, and how the judiciary best serves the rule of law within systems through constitutional theory, case law, and institutional analysis. The paper highlights the transformative nature of the judiciary in the process of democratic consolidation and its limitations during periods of dictatorship, and proposes ways to enhance judicial accountability and autonomy.

KEYWORDS:

Judiciary; Judicial Independence; Parliamentary System; Authoritarian System; Separation of Powers; Rule of Law; Constitutional Governance; Democratic Accountability; Judicial Review; Institutional Autonomy; Comparative Constitutional Law; Executive Dominance

THE CENTRALITY OF THE JUDICIARY IN GOVERNANCE

As a fundamental branch of the government, the judiciary holds a prominent position in interpreting and applying laws, resolving disputes, and upholding constitutional principles. Its function as an organ becomes indispensable to the operation of any state, no matter what its political orientation.

In well-established democracies, an independent judiciary is often seen as a cornerstone of the rule of law. It is what protects individual rights, ensures that no branch of government holds unchecked power, and acts as a vital safeguard for freedom.¹ The very idea of the rule of law rests on the principle that authority must come from law itself, not from personal or political will. For this reason, an independent judiciary is essential, as it ensures equal protection for all citizens, regardless of their status or power.² While the broad commitment to constitutionalism and the protection of rights is a common feature across democracies, the way in which it is achieved and the extent to which courts actually hold power, especially when it comes to judicial review, varies notably across different parliamentary systems.

On the other side, in authoritarian systems, the role of the judiciary may look weak or subordinate, but it is far from insignificant. Courts still carry out important functions, not as independent guardians, but as instruments that help maintain the regime's stability and legitimacy. They are rarely allowed to challenge executive or legislative power directly. Instead, authoritarian governments use them strategically to manage disputes, enforce discipline, and project an image of legality to citizens and the world. This means the value of courts in such systems goes beyond the ideals of democracy.³ They become tools of State control, a source of governance stability, and even part of what helps the regime endure over time. Seen in this way, the picture challenges the common belief that judicial authority only grows in the context of democratisation.

¹ *R (Miller) v. Prime Minister* [2019] UKSC 41 (UK Supreme Court held that prorogation of Parliament is justiciable and subject to constitutional principles, reinforcing judicial oversight in a parliamentary democracy).

² *Marbury v. Madison*, 5 U.S. (1 Cranch) 137 (1803) (Established judicial review as a core constitutional principle, affirming the judiciary's role as interpreter of the Constitution).

³ *A.K. Gopalan v. State of Madras*, AIR 1950 SC 27 (Early Indian constitutional case reflecting judicial restraint before the expansion of rights-based review).

An in-depth analysis of the role of courts across different political systems reveals a far more complex reality than we often assume. It challenges the simple idea that courts in democracies always stand firm as protectors of rights and checks on power, while those in authoritarian regimes operate only as obedient tools of the state. In practice, democracies sometimes see courts yield to political pressure, and even authoritarian systems leave room for courts to operate in limited yet meaningful ways. ⁴This dynamic reminds us that the judiciary's role is never one-dimensional; rather, it is always shaped by the political environment around it, balancing between independence and control in ways that defy simplistic labels.

This article aims to provide a closer examination of how courts function in two distinct political settings: authoritarian regimes and parliamentary democracies. It will not just focus on the contrasts between them, but also on the surprising ways their roles can sometimes overlap. The aim is to delve deeper into the true nature of judicial power: where it is strong, where it is limited, and how it responds to the surrounding political environment. By drawing on constitutional principles, the actual functioning of courts in practice, and concrete examples from various countries, the article aims to provide a clearer understanding of the role courts play in governance and the everyday lives of citizens.

JUDICIAL POWER IN TWO SYSTEMS: DEMOCRACY AND AUTHORITARIANISM.

At first glance, parliamentary democracies and authoritarian regimes can look somewhat similar: both have executives, legislatures, and even courts. But when you look more closely, especially from the perspective of the people who live under them, the differences are profound. These systems shape not only how laws are made and enforced, but also how citizens experience fairness, freedom, and justice in their everyday lives.⁵

In a parliamentary democracy, power is shared and responsive. Governments are chosen by the people through competitive elections and must constantly answer to representatives in parliament. This accountability means that those in power cannot ignore public opinion for long. For citizens, this fosters a sense of belonging, where their voices are heard and their interests are taken seriously.⁶ Here, the judiciary plays a crucial role as the guardian of fairness

⁴ *Maneka Gandhi v. Union of India*, (1978) 1 SCC 248 (Expanded Article 21 and embedded substantive due process into Indian constitutional law, strengthening judicial protection of civil liberties).

⁵ *S.P. Gupta v. Union of India*, 1981 Supp SCC 87 (Judicial appointments and independence case; introduced the concept of judicial accountability alongside independence).

⁶ *Supreme Court Advocates-on-Record Association v. Union of India*, (2016) 5 SCC 1 (NJAC Case) (Reaffirmed judicial independence as part of the basic structure of the Indian Constitution).

and freedom. It stands apart from political influence, ensuring that laws and government actions respect constitutional rights. When someone feels unfairly treated, as if a worker is denied justice, a journalist faces censorship, or a community is sidelined, then the courts offer a space where they can fight back and expect to be heard. In this way, democracy feels tangible, not just about voting every few years, but about having everyday access to justice, dignity, and accountability.

Life under an authoritarian regime unfolds very differently. Power is heavily centralised, often in the hands of one leader or ruling party, and decisions flow from the top down with little room for dissent. Elections, if they exist, are rarely genuine contests of ideas and choice. Instead, they serve as performances to reinforce the regime's grip.⁷ Here, the judiciary does not stand as a shield for the people but as an extension of political power. While courts may handle small personal disputes, they are seldom places where citizens can challenge unfair laws, government repression, or the abuse of power. In many cases, they become weapons in the hands of the state, which is used to legitimise censorship, punish critics, or silence opposition. For ordinary people, seeking recourse through the judiciary can feel daunting or futile, eroding their faith in the justice system itself.⁸

This difference is not merely institutional, but it is deeply human. In a democracy, people feel like participants in shaping their society.⁹ The judiciary becomes a source of reassurance that even if those in power falter, there is an independent body to uphold fairness. In authoritarianism, people often feel reduced to subjects with little control over their lives, knowing that the legal system is unlikely to protect them against the state. Where one system inspires trust and participation, the other breeds fear and silence.¹⁰

Put simply, the judiciary reflects the soul of each system. In democracies, it symbolises liberty and accountability. In authoritarian regimes, it often mirrors control and subordination. And

⁷ Martin Shapiro, 'Courts in Authoritarian Regimes' in Tamir Moustafa and Tom Ginsburg (eds), *Rule by Law: The Politics of Courts in Authoritarian Regimes* (Cambridge University Press 2008) 326-336.

⁸ *Public Law Project v. Lord Chancellor* [2016] UKSC 39 (Held that access to justice is a constitutional principle fundamental to the rule of law).

⁹ *Minister of Health v. Treatment Action Campaign* 2002 (5) SA 721 (CC) (South Africa) (Demonstrated judicial intervention to enforce socio-economic rights against executive inaction).

¹⁰ *State v. Makwanyane* 1995 (3) SA 391 (CC) (South Africa) (Abolished death penalty, showcasing transformative constitutionalism and human-rights-centred adjudication).

for the citizen, this difference marks the line between living with dignity and living under domination.¹¹

THE LEGAL ANCHOR: FROM CONSTITUTIONAL SUPREMACY TO THE FAÇADE OF LAW

The most profound divergence between these two regimes lies in their underlying legal philosophies concerning the source and application of state power.

THE PHILOSOPHICAL DIVIDE: RULE OF LAW VS. RULE BY LAW

When we compare parliamentary democracies and authoritarian regimes side by side, the contrast between them becomes clear not only in their institutional design but also in the way they understand and utilise law. This difference shapes how ordinary people live, their experiences of justice, and their relationships with those in power.

In parliamentary democracies, power is meant to be accountable, limited, and transparent. Governments are chosen by the people, held responsible to parliament, and subject to the principle of the Rule of Law. This means that every individual, from the most powerful prime minister to the most ordinary citizen, is bound by the same legal framework. Crucially, the judiciary stands as an independent guardian of this promise. It is not just a dispute-settling institution but a shield that ensures governments do not overstep the boundaries of the constitution. After the devastation of World War II, many democratic states recognised how dangerous unchecked power could be, and deliberately built strong constitutional and administrative courts to act as permanent safeguards for liberty. For the citizen, this creates a strong sense of trust: they can speak freely, challenge government decisions, and rely on the courts for protection. Law here feels like a safety net—something that protects their dignity and rights, day to day.¹²

In authoritarian regimes, the picture is drastically different. Power is centralised and preserved, often in the hands of a single leader or a ruling elite. Here, law does not stand above power—it is bent to serve it. This is the philosophy of Rule by Law. Many authoritarian states preserve the trappings of legality, such as constitutions, courts, regulations, and even elections—but

¹¹ *Loewen Group, Inc. v. United States*, ICSID Case No. ARB(AF)/98/3 (2003) (Illustrates judicial credibility and rule-of-law concerns in international investment contexts).

¹² *Secretary of State for the Home Department v. Belmarsh Prisoners* [2004] UKHL 56 (House of Lords invalidated indefinite detention of terrorism suspects, reinforcing judicial checks even during emergencies).

these are largely symbolic. Legal systems become tools of control, constructed to maintain the authority of the ruling regime rather than to hold it accountable.¹³ This approach is often referred to as Authoritarian Constitutionalism, a framework in which laws and institutions exist, but only to legitimise repression and project an image of order and modernity. For citizens, the experience is disheartening. Instead of being protected by the law, they often find themselves restricted by it. If they speak out, the same legal system that should shield them may instead prosecute, silence, or punish them. In such places, law feels like a weapon—something wielded by the state to command obedience rather than to guarantee justice.¹⁴

The human experience of these two systems could not feel more different. In a democracy, the law is something people can lean on for support, a reminder that those who govern remain answerable to those they govern. Citizens are participants with dignity, able to challenge or question without fear.¹⁵ In authoritarian states, however, the law looms like a shadow, shaping daily life with fear and caution. Citizens are treated not as participants but as subjects, with little recourse when rights are violated.

INSTITUTIONAL LEGITIMACY AND ACCOUNTABILITY

The way courts are perceived and trusted varies significantly depending on whether one lives in a democracy or under authoritarian rule. For citizens, this difference is not about theory, but about their daily reality: whether the law protects them or only those in power.

In a parliamentary democracy, the court's authority comes from being an independent guardian of the constitution. People believe in the courts because they stand outside of political games. Their job is simple yet vital: to ensure that everyone, including the government itself, follows the rules. If a new law threatens someone's rights, or if a government oversteps its powers, citizens know they can walk into court and demand fairness. This makes the legal system feel like a partner in democracy, which is a place of protection and accountability. For the public, the court is a trusted referee, ensuring that power is exercised fairly and never goes unchecked.

¹³ Yuhua Wang, 'Authoritarian judiciary: How the party-state limits the rule of law' in *Tying the Autocrat's Hands: The Rise of the Rule of Law in China* (Cambridge University Press 2014) 50-85.

¹⁴ Tamir Moustafa and Tom Ginsburg, 'Introduction: The Functions of Courts in Authoritarian Politics' in Tamir Moustafa and Tom Ginsburg (eds), *Rule by Law: The Politics of Courts in Authoritarian Regimes* (Cambridge University Press 2008).

¹⁵ *Hirst v. United Kingdom (No 2)* (2005) 42 EHRR 41 (European Court of Human Rights emphasised judicial authority over legislative excess affecting political rights).

In an authoritarian regime, the court assumes a significantly different role. Here, legitimacy is not about independence, but rather about utility to those in power. The courts are expected to help the regime maintain order at home and credibility abroad. Instead of offering ordinary people a shield against authority, the judiciary often serves as a tool to reinforce authority. Citizens quickly learn that justice is less about their rights and more about the stability of the state. Where some might enter courtrooms with hope, many in authoritarian systems enter them with caution, knowing outcomes will most likely reflect the priorities of those sitting at the top.¹⁶

However, authoritarian rulers also need courts to play a balancing act, especially in how they present themselves to the outside world. For example, in Russia, under the weight of sanctions, its courts, such as the Arbitrazh system, take on commercial disputes to demonstrate that a functioning legal process remains in place, ensuring citizens that disputes are under state control. To the international community, it creates the impression that the system is not entirely politicised.¹⁷ This performance of legality helps attract investment, negotiate with foreign powers, and blunt criticism. In truth, the judiciary here is less a guardian of citizens' rights and more a diplomatic tool, carefully staged to extend the life of the regime and reduce outside pressure.

For ordinary people, this divide is sharply felt. In democracies, a worker fighting unfair dismissal, a journalist silenced by the government, or a protester arrested during a rally can hope for a judge to stand up for them. In authoritarian systems, those same people may find the law turned against them-used to justify repression rather than protect against it. Where law in a democracy feels like a shield, in an authoritarian state it often feels like a mask and a weapon at the same time: a mask to present legitimacy abroad, and a weapon to control people at home.

THE FUNCTIONAL MANDATE: "WHY DO RULERS EMPOWER COURTS?"

The way governments choose to empower courts reveals what really matters to them and to the people who live under their systems. On the surface, both democracies and authoritarian

¹⁶ Yuhua Wang, 'Authoritarian judiciary: How the party-state limits the rule of law' in *Tying the Autocrat's Hands: The Rise of the Rule of Law in China* (Cambridge University Press 2014) 50-85.

¹⁷ Yueduan Wang, 'The More Authoritarian, the More Judicial Independence? The Paradox of Court Reforms in China and Russia' (2020) 22(2) University of Pennsylvania Journal of Constitutional Law 415.

regimes have judges and legal institutions, but the purposes they serve and how citizens perceive them differ greatly.

UPHOLDING ACCOUNTABILITY AND CHECKS & BALANCES

In a parliamentary democracy, courts are given power because they are meant to keep governments within the law. They are constitutional guardians. Their legitimacy comes from being independent, from reminding even the most powerful leaders that they are not above the rules. Through judicial review, they can overturn laws or government actions that are deemed unfair. For citizens, this makes courts feel like a place of hope and fairness, a space where even a humble individual can stand up against the state and expect justice.¹⁸ In countries like the United Kingdom, although parliament is sovereign, courts have carved out authority to review decisions, ensuring officials act lawfully and reasonably. For the people who live there, this oversight transforms the judiciary into a safety net against arbitrary power.¹⁹

In an authoritarian system, courts serve very different purposes. They are not meant to restrain the rulers but to protect the regime itself. Courts here are functional instruments for disciplining officials, resolving disputes within the ruling elite, keeping political opponents in check, and maintaining an image of order. They might process commercial or personal disputes, but when cases involve politics, power, or dissent, outcomes are often predetermined. For citizens, walking into an authoritarian court rarely feels like appealing to an impartial judge; it feels like stepping into the machinery of authority itself. Law, instead of being a shield, becomes a tool of control.

In democracies, empowering courts is about protecting people, dispersing power, and building trust. Law feels like something that stands with the citizen against the state. In authoritarian regimes, empowering courts is about maintaining control, disciplining insiders, and projecting authority. Law feels less like a promise and more like a command-something that belongs to the rulers, not the ruled.

¹⁸ Shayonee Dasgupta and Sakshi Agarwal, 'Judicial Accountability and Independence: Exploring the Limits of Judicial Power' (2009) 2(4) NUJS Law Review 779
<http://docs.manupatra.in/newslines/articles/Upload/A58170B2-B86C-4E1D-B972-86EF9F6741B1.pdf> accessed 2 October 2025.

¹⁹ UK Parliament, The Separation of Powers (Research Briefings, 2024)
<https://researchbriefings.files.parliament.uk/documents/CBP-07354/CBP-07354.pdf> accessed 3 October 2025.

GOVERNANCE EFFICIENCY, STABILITY, AND THE CONTROL OF AGENTS

Courts often serve as a mirror of the political system around them, and the way they are used shows whether their purpose is to protect people or to preserve power.

In systems that are accountable to citizens, the judiciary works as a neutral safety valve. When people feel wronged, whether by officials, unfair policies, or deep social injustices, they have courts to turn to. This helps defuse tensions that might otherwise spill into protests or unrest. By channelling grievances into legal processes, the courts provide society with a means to resolve conflicts fairly. In a country as diverse and complex as India, this role has been especially vital. Courts have taken up emotionally charged issues, such as caste-based discrimination, and by addressing them within the framework of law, they have prevented social divisions from spiralling into open conflict. For citizens, this fosters trust and the sense that justice is attainable, and that even the most challenging struggles can be resolved peacefully.

In more centralised systems, however, the judiciary is empowered for very different reasons. Courts here are instruments of governance, not neutral guardians. Leaders give them authority not to protect the people from the state, but to maintain the state's machinery. By allowing courts to discipline corrupt or opportunistic officials, the central authority gains a way to control its own agents, whose behaviour it cannot monitor everywhere at once. Courts also help maintain stability in the business climate, reassuring foreign investors that contracts and disputes will be resolved in a formal, transparent, and impartial manner. For ordinary people, this can sometimes mean predictable outcomes in minor cases; however, when issues intersect with politics or challenge the regime, loyalty to the leadership often takes precedence over fairness and justice.

There is, however, a paradox hidden within this arrangement. For courts in such systems to rein in corrupt local elites, they need a degree of independence. Yet that same independence can pose risks if it loosens the grip of central power. In China, for instance, the Communist Party allows courts some autonomy to investigate local corruption but simultaneously keeps them closely tied to the centre. In China, the fragmentation of authority has often weakened this

balance; local officials have been able to interfere in judicial matters, eroding the courts' credibility despite formal protections, such as centralised appointments and budgets.²⁰

This reveals a fragile truth, where justice serves the state rather than the citizen; the judiciary is constantly pulled between two pressures: protecting the central leadership's hold on power while resisting manipulation by local elites. To function even in this limited, instrumental way, courts in such systems depend on tight central control. Without it, they quickly lose their authority to both citizens and the state itself.²¹

JUDICIAL SCOPE AND CONSTRAINT: "WHO GUARDS THE GUARDIANS, AND How?"

The real difference in how courts function can be seen most clearly in how far judges are allowed to go in questioning those in power. This is the heart of judicial review, and it draws a sharp line between systems that genuinely limit authority and those that only appear to.

JUDICIAL REVIEW: DEFINING THE CONSTITUTIONAL PERIMETER

In countries with strong democratic traditions, judicial review acts like a boundary line that no leader can cross. The United Kingdom is a good example. For centuries, parliament's authority was considered absolute, and judges had little room to interfere. Even today, they cannot strike down laws. However, since the Human Rights Act 1998²² Courts can issue declarations when laws conflict with fundamental human rights. They do this carefully, always showing respect for parliament's role, yet the effect is significant: people now have a legal means to question whether those in power are acting fairly.

Other democracies go even further. In India, the Supreme Court's famous ruling in the Kesavananda Bharati²³ case established the basic structure doctrine: Parliament may amend the constitution, but it cannot undermine its fundamental pillars, such as democracy, freedom, and the rule of law. This makes citizens feel that certain rights and principles are secure, regardless of which political majority comes to power. In Canada, courts use the Charter of

²⁰ Yueduan Wang, 'The More Authoritarian, the More Judicial Independence? The Paradox of Court Reforms in China and Russia' (2020) 22(2) University of Pennsylvania Journal of Constitutional Law 415.

²¹ Carlo Guarnieri, 'Judicial Independence in Authoritarian Regimes: Lessons from Continental Europe' in Randall Peerenboom (ed), *Judicial Independence in China: Lessons for Global Rule of Law Promotion* (Cambridge University Press 2012).

²² Human Rights Act 1998, c 42.

²³ Kesavananda Bharati v. State of Kerala (1973) 4 SCR 225.

Rights and Freedoms, 1982²⁴, to strike down laws that are deemed unjust²⁵. At the same time, the presence of the “notwithstanding clause” gives legislatures the ability to temporarily override court rulings. It’s a compromise that reflects partnership: courts fiercely protect rights, but legislatures retain a final touchpoint of authority, ensuring balance.²⁶

Now contrast this with more closed systems, where judicial review all but disappears when it threatens the grip of the ruling authority. Courts may decide everyday disputes between neighbours, or even in business, but when it comes to questioning the core decisions or survival of those in charge, their role simply ends. Judges here do not act as referees between the state and the citizen; instead, they stay firmly within the boundaries drawn by those at the top.

In places like India or Canada, an ordinary citizen can feel that the courts are a genuine ally when government decisions seem unfair. There is hope that the state can be held to account. Even in the UK, where courts tread carefully, the possibility of challenging authority exists. In heavily controlled systems, however, people understand the limits that if their grievance touches state power, it will never truly be heard.

MECHANISMS OF CONTAINMENT: DEMOCRATIC LIMITS VS. AUTHORITARIAN CONTROL

The way courts are kept accountable or contained reflects the deeper priorities of each political system, and it shapes how citizens experience justice.

In parliamentary systems, courts are powerful, but they are also answerable within a democratic framework. Judges cannot simply issue decisions on personal will or unchecked authority. Their rulings must be reasoned, well-explained, and grounded in established legal principles. Binding precedent ensures that decisions are consistent, appellate review provides oversight, and the duty to justify opinions anchors judges to democratic law made by elected representatives.²⁷ For ordinary people, this means that even though judges are unelected, their

²⁴ Canadian Charter of Rights and Freedoms, Part I of the Constitution Act, 1982, being Schedule B to the Canada Act 1982 (UK), 1982, c 11.

²⁵ Warren J Newman, The Rule of Law, the Separation of Powers and Judicial Independence in Canada (European Parliament, 2023) <https://www.europarl.europa.eu/cmsdata/150494/The%20Rule%20of%20Law,%20the%20separation%20of%20powers%20and%20judicial%20independence%20in%20Canada.pdf> accessed 3 October 2025.

²⁶ Donald P Kommers, ‘Comparative Judicial Review and Constitutional Politics’ (1975) 27 World Politics 282 https://scholarship.law.nd.edu/cgi/viewcontent.cgi?article=2390&context=law_faculty_scholarship accessed 2 October 2025.

²⁷ Shayonee Dasgupta and Sakshi Agarwal, ‘Judicial Accountability and Independence: Exploring the Limits of Judicial Power’ (2009) 2(4) NUJS Law Review 779

authority appears transparent and legitimate, and they must work within the logic of the law, rather than personal preference. Courts here gain trust because they strike a balance between independence and accountability, providing citizens with both protection and predictability.

In more authoritarian contexts, however, the approach to controlling courts is far subtler and less visible. The goal is the opposite: to give the impression of legality while making sure judicial power is never truly threatening. Citizens may see functioning courts, but those courts operate strictly within boundaries set by the regime. Self-restraint through fear is one of the most common mechanisms.²⁸ Judges quickly learn that openly challenging the regime on sensitive matters can be futile-or even dangerous. They adopt caution, carefully avoiding cases that touch the leadership's core interests, such as political repression or opposition movements. This was clear in Pinochet's Chile, where judges largely stayed out of regime-sensitive cases in order to preserve the judiciary as an institution, even while sacrificing its protective role for individuals.

Fragmentation of the judicial system is another tactic. Regimes often create parallel "special courts"-such as military or security tribunals-to handle political cases. This allows the ordinary judiciary to maintain a façade of competence in areas such as commercial law or basic administration, while sensitive matters are swiftly referred to tightly controlled forums. For example, in Egypt, administrative courts were allowed to project some independence, but political cases could be shifted to special tribunals where outcomes favoured the regime. Citizens thus see a dual system: fairness in routine cases, but no real chance when politics is involved.²⁹

Restricted access to justice is also a key concern. On paper, citizens may be able to sue the government, but laws carefully exclude the most sensitive issues. In China, the Administrative Litigation Law allows individuals to challenge minor personal or property-related matters, but bars claims involving political rights, such as the right to free association. In Mexico under PRI rule, the amparo system was narrowed, allowing people to challenge petty bureaucratic abuses

<http://docs.manupatra.in/newsline/articles/Upload/A58170B2-B86C-4E1D-B972-86EF9F6741B1.pdf> accessed 2 October 2025.

²⁸ Asian Journal of Comparative Law (AsJCL), ISSN Print: 2194-6078, ISSN Online: 1932-0205, Editors: Arif A. Jamal and Kevin Y.L. Tan (National University of Singapore).

²⁹ Peter H Solomon Jr, 'Courts and Judges in Authoritarian Regimes' (2007) 13 Annual Review of Law and Social Science 125
<http://www.rochelleterman.com/ComparativeExam/sites/default/files/Bibliography%20and%20Summaries/Soloman%202007.pdf> accessed 3 October 2025.

but not to question regime policies themselves. To ordinary people, courts become a channel for small relief but a dead end for real change.³⁰

The lived reality is very different depending on context. In open democratic systems, courts feel like a genuine check on power, where judges are compelled to listen, explain, and act within the law. In controlled systems, courts become arenas of limited relief-useful for day-to-day disputes but powerless against entrenched authority. Citizens in such settings often instinctively know where the red lines are: you can argue about small things, but challenging the system itself is off-limits.³¹

JUDICIAL ACTIVISM AS A CONSEQUENCE OF POLITICAL FAILURE

The expansion of judicial power in parliamentary systems is often less about courts seeking authority for themselves and more about stepping in when democracy falters elsewhere. When parliaments stall, when executives misuse power, or when corruption paralyses politics, the judiciary emerges as the institution that keeps the system from collapsing under the weight of its own failures.³²

In India, for years, too many urgent problems, from unsafe working conditions to violations of basic rights-remained unaddressed. Out of this grew Public Interest Litigation (PIL), an innovation by the Supreme Court that opened the doors of justice to ordinary citizens and activists. Suddenly, workers, the poor, and the voiceless had a way to be heard in powerful courtrooms. Whether protecting the environment or defending human dignity, the judiciary has become a space where previously neglected voices have finally found recognition. For people on the margins, it was a turning point: the courts gave them hope when politics had failed them.³³

On the other hand, in South Africa, when corruption scandals surrounded President Jacob Zuma, the ruling African National Congress hesitated to act, paralysed by loyalty and political

³⁰ Stanford Center on China's Economy & Institutions, 'The Rise of China's Judiciary and Its Limits' (2025) <https://sccei.fsi.stanford.edu/china-briefs/rise-chinas-judiciary-and-its-limits> accessed 2 October 2025.

³¹ Joost Sillen, 'The concept of 'internal judicial independence' in the case law of the European Court of Human Rights' (2019) 15(2) European Constitutional Law Review 273-300 <https://www.cambridge.org/core/journals/european-constitutional-law-review/article/concept-of-internal-judicial-independence-in-the-case-law-of-the-european-court-of-human-rights/384E519248A7571C6126628A345C324D> accessed 3 October 2025.

³² Zsolt Szabó, 'Judicial Control of Parliamentary Procedure: Theoretical Framework Analyses' (2023) 9(1) Constitutional Review 1–27 <https://doi.org/10.31078/consrev911> accessed 10 October 2025.

³³ Tom Ginsburg, *Judicial Review in New Democracies: Constitutional Courts in Asian Cases* (Cambridge University Press 2003) ISBN 9780521817158.

calculations. It was the Constitutional Court that took a stand, insisting that even the president had to answer to the constitution. In that moment, the judges spoke directly to the people: the rule of law would not bend to politics. For ordinary South Africans frustrated and disillusioned, the intervention wasn't just legal, it was an emotional reassurance that democracy could still defend itself.³⁴

This kind of judicial activism is often misunderstood as “overreach.” In truth, it functions like a safety net, catching democracy when its own institutions falter. Courts don't seek to replace parliaments or governments; they protect the constitutional order until politics can resume its role. They act as guardians of last resort, stepping up not because they want power, but because they refuse to let democracy erode unchecked. Scholars call this role “militant democracy”, a reminder that democracy sometimes needs defenders strong enough to fight for its survival. For citizens, though, it is much simpler: when politicians fail them, courts can still offer justice, dignity, and the reassurance that the principles of freedom and fairness will endure.³⁵

THE HUMAN RIGHTS CRUCIBLE: ADJUDICATING POLITICAL EXPRESSION

The way courts handle freedoms like speech, protest, and political expression offers perhaps the clearest window into how differently legal systems function-and how those differences shape everyday life.

Where democratic principles guide the courts, these freedoms are seen as the very foundation of public life. Speaking out, criticising leaders, writing controversial opinions, or gathering in protest are treated not as threats but as rights essential to democracy's survival. Judges build strong walls around these freedoms, permitting restrictions only in the most extreme of cases. In the United States, for example, the landmark case *Brandenburg v. Ohio*³⁶ established that speech is protected unless it directly incites people to commit imminent violence. Courts in such settings also ensure that platforms for open discussion exist, in the form of broadcasters, universities, and community forums, because pluralism is not just tolerated but encouraged.

³⁴ David Landau, 'Political Institutions and Judicial Role in Comparative Constitutional Law' (2010) 51 Harv. Int'l L.J. 319 <https://ir.law.fsu.edu/articles/558/> accessed 10 October 2025.

³⁵ Donald P Kommers, 'Comparative Judicial Review and Constitutional Politics' (1975) 27 World Politics 282 https://scholarship.law.nd.edu/cgi/viewcontent.cgi?article=2390&context=law_faculty_scholarship accessed 2 October 2025.

³⁶ *Brandenburg v Ohio* 395 US 444 (1969)

For the citizen, this means confidence that they can question, mobilise, or dissent, knowing the law is designed to protect their voice, even perhaps especially if it is unpopular.³⁷

In authoritarian systems, the picture is reversed. Here, the freedoms of speech and assembly are seen as potential threats to control, rather than as the lifeblood of democracy. Regimes may sign international agreements that promise free expression, but in practice, courts rarely act as defenders of those promises.³⁸ Instead, censorship, surveillance, and intimidation are routine. Independent journalists, NGOs, or bar associations that could support judicial independence are closely watched or actively suppressed. Courts become part of this machinery, limiting what can be said, who can organise, and how far discontent can spread. In such settings, publishing an article critical of the government or holding a protest sign risks punishment rather than exercising a right.³⁹

INSTITUTIONAL INTEGRITY: MECHANISMS FOR INDEPENDENCE AND LOYALTY

Judicial independence is one of the cornerstones of the rule of law. It is what allows courts to act as fair guardians of justice rather than as mere instruments of political power. But how this independence is protected or undermined depends heavily on the political system in which courts operate. For ordinary citizens, the distinction is huge; it can mean the difference between viewing a courtroom as a place of refuge or as another arm of authority.

In systems that genuinely uphold the rule of law, courts are shielded from political manipulation. Judges are given secure tenure, protection against arbitrary removal, and clear safeguards against interference from those in power. The appointment process is designed to focus on merit, transparency, and integrity, rather than political loyalty. The United Kingdom's Judicial Appointments Commission is a good example, as it ensures judges are selected for their professional skills and fairness, rather than their party affiliations. For the public, this builds trust. People can feel confident that judges are impartial guardians of justice who will treat them fairly, regardless of their background or identity.⁴⁰

³⁷ Asian Journal of Comparative Law (AsJCL), ISSN Print: 2194-6078, ISSN Online: 1932-0205, Editors: Arif A. Jamal and Kevin Y.L. Tan (National University of Singapore).

³⁸ Martin Shapiro, 'Courts in Authoritarian Regimes' in Tamir Moustafa and Tom Ginsburg (eds), *Rule by Law: The Politics of Courts in Authoritarian Regimes* (Cambridge University Press 2008) 326-336.

³⁹ Faded Abul-Ethem, 'The Role of the Judiciary in the Protection of Human Rights and Development: A Middle Eastern Perspective' (2002) 26 *Fordham International Law Journal* 761
<https://ir.lawnet.fordham.edu/ilj/vol26/iss3/8> accessed 2 October 2025.

⁴⁰ UK Parliament, *The Separation of Powers* (Research Briefings, 2024)
<https://researchbriefings.files.parliament.uk/documents/CBP-07354/CBP-07354.pdf> accessed 3 October 2025.

In more tightly controlled systems, the picture changes. Here, loyalty to those in power often matters far more than merit. Judicial appointments are used strategically to secure a bench that will echo the regime's priorities. Systems may still appear independent, such as centralised appointment boards or formal budget frameworks, but in reality, the freedom of judges is narrowly confined. Their role is to reinforce state authority, not to challenge it. To citizens, this becomes clear over time: courts may resolve small, everyday disputes, but on issues of political importance, they are unlikely to act as independent protectors of justice.

When a country breaks free from authoritarian rule and takes its first steps toward democracy, one of the most challenging questions it faces is what to do with the judges who served the old regime. The answer to this question often shapes how citizens view the new judiciary, whether as genuine guardians of justice or as institutions still carrying the shadows of the past. During these fragile transitions, keeping the old judges can seem like the safe, practical choice. Outgoing rulers often insist on protecting their allies on the bench as part of the bargain to step aside. Politically, this helps calm the uncertainty of change. But it also comes with risks. Judges who were comfortable under authoritarianism may carry those same habits into the new system, undermining the spirit of democracy. For citizens, this can feel less like a new beginning and more like the same loyalties, just disguised in new clothes.⁴¹

On the other hand, sweeping out all the judges, what's often called "lustration", may feel like an act of cleansing justice, but it too carries serious dangers. Removing everyone sets an unsettling precedent: if every new political force can remake the judiciary at will, then independence collapses, and courts become just another political tool. It also risks cheapening the very values that democracy is trying to build. After all, many judges under authoritarianism were simply applying the laws of their time.⁴² Unless judges were directly involved in serious human rights abuses, removing them all at once can appear less like a pursuit of justice and more like an act of political revenge.

This is the heart of the dilemma in transitional justice. Keep too many judges, and the authoritarian mindset lingers on. Remove too many, and you weaken the judiciary before democracy has a chance to take root. The path forward is rarely straightforward. It requires

⁴¹ Leigha C Crout, 'Legal Mobilization & The Rule of Law: Lessons in Democratic Resilience' (Stanford Law School, February 2025) <https://law.stanford.edu/wp-content/uploads/2025/02/Crout-Legal-Mobilization-the-Rule-of-Law.pdf> accessed 10 October 2025.

⁴² Fahed Abul-Ethem, 'The Role of the Judiciary in the Protection of Human Rights and Development: A Middle Eastern Perspective' (2002) 26 Fordham International Law Journal 761 <https://ir.lawnet.fordham.edu/ilj/vol26/iss3/8> accessed 2 October 2025.

balance holding those who abused power accountable, while also building stability and protecting the court's independence for the future.

CONCLUSION

When we examine courts across various systems of government closely, we discover a fascinating paradox. Courts are built on the promise of justice to uphold the rule of law, protect rights, and safeguard constitutional values. Yet, in the real world, they often serve another purpose as well, acting as tools of political power. This tension runs through every system. As this paper has shown in comparing authoritarian regimes with parliamentary democracies, courts are never simply one thing or the other. What we see instead is a more complicated reality: their authority is both shaped and limited by the political environment around them, yet, in its own way, strengthened by it. Courts, in short, live in the space between law and politics, never entirely free of either.

In authoritarian regimes, the judiciary often fails to serve as an independent check on those who rule. Instead, it is generally made to serve the interests of the regime by legitimising political authority, managing disputes in ways that reinforce control, and projecting an image of legality. Courts are allowed some discretion in their operations, but always within carefully defined boundaries. They may discipline local actors, settle administrative or economic conflicts, or provide citizens with limited forms of relief, but they are not permitted to challenge the foundations of political power. In this sense, the judiciary in authoritarian systems functions more as an instrument of governance than as a guardian of rights. Yet this does not mean that authoritarian courts are without significance. Their very usefulness to the regime depends on maintaining a degree of credibility⁴³. If courts appeared completely hollow, people wouldn't trust them to resolve even the smallest issues. That is why they are given a narrow space to function, enough to discipline lower officials or settle disputes fairly in limited areas. These small openings, though controlled, sometimes create moments of accountability. So, while authoritarian courts mostly serve the regime, they still hold fragments of independence that remind us of the lasting importance of law, even under restrictive rule.

By contrast, in parliamentary democracies, the judiciary is institutionally designed to protect constitutional values, individual rights, and the balance of powers. Courts are expected to act

⁴³ Hilton L. Root and Karen May, 'Judicial Systems and Economic Development' in Tamir Moustafa and Tom Ginsburg (eds), *Rule by Law: The Politics of Courts in Authoritarian Regimes* (Cambridge University Press 2008) 304-325.

as guardians against arbitrary rule and as guarantors of fairness. Through mechanisms such as judicial review, democratic courts ensure that parliaments and executives do not exceed their authority. This protective role strengthens the legitimacy of democratic governance by providing citizens with a trusted avenue through which they can contest state action. In this way, the judiciary embodies the promise of constitutional democracy.⁴⁴ At the same time, the democratic judiciary is not beyond criticism. Its independence can be compromised in moments of crisis, and its decisions are not always in line with the ideals of liberty or equality. Courts in parliamentary democracies can and have endorsed measures that limit rights or expand executive authority. Such episodes remind us that the judiciary is also embedded in political contexts, and that even in democracies it can operate as an instrument of power. Guardianship, therefore, is not absolute but conditional, depending on institutional strength, constitutional culture, and the courage of judges themselves.⁴⁵

Taken together, the two systems highlight a shared paradox. Authoritarian regimes deploy courts mainly as instruments but still require them to retain some degree of independence. Parliamentary democracies empower courts as guardians, but they also witness moments when those same courts align with political power. The difference lies in emphasis: in authoritarian systems, the balance tilts heavily toward instrumentality, while in democracies it leans toward guardianship. But neither side of the paradox is ever absent. For ordinary people, this paradox plays out in very real ways. In democracies, citizens walk into courtrooms with the hope that their voices will be heard and their rights upheld. Even if a particular judgment disappoints them, the simple possibility of appealing to the courts strengthens their faith in the system. By contrast, in authoritarian states, people tread more carefully. They know that political cases are usually decided in advance, leaving little room for true justice. Still, they may turn to the courts for smaller, everyday matters such as property disputes or local conflicts where fairness is more attainable. This contrast reminds us that while courts are deeply shaped by political systems, they also shape how people experience justice in their daily lives.⁴⁶

What this study reveals is that courts cannot be seen as institutions that exist above politics. They are not just legal bodies; they are also deeply political. Their power and independence

⁴⁴ Zsolt Szabó, 'Judicial Control of Parliamentary Procedure: Theoretical Framework Analyses' (2023) 9(1) Constitutional Review 1–27 <https://doi.org/10.31078/consrev911> accessed 10 October 2025.

⁴⁵ Tom Ginsburg, *Judicial Review in New Democracies: Constitutional Courts in Asian Cases* (Cambridge University Press 2003) ISBN 9780521817158.

⁴⁶ Asian Journal of Comparative Law (AsJCL), ISSN Print: 2194-6078, ISSN Online: 1932-0205, Editors: Arif A. Jamal and Kevin Y.L. Tan (National University of Singapore).

depend on how they interact with those who govern. In authoritarian regimes, this typically means that the courts operate under the shadow of political authority, kept in check but still sufficiently independent to lend the system some credibility. In parliamentary democracies, the relationship appears more balanced as courts can challenge political actors, but at the same time, they rely on those same actors to implement their rulings. In both contexts, the judiciary offers insight into the deeper workings of power and governance.⁴⁷

The fact that courts play a double role as protectors of justice and as tools of power isn't a flaw at all. It's part of their very nature. Courts are never fully one or the other; they are always a mix of both. Sometimes they lean more toward defending people's rights, and other times they tilt toward serving those in power. This constant balancing act is what keeps them central to political life, no matter the system of government. They don't just matter because they settle disputes or deliver verdicts; rather, they matter because they reflect something bigger: the way a state chooses to connect law, authority, and the lives of its citizens.

Ultimately, the comparative analysis in this paper reveals that courts are one of the clearest windows into how governments operate. In democracies, they reveal both the strength and the fragility of constitutional rule. In authoritarian systems, courts reveal how fragile the law becomes when too much power rests in the hands of a few. Across both, courts remind us of the law's double nature, that it can empower people, but it can also be used to control them. To think of courts only as guardians or only as tools of power is to overlook their more profound role. They are always both at once, reflecting the logic of the political system, shaping legitimacy, and reminding us that law and power are never entirely separate.

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