



## Supreme Court's Role in Upholding Civil Liberties

This editorial is based on "[The top court as custodian of liberties](#)" which was published in The Hindu on 13/08/2024. This article highlights the Supreme Court of India's recent decision to grant bail in Delhi excise policy case, emphasizing that "liberty is an intrinsic part" of constitutionalism, highlights its role in upholding individual rights and ensuring timely justice. The ruling critiques the criminal justice system's delays and the problematic use of stringent laws, reaffirming that bail should be the rule rather than the exception.

**For Prelims:** [The Supreme Court](#), [Prevention of Money Laundering Act \(PMLA\)](#), [Chief Justice of India \(CJI\)](#), [Right To Privacy As A Fundamental Right](#), [Section 66A of the Information Technology Act](#), [Fundamental Rights](#), [National Judicial Data Grid](#), [The National Judicial Appointments Commission \(NJAC\) Act](#), [e-Courts Integrated Mission Mode Project](#).

**For Mains:** Significance of Judiciary in Upholding Fundamental Rights and Democratic Values.

On August 9, [the Supreme Court \(SC\)](#) ruled that a speedy trial is a fundamental right under **Article 21** of the Constitution, holding that long incarceration without trial, even under stringent laws like the [Prevention of Money Laundering Act \(PMLA\)](#), violates this right. The Court's ruling, which emphasizes that "liberty is an intrinsic part" of constitutionalism, reinforces the principle that bail should be the rule rather than the exception, reflecting its commitment to ensuring a **fair and timely trial** as a fundamental right under **Article 21**.

In its judgment, the Court not only addressed the specific bail case but also responded to broader concerns about the **delays and inefficiencies** inherent in the criminal justice system, particularly under stringent laws like the PMLA. By highlighting the excessive delays and the problematic application of such laws, the Court called for a reconsideration of how justice is administered, aiming to protect **civil liberties** against procedural excesses.

Ultimately, the ruling serves as a reminder of the Court's pivotal role in upholding justice and reinforcing **democratic values**, urging a shift towards a justice system that respects individual rights and counters systemic inefficiencies.

**The Supreme Court**, while revered as the **guardian of the Constitution**, has faced increasing scrutiny in recent years. Contemporary political and constitutional commentators have raised concerns about various aspects of its functioning, questioning its independence, consistency, and effectiveness.

### Supreme Court of India

- Following India's independence in 1947, the **Constitution of India** was adopted on **26th January 1950**. **The Supreme Court of India** was established shortly thereafter, with its inaugural session

held on **28th January 1950**.

- The Indian constitution provides for a provision of **the Supreme Court** under **Part V (The Union) and Chapter 6 (The Union Judiciary)**.
- **Articles 124 to 147 in Part V** of the Constitution deal with the organization, independence, jurisdiction, powers and procedures of the Supreme Court.
- **The Indian constitution under Article 124(1)** states that there shall be a **Supreme Court of India** constituting of a [Chief Justice of India \(CJI\)](#) and, until Parliament by law prescribes a larger number, of not more than seven other Judges.
  - At present the top court has a sanctioned strength of **34 judges**.
- The jurisdiction of the **Supreme Court of India** can broadly be categorized into original jurisdiction, appellate jurisdiction and advisory jurisdiction. However, there are other multiple powers of the Supreme Court.
- The rulings issued by the Supreme Court are **authoritative and binding** on all courts within India.
- The Court possesses the **power of judicial review**, enabling it to invalidate legislative and executive actions that violate constitutional provisions, disrupt the balance of power between the Union and the States, or infringe upon the **fundamental rights** guaranteed by the Constitution. Thus, the Supreme Court of India is the **guarantor of the civil liberties** in India.

## Which Provisions Make the Supreme Court The Guardian of Civil Liberties?

### ▪ Constitutional Provisions:

- **Article 13:** This provision ensures that any law that contravenes or takes away the **Fundamental Rights** is deemed void. The Supreme Court can adjudicate whether any law is unconstitutional or violates civil liberties.
- **Article 32:** This article grants the [right to constitutional remedies](#), allowing individuals to approach the Supreme Court directly for the enforcement of Fundamental Rights. It makes the Supreme Court the protector of Fundamental Rights and civil liberties.
- **Article 136:** This provision grants the Supreme Court special powers to grant special leave to appeal from any judgment, decree, or order of any court or tribunal, which includes matters related to civil liberties.
  - **SLP (Special Leave Petition):** This is a petition to the Supreme Court seeking permission to appeal against lower court decisions on significant legal issues.
- **Article 142:** This article empowers the Supreme Court to pass any order or decree necessary for doing **complete justice** in any cause or matter, including safeguarding civil liberties and fundamental rights.

### ▪ Other Tools:

- **Writs:** These are legal orders from higher courts to enforce Fundamental Rights or direct public authorities. **Habeas Corpus, Mandamus, Prohibition, Certiorari, and Quo Warranto** are writs available to enforce civil liberties.
- **PIL (Public Interest Litigation):** These are petitions filed to address issues affecting the public and ensure justice on matters of broader social concern.
- **Judicial Review:** This is the power of courts to assess the constitutionality of laws and government actions, ensuring they comply with the Constitution.

### ▪ Various Doctrines:

- **Basic Structure:** The [Basic Structure Doctrine](#) is a principle established by the Supreme Court which asserts that certain fundamental features of the Constitution cannot be altered or destroyed by amendments.
  - This doctrine ensures that amendments to the Constitution must not affect its essential framework, such as democracy, secularism, and the rule of law. It was formalized in the case [Kesavananda Bharati v. State of Kerala \(1973\)](#).
- **Doctrine of Severability:** This doctrine states that if a part of a law is found to be unconstitutional, that part can be severed from the rest of the law, which will remain valid if it can function independently.
  - It helps to invalidate only the unconstitutional portions of a law, preserving the remainder of the legislation.

- **Doctrine of Eclipse:** According to this doctrine, if a law infringes on Fundamental Rights, it becomes void or "eclipsed" to the extent of the infringement but does not become null and void altogether. It remains inoperative as long as it contravenes **Fundamental Rights** but can be revived if the inconsistency is removed.
  - This doctrine provides that laws infringing on Fundamental Rights are not completely invalidated but are suspended until they are aligned with the Constitution.
- **Doctrine of Substantive Due Process:** This doctrine extends beyond mere procedural fairness to include the protection of certain fundamental rights as **substantive rights**, ensuring laws do not violate the core essence of Fundamental Rights.
  - It protects individual freedoms and ensures laws affecting such freedoms are just, fair, and reasonable.
- **Doctrine of Colorable Legislation:** The doctrine of colourable legislation is a legal principle that prevents the government from using its legislative authority in an unconstitutional way. It's also known as the "Fraud on the Constitution". It means that things that can't be done directly also can't be done indirectly.

## What are Some Instances Where the Supreme Court has acted as the Guardian of Civil Liberties??

- **Delhi Excise Policy Case (2024):**
  - In this recent judgment, the Supreme Court reaffirmed that the **right to a speedy trial** is a fundamental right under **Article 21**.
    - However, the Right of Speedy Trial was declared as a fundamental right by a Constitutional Bench of the Supreme Court in *Kartar Singh vs. State of Punjab* (1994).
  - This decision emphasized that prolonged incarceration without trial is a violation of civil liberties, particularly in the context of stringent laws like the **Prevention of Money Laundering Act (PMLA)**.
- **Arnab Goswami vs The State of Maharashtra (2020):**
  - The judgment underscored the **right to liberty and a speedy trial**, emphasizing that personal liberty cannot be compromised through arbitrary or excessive legal measures.
  - It reiterated the constitutional principle that **bail** is the norm and incarceration an exception, a principle articulated by **Justice V.R. Krishna Iyer in 1977**.
  - This aligns with the **right to a fair and speedy trial** under Article 21 of the Indian Constitution.
- **Navtej Singh Johar vs. Union of India (2018):**
  - The Supreme Court **decriminalized consensual homosexual acts** by striking down **Section 377** of the Indian Penal Code.
  - This landmark decision affirmed the rights of the LGBTQ+ community, highlighting the Court's commitment to upholding individual dignity and privacy against discriminatory laws.
- **Justice K.S. Puttaswamy vs. Union of India (2017):**
  - **The Supreme Court** recognized the [right to privacy as a fundamental right](#) under the Constitution.
  - The judgment emphasized that privacy is intrinsic to the **dignity of individuals** and must be protected against arbitrary state actions, thereby expanding the scope of civil liberties in India.
- **Shreya Singhal v. Union of India (2015):**
  - **The Supreme Court** struck down [Section 66A of the Information Technology Act](#), which criminalized offensive or menacing online content.
  - The Court ruled that this provision violated the fundamental right to freedom of speech and expression under Article 19(1)(a) of the Constitution.
- **Lalita Kumari vs. Government of Uttar Pradesh (2014):**
  - **The Supreme Court** ruled that the police are **obligated to register an FIR** (First Information Report) upon receiving a complaint of cognizable offenses.
  - This decision reinforced the right of individuals to have their grievances addressed by law enforcement, ensuring prompt action and protection of civil liberties.
- **Lily Thomas vs. Union of India (2013):**

- The court declared that a lawmaker convicted of a crime punishable with imprisonment for two years or more would be disqualified from holding office immediately upon conviction, irrespective of the pendency of an appeal.
- This judgment was a significant step towards enhancing the **credibility and accountability** of elected representatives.
- **Gaurav Jain vs. Union of India (1997):**
  - In this case, the Supreme Court addressed the rights of women and children in the context of prostitution.
  - The court determined that women in the flesh trade should be seen as victims of **socio-economic hardships** rather than offenders, and that both they and their children deserve **dignity, protection, and the opportunity** to reintegrate into society without stigma..
- **Maneka Gandhi vs. Union of India (1978):**
  - This case expanded the scope of **Article 21**, which guarantees the **right to life and personal liberty**. The Supreme Court ruled that this right is not limited to mere existence but includes the **right to live with dignity**.
  - The judgment emphasized that any law depriving a person of their liberty **must be fair, just, and reasonable**, thereby strengthening procedural safeguards.
- **Kesavananda Bharati vs. State of Kerala (1973):**
  - In this landmark case, **the Supreme Court** established the **Basic Structure Doctrine**, asserting that certain fundamental features of the Constitution, including the **protection of civil liberties**, cannot be altered by amendments.
  - The Court held that the [fundamental rights](#) enshrined in the Constitution form part of its basic structure, which must be preserved.
- **A.K. Gopalan vs. State of Madras (1950):**
  - In this early case, the Supreme Court tackled the issue of **preventive detention**. Although the decision initially upheld the validity of preventive detention laws, it set the stage for later rulings that would address and narrow the scope of such laws to better align with fundamental rights.
- **Romesh Thappar v. State of Madras (1950):**
  - The Supreme Court of India ruled that a government order banning the entry and circulation of a newspaper in Madras violated the **fundamental right to freedom of speech and expression** under **Article 19(1)(a) of the Constitution** and held that freedom of the press was an essential part of the right to freedom of speech and expression.
  - It emphasized that the state cannot impose arbitrary bans on the press, thereby reinforcing the protection of civil liberties and limiting government power over free expression.

## What are Challenges Associated With Functioning of the Supreme Court?

- **Implementation of Judgments:**
  - Critics have raised concerns about the **implementation and enforcement** of the Supreme Court's judgments. In some cases, despite clear directives from the Court, the execution of its orders has been slow or inadequate.
  - **Constitutional experts** argue that without robust implementation frameworks, the impact of the **Court's decisions** can be diminished, leading to frustration among litigants and diminishing the **rule of law**.
  - Also, there is **no uniformity** in application of various principles upheld by the supreme court for securing civil liberties.
  - The lack of **doctrinal consistency** across benches leads to **confusion and unpredictability** in legal outcomes.
- **Case Delays and Pendency:**
  - Another significant issue facing the Supreme Court is the enormous backlog of cases, leading to significant delays in justice delivery.
    - As per [National Judicial Data Grid](#), around **4.4 Crore** cases are pending in Indian courts out of this more than **1 crore** cases are **civil suits**.
  - The delays in adjudication not only undermine public confidence in the judiciary but also adversely affect the lives of litigants. The lack of doctrinal consistency across benches leads to confusion and unpredictability in legal outcomes.
- **Master of The Roster Issue:**

- Several critics including judges have criticized the concept of '**master of the roster,**' which grants the CJI the exclusive power to form benches and allocate cases, arguing that it should not imply the CJI's superiority over other justices.
- They believe that traditional conventions guiding roster management have been ignored, leading to selective and potentially biased case assignments by the CJI.
- **Judicial Overreach and Activism:**
  - One of the most frequent criticisms of **the Supreme Court** is its perceived **judicial overreach and activism.**
  - Critics argue that the Court has occasionally encroached upon the domain of the legislature and executive, thereby disrupting the balance of power among the three branches of government.
  - Such activism risks undermining the principle of separation of powers and may lead to accusations of judicial authoritarianism.
- **Appointments and Transparency Issues:**
  - The process of appointing judges to the Supreme Court has also been a focal point of criticism. [The National Judicial Appointments Commission \(NJAC\) Act](#), intended to reform the appointment process, was struck down by the Supreme Court in 2015.
  - Lack of transparency and thoroughness, and the lack of clear standards for assessing suitability of judges further erode trust in the [collegium's](#) integrity.
- **Independence of Judiciary:**
  - The independence of the judiciary is a fundamental principle in India, guaranteed by the Constitution through provisions like **Article 50 and Article 124(2)**, which aim to separate judicial functions from executive influence.
  - Despite these safeguards, challenges such as judicial appointments, procedural delays, and corruption pose threats to this independence.

## The Bangalore Principles of Judicial Conduct

- The Bangalore Principles of Judicial Conduct aim to set ethical standards for judges.
- They provide a framework for regulating judicial behavior and offer guidance on maintaining judicial ethics.
- The Principles recognize six core values: **independence, impartiality, integrity, propriety, equality, and competence and diligence.**
  - **Independence:** Judges must make decisions free from external pressures or influences, ensuring their judgments are based solely on the law.
  - **Impartiality:** Judges must be unbiased and fair, treating all parties equally and deciding cases based on evidence and legal principles.
  - **Integrity:** Judges must act honestly and ethically, maintaining high standards of truthfulness and transparency.
  - **Propriety:** Judges should conduct themselves in a manner that upholds the dignity of their office, both inside and outside the courtroom.
  - **Equality:** Judges must treat everyone equally, ensuring that no one is unfairly discriminated against and that justice is administered fairly.
  - **Competence and Diligence:** Judges must have the necessary legal expertise and handle cases with care and thoroughness, ensuring timely and well-considered decisions.
- The principle defines these values and details the expected conduct for judges to effectively practice each value.

## What Should be Way Forward?

- **Strengthening Implementation Frameworks:**
  - Develop clear, **enforceable guidelines** for the implementation of Supreme Court judgments to ensure that directives are acted upon promptly and effectively.
  - Establish **monitoring mechanisms** to track the execution of orders and address non-compliance issues.
- **Reducing Case Backlog:**

- Increase the number of judges and court staff to expedite case processing and reduce the backlog.
- Implement technology-driven solutions like e-filing and case management systems to streamline procedures and enhance efficiency.
  - For instance, the Government of India has launched the [e-Courts Integrated Mission Mode Project](#) in the country for computerization of District and subordinate courts with the objective of improving access to justice using technology.
- **Ensuring Doctrinal Consistency:**
  - Foster uniform application of legal principles by promoting cross-bench dialogue and standardizing judicial approaches to reduce variability in rulings.
    - For example, applying the recent ruling of SC, fair and timely trial as a fundamental right under Article 21, should be applied for speedy trial of several other pending cases.
  - Encourage the development of comprehensive guidelines to ensure consistency in judicial decisions.
- **Addressing Judicial Overreach:**
  - Reinforce the separation of powers by clarifying the boundaries of judicial intervention in legislative and executive matters.
  - Promote judicial restraint and emphasize adherence to constitutional limits to avoid accusations of overreach and maintain balance among government branches.
- **Improving Appointments and Transparency:**
  - Revise the Collegium system to enhance transparency and accountability in the judicial appointment process.
  - Consider reforms to establish clearer standards for evaluating judicial candidates and ensure a more transparent selection process.
- **Protecting Judicial Independence:**
  - Uphold constitutional safeguards by addressing threats to judicial independence, including addressing concerns related to appointments, procedural delays, and corruption.
  - Promote ongoing dialogue between the judiciary, executive, and legislative branches to strengthen the independence and integrity of the judicial system.

## Conclusion

The independence of the judiciary is often hailed as the cornerstone of a democratic polity. In India, this principle is enshrined in the Constitution, with provisions guaranteeing the judiciary's freedom from executive and legislative interference.

However, the judiciary's independence has faced challenges over the years. There have been instances of alleged executive overreach and attempts to influence judicial decisions. Despite these challenges, the Indian judiciary has demonstrated its courage and commitment to upholding the Constitution. Landmark judgments on issues such as fundamental rights, electoral reforms, and corruption have solidified its position as a guardian of constitutional rights.

### **Drishti Mains Question:**

The Supreme Court of India, as the apex judicial authority, plays a vital role in upholding constitutional values and civil liberties. Highlighting this, critically analyze the major challenges confronting the Supreme Court of India.

## UPSC Civil Services Examination Previous Year Question (PYQ)

### **Prelims:**

**Q. With reference to the Indian judiciary, consider the following statements:**

1. Any retired judge of the Supreme Court of India can be called back to sit and act as a Supreme Court judge by the Chief Justice of India with the prior permission of the President of India.

2. A High Court in India has the power to review its own judgement as the Supreme Court does.

**Which of the statements given above is/are correct? (2021)**

- (a) 1 only
- (b) 2 only
- (c) Both 1 and 2
- (d) Neither 1 nor 2

**Ans: (c)**

**Mains:**

**Q.** Discuss the desirability of greater representation to women in the higher judiciary to ensure diversity, equity and inclusiveness. **(2021)**

**Q.** Critically examine the Supreme Court's judgement on 'National Judicial Appointments Commission Act, 2014' with reference to appointment of judges of higher judiciary in India. **(2017)**

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