

***Advancing Judicial Independence and Accountability:
Preserving the Rule of Law and Reinforcing Judicial Security
in an Evolving Global Landscape***

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Opening

Distinguished colleagues, esteemed jurists, ladies and gentlemen,

It is a profound privilege to address you today on a theme that is central to the health of democracy itself: how we advance judicial independence and accountability, preserve the rule of law, and reinforce judicial security, all within the challenges of an evolving global landscape.

India and South Africa, though separated by oceans, are united by history and ideals. Both emerged from deep struggles — India from colonial subjugation, South Africa from the long night of apartheid. And in both, the judiciary often stood as the sentinel of liberty, keeping alive the promise of equality and human dignity when other institutions falter.

Nelson Mandela recognized that even the most oppressive regimes can be constrained by principled judges. During apartheid, the Delmas Treason Trial, in which 22 anti-apartheid activists were charged with treason, saw the judiciary acquit several defendants despite immense political pressure. Such acts of judicial courage, Mandela observed, gave legitimacy to the struggle for justice and

inspired hope, showing that even a few independent voices in the courts can change the course of history.

Similarly, Justice H.R. Khanna — whose immortal dissent in *ADM Jabalpur v. Shivkant Shukla* during the Emergency period in India remains one of the brightest beacons of constitutional fidelity — once observed: “If there are three prime requisites for the rule of law, they are a strong Bar, an independent judiciary, and an enlightened public opinion.”¹

These requisites are as relevant today as they were half a century ago. For without them, liberty is fragile, rights are illusory, and constitutions become mere parchment barriers. Courts may not wield the sword or the purse, but they wield something far greater — the trust of the people. And it is this trust that makes democracy endure.

Today, I propose to reflect on how judicial independence has been shaped, why accountability must accompany it, how judicial security underpins both, and how together they sustain the rule of

¹ *ADM Jabalpur v. Shivkant Shukla* (1976) 2 SCC 521 (Khanna, J., dissent).

law in a fast-changing world.

I. Why Judicial Independence Matters

The judiciary is the sentinel of the Constitution, tasked with saying “no” when power exceeds its bounds.

An independent judiciary ensures:

- That executive and legislative excesses can be checked.
- That minority rights are protected even against majoritarian sentiment.
- That the powerful and the powerless stand equal before the law.

Alexander Hamilton, in *Federalist No. 78*, described the judiciary as “the least dangerous branch” for it held neither purse nor sword.² Yet, paradoxically, it is the most enduring guardian of liberty

²Alexander Hamilton, *The Federalist Papers*, No. 78 (1788)

“Whoever attentively considers the different departments of power must perceive, that, in a government in which they are separated from each other, the judiciary, from the nature of its functions, will always be the least dangerous to the political rights of the Constitution; because it will be least in a capacity to annoy or injure them. The Executive not only dispenses the honors, but holds the sword of the community. The legislature not only commands the purse, but prescribes the rules by which the duties and rights of every citizen are to be regulated. The judiciary, on the contrary, has no influence over either the sword or the purse; no direction either of the strength or of the wealth of the society; and can take no active resolution whatever. It may truly be said to have neither FORCE nor WILL, but merely judgment; and must ultimately depend upon the aid of the executive arm even for the efficacy of its judgments.”

precisely because it wields the pen — the authority of reason, precedent, and legitimacy.

But independence is not an end in itself. It is a means to secure impartial justice, protect rights, and preserve constitutionalism. While an independent Judiciary does not, of itself, guarantee the Rule of Law, in the absence of an independent Judiciary, there can be no Rule of Law.

II. The Historical Foundations of the Rule of Law in India

In India, the epic Mahabharata deals with the concepts of Dharma (used to mean law and duty interchangeably), *Rajdharma* (duty of the king) and *Dharmaraja* (rule of law).

In the landmark case of *Indira Gandhi vs Raj Narain*, Justice KK Mathew had emphasised this concept succinctly: *“I cannot conceive of rule of law as a twinkling star up above the Constitution. To be a basic structure, it must be a terrestrial concept having its habitat within the four corners of the Constitution.”*

The *Upanishads* declare: **“Law is the king of kings, far more rigid and powerful than they; there is nothing higher than law; by its**

prowess, as by that of the highest monarch, the weak shall prevail over the strong."³

This heritage was crystallized in our Constitution of 1950, which entrusted the judiciary with the duty to safeguard liberty, enforce equality, and preserve the balance of power. It is through a sui-generis system of Constitutional checks and balances by reason of which powers are so distributed that none of the three organs it sets up can become so pre-dominant as to disable the others from exercising and discharging powers and functions entrusted to them. The judicial review provided expressly in our Constitution by means of Article 226 and 32 is one of the features upon which hinges the system of checks and balances.⁴

III. Constitutionalism and Judicial Independence in India

Our framers understood that independence without accountability could degenerate into arbitrariness.

³ (1976) 2 SCC (Jour) 1

⁴ *Kesavananda Bharati v. State of Kerala* (1973) 4 SCC 225

Thus, the Constitution built both **structural safeguards** and **normative duties**:

- Articles 124 and 217: Appointment and tenure of judges.

Judges of the Supreme Court of India (Art. 124) and High Courts (Art. 217) are appointed by the President after consultation (interpreted through the *Second Judges Case*, (1993) 4 SCC 441, as the **Collegium system**). Tenure security ensures that judges are not beholden to the executive for continuance in office.

- Articles 121 and 211: Immunity from legislative criticism.

These articles bar discussion in Parliament or State Legislatures on the conduct of judges, except during impeachment proceedings. This is to shield judges from political pressure and public vilification in legislative forums.⁵

- Articles 125 and 221: Salaries charged to the Consolidated Fund.

Charged on the Consolidated Fund of India/States, meaning they are not subject to annual legislative vote. They cannot be

⁵ M.P. Jain (*Indian Constitutional Law*, 8th ed., p. 2123).

altered to a judge's disadvantage after appointment, ensuring financial autonomy.

- Article 50: Separation of judiciary from executive - *“The State shall take steps to separate the judiciary from the executive in the public services of the State.”*

Article 50 is enshrined in Part IV of the Constitution (Directive Principles of State Policy, “DPSPs”). While DPSPs are non-justiciable under Article 37, they are fundamental in the governance of the country and guide State policy.⁶ This provision was specifically designed to secure the independence of the subordinate judiciary from executive interference. The framers considered separation a “prerequisite for impartial justice” in a democracy.⁷

- Removal only by special majority in Parliament for proved misbehavior or incapacity.

Judges can only be removed by an order of the President after an address by both Houses of Parliament supported by a

⁶ Seervai, *Constitutional Law of India*, Vol. II, p. 1960)

⁷ B. Shiva Rao's *The Framing of India's Constitution* - (In Six Volumes) by B. Shiva Rao by Indian Institute of Public Administration

special majority (two-thirds members present and voting, plus an absolute majority of total membership). This safeguard, discussed in *Sub-Committee on Judicial Accountability v. Union of India* (1991) 4 SCC 699,15 ensures removal only for **proved misbehaviour or incapacity**.

States in independent India have progressively separated executive and judicial functions in criminal justice administration, especially under the Code of Criminal Procedure, 1973.

The combined effect of Article 50 and the aforesaid provisions is that **judicial independence operates on two levels:**

- *Institutional* (structural safeguards in appointment, tenure, removal, finances).
- *Functional* (separation from executive influence in day-to-day judicial work).

The ***Kesavananda Bharati v. State of Kerala*** (1973) 4 SCC 225 decision cemented judicial independence as part of the **basic structure** of the Constitution, meaning it cannot be diluted even by constitutional amendment.

Article 50, though aspirational, forms the textual bedrock for subordinate judicial independence, while Articles 124, 217, 121, 211, 125, 221, and removal provisions operationalise independence for the higher judiciary. As H.M. Seervai observed these provisions, read together, ensure that “the judiciary remains not merely an organ of the State, but the sentinel of the Constitution.”

Yet, independence must coexist with accountability. Judges are not sovereigns but trustees of constitutional power. They are accountable to the Constitution, to precedent, to reasoned judgment, and ultimately, to the people whose rights they safeguard.

IV. Judicial Accountability: Complement, Not Contradict

Accountability preserves legitimacy, which is the lifeblood of judicial authority.

Accountability takes many forms:

- **Reasoned Judgments:** Every decision must speak through reasons, not authority.
- **Judicial Conduct:** Mechanisms for disciplining misconduct, without chilling independence, are essential.

- **Public Confidence:** Ultimately, judicial legitimacy rests on public trust, earned through consistency, fairness, and accessibility.

Judicial independence enables judges to follow the facts and law without fear or favour, so as to uphold the rule of law, preserve the separation of governmental powers, and promote due process. Thus, Judicial accountability has to be viewed as an instrumental value that promotes three discrete ends: the rule of law, public confidence in the courts, and institutional responsibility.⁸

The **Institute of Democracy in South Africa (IDASA)**, in support of the aforesaid idea, pertinently stated in March 2007 – “*The Independence of the Judiciary must not only be constitutionally protected, it must also capture and maintain the confidence of the public it seeks to protect. Loss of confidence in the judicial system due to perceptions of a lack of independence and impartiality is extremely damaging to the effective working of the justice system.*”

Therefore, judicial independence is not an end in itself but merely a means to an end. With respect to judicial decision-making the object

⁸ Nath, Dr. G. V. Mahesh, Judicial Accountability: The Present Contours and the Way Forward (July 16, 2013). Available at SSRN: <https://ssrn.com/abstract=2294465> or <http://dx.doi.org/10.2139/ssrn.2294465>

of judicial independence is to ensure judicial fairness – that judicial decisions are based solely on evidence and law and not influenced by any improper consideration. With respect to judicial decision making, judicial independence is the freedom to be fair.

V. Judicial Security: A Comparative and Contemporary Analysis as a facet of Judicial Independence

1. A Strengthened Foundation for Judicial Independence

Judicial security encompasses physical, institutional, and procedural measures to protect judges, court staff, and infrastructure from threats and attacks. It is a cornerstone of judicial independence, ensuring that judicial officers can discharge their duties free from intimidation or coercion.⁹ The concept extends beyond physical safety to include reputational and psychological protection, recognizing that an unthreatened judiciary is a prerequisite for fair and impartial adjudication. As courts continue to address complex disputes, judicial security is viewed not just as

⁹ Basic Principles on the Independence of the Judiciary, 1985, OHCHR: *Basic Principles on the Independence of the Judiciary*, adopted in 1985

a logistical necessity but as a positive constitutional imperative.¹⁰ The need for judicial security is recognized globally, and robust security is essential for judicial independence. In jurisdictions with heightened risks, threats against judges can hinder impartial adjudication.

2. Evolving Legal Frameworks and Institutional Protections

Across the globe, legal frameworks for judicial protection are evolving to meet contemporary challenges. International standards, such as the U.N. Basic Principles on the Independence of the Judiciary, have long recognized that robust security is essential for judicial independence.¹¹

- South Africa integrates judicial security into its broader court administration. The Superior Courts Act 10 of 2013¹² and administrative protocols coordinated by the Office of the Chief Justice (OCJ) with national law enforcement ensure a more unified and resilient strategy.¹³

¹⁰ Rep. Sherrill Secures Inclusion of Daniel Anderl Judicial Security and Privacy Act in Final Version of the NDAA, 2022.

¹¹ Basic Principles on the Independence of the Judiciary, 1985, *OHCHR website*

¹² Superior Courts Act 10 of 2013, 2013, *SAFLII*.

¹³ The Establishment of the Office of the Chief Justice 2010–2013

- In India, alongside the Judges (Protection) Act, 1985, there is a strong and continuing push for administrative and procedural improvements. The judiciary and government are actively engaged in reinforcing protective mechanisms to better ensure the safety and dignity of judicial officers.

- **K. Veeraswami v. Union of India (1991) 3 SCC 655**

*“60. The Chief Justice of India is a participatory functionary in the matter of appointment of Judges of the Supreme Court and the High Courts. [Articles 124(2) and 217(1)] Even for transfer of a Judge from one High Court to another the Chief Justice should be consulted by the President of India. [Article 222] If any question arises as to the age of a Judge of a High Court, the question shall be decided by the President after consultation with the Chief Justice of India. [Article 217(3)] Secondly, **the Chief Justice being the head of the judiciary is primarily concerned with the integrity and impartiality of the judiciary. Hence it is necessary that the Chief Justice of India is not kept out of the picture of any criminal case contemplated against a Judge. He would be in a better position to give his opinion in the case and consultation***

with the Chief Justice of India would be of immense assistance to the government in coming to the right conclusion. We therefore, direct that no criminal case shall be registered under Section 154, CrPC against a Judge of the High Court, Chief Justice of High Court or Judge of the Supreme Court unless the Chief Justice of India is consulted in the matter. Due regard must be given by the government to the opinion expressed by the Chief Justice. If the Chief Justice is of opinion that it is not a fit case for proceeding under the Act, the case shall not be registered. If the Chief Justice of India himself is the person against whom the allegations of criminal misconduct are received the government shall consult any other Judge or Judges of the Supreme Court. There shall be similar consultation at the stage of examining the question of granting sanction for prosecution and it shall be necessary and appropriate that the question of sanction be guided by and in accordance with the advice of the Chief Justice of India. Accordingly the directions shall go to the government. These directions, in our opinion, would allay the apprehension of

all concerned that the Act is likely to be misused by the executive for collateral purpose.”

3. Innovative Responses to Evolving Threats

The judiciary is responding to security threats with innovative and decisive action, leveraging technology and a proactive mindset to strengthen judicial resilience.

Cybersecurity and Data Protection: Given that judicial institutions are potential targets for cyberattacks, cybersecurity is a top priority. Initiatives focus on robust measures like encryption, intrusion detection systems, and regular security audits to protect sensitive judicial data and records. The National Judicial Data Grid (NJDG), for instance, has been discussed as a system requiring protected status to ensure its security.¹⁴

AI-Powered Security and Efficiency: Artificial intelligence (AI) is being leveraged to both enhance security and streamline judicial processes. In India, Phase III of the e-Courts Project integrates AI

¹⁴ Cybercrime and Electronic Evidence: Programme Report P-1271,” 2021

technologies to enhance case management, improve efficiency, and secure data.¹⁵

Courtroom Surveillance and Access Control: The use of technology for physical security is becoming more sophisticated. This includes AI-powered surveillance systems for real-time threat detection and enhanced situational awareness, as well as biometric identification for secure access control.

- Judicial Training and Threat Assessment: Beyond technology, there's a growing emphasis on proactive human-centric measures:
- Specialized training for judicial officers on cybersecurity and digital evidence.
- Regular threat assessments for judges in high-risk cases.
- Specialized measures for witness protection, including secure witness rooms.

¹⁵ Cabinet Approves eCourts Phase III for Four Years,” Department of Justice, Government of India, 2023

VI. Global Perspectives and Comparative Lessons

Cross-Border Judicial Cooperation to Uphold Rule of Law in Global Financial Architecture

Judicial adherence to the rule of law is critical in establishing a predictable and stable environment, deterring economic abuses and corruption, and protecting investors and countries from arbitrary treatment. It mitigates the risk of financial crises by enforcing financial regulations and standards. Furthermore, it ensures that every dispute will be subject to an impartial and non-arbitrary legal process, which can foster investor confidence and stability in the system.¹⁶

Environmental Rule of Law and Cross-Border Judicial Cooperation to Prevent Climate Change

The UN Environment Report called “Environmental Rule of Law”, 2019 underscores that although the environmental laws put in place since 1972 have increased 38-fold, “**failure to fully implement and enforce these laws** is one of the greatest challenges to mitigating climate change, reducing pollution and preventing widespread

¹⁶ Mehmood, S. 2023. The Rule of Law Approach for More Resilient Institutions: Judicial Accountability and Independence, and Global Economic Activities. ADBI Working Paper 1418. Tokyo: Asian Development Bank Institute. Available: <https://doi.org/10.56506/FGHQ1674>

species and habitat loss. While there are still gaps in many of the laws, the substantial growth of environmental laws has been dramatic.”

This insight underscores that judicial independence is not merely about safeguarding institutional autonomy; it is also about ensuring that the judiciary remains a steadfast guardian of the rule of law in domains of pressing global concern. Strengthening judicial cooperation across borders in matters of climate change is therefore an essential dimension of upholding both the rule of law and judicial independence.

VII. The Judiciary as an Inclusive Institution Upholding the Rule of Law

The role of the Judiciary as a reliable, predictable, and vigilant institution is not an abstract legal concept, but a powerful idea rooted in the very mechanisms of economic prosperity and social stability, as articulated by the groundbreaking work of economists

like Daron Acemoglu, James Robinson, and Simon Johnson.¹⁷ Their theories provide a compelling framework for understanding how the judiciary is not merely a passive arbiter of disputes but an active catalyst for building a flourishing society.

The Foundation: Inclusive vs. Extractive Institutions

Extractive institutions, as defined by Acemoglu and Robinson, are those designed to siphon resources and power from the broad population for the benefit of a small, narrow elite. This is a historical norm, **characterized by the absence of secure property rights, coercion, and a general lack of opportunities for the majority. Under such a system, the "playing field is tilted" to favor those in power, often through the creation of entry barriers to businesses and occupations, and a general failure to provide public services for the masses.** In an extractive system, innovation and economic growth are, at best, fleeting. They can happen, but they are often limited to narrow sectors controlled by the elite, or they are quickly suppressed if they threaten the existing power structure. The elite's fear of "creative destruction"—the process by which new technologies and

¹⁷ Ramos-Maqueda, M., and Chen, D. L. (2021). *The Role of Justice in Development: The Data Revolution*. World Bank Group.

businesses displace old ones—drives them to maintain a system that is fundamentally hostile to broad-based progress. The extractive political systems that support this are defined by a concentrated, rather than pluralistic, distribution of power, where a small group can exercise power without any meaningful checks or constraints.

In stark contrast, inclusive institutions are those that provide incentives and opportunities for innovation and economic activity to a broad cross-section of society. The incentives are based on secure property rights, and the opportunities are undergirded by a level playing field, where a large portion of the population can participate in economic activity. This requires inclusive political institutions, which are defined by a pluralistic, broad-based distribution of political power, so that no single individual or group can exercise power in an arbitrary fashion. The crucial insight is that economic growth is much more likely to occur under inclusive institutions because they empower a larger segment of the population to innovate and participate, unleashing the full potential of human capital and creativity.

The Judiciary as a Pillar of Inclusive Political Institutions

The judiciary is arguably one of the most vital components of an inclusive political institution. By its very nature, it is designed to be independent of the legislative and executive branches of government. This independence is the cornerstone of its pluralism, ensuring that political power is not monopolized by a single group. A truly autonomous court system prevents rulers and powerful elites from acting in an arbitrary fashion, thereby upholding the core principle of inclusive political institutions. This institutional separation is not merely a formality; it is a profound check on power that prevents the powerful from using the law as a tool of extraction. When a judiciary operates with integrity and impartiality, it provides a powerful check on the exercise of state power, ensuring that the law applies to everyone equally. This includes the most vulnerable citizen and the most powerful corporation. This "equality before the law" is not a mere legal formality; it is a fundamental characteristic of a pluralistic system that empowers the many against the potential tyranny of the few.

The judiciary contributes to inclusivity in four fundamental ways:

1. Equal Application of Laws

2. **Protection of Minorities and the Marginalized**

3. **Checking Concentrations of Power**

4. **Guaranteeing Predictability and Impartiality in Rules**

Thus, strengthening judicial independence and accountability is not only about preserving the rule of law in a narrow constitutional sense; it is about ensuring that our institutions remain inclusive, resilient, and responsive to all citizens — the ultimate safeguard against both unchecked exercise of power and inequality.

VIII. The Evolving Global Landscape

Today's challenges to judicial independence are unlike those of the past.

- **Technological disruption:** Artificial intelligence in adjudication raises questions of fairness and accountability.¹⁸
- **Transnational issues:** Climate change litigation, international trade disputes, and human rights claims require judiciaries to think beyond borders.

¹⁸ Richard Susskind, *Online Courts and the Future of Justice* (2019).

- **Populism and majoritarianism:** Courts often face political backlash when protecting minorities.
- **Access to justice:** Delay itself can threaten the rule of law.

In this evolving landscape, courts must not retreat into formalism. They must embrace what Justice Bhagwati once described as a “rights-first mindset,” adapting constitutional principles to contemporary realities.¹⁹

The Rule of Law in the Era of Artificial Intelligence

In 2024, UNESCO conducted a global survey across 96 countries to examine the use of artificial intelligence in the justice sector. The results revealed a striking reality: nearly 44% of judicial actors, judges, prosecutors, and lawyers—reported using AI tools such as ChatGPT in their professional work. Yet, alarmingly, only 9% of them had received any form of institutional training or guidance on their appropriate use. This disparity underscores a profound gap, raising serious ethical, legal, and professional concerns.

¹⁹ Justice P.N. Bhagwati, “Judicial Activism and Public Interest Litigation” (1984) 23 Columbia Journal of Transnational Law 561.

How AI Biases Can Affect Rule of Law

One of the most troubling aspects of AI is the risk of bias. As UNESCO reminds us, “since wars begin in the minds of men and women, it is in the minds of men and women that the defences of peace must be constructed.”²⁰ Bias in AI does not always stem from deliberate prejudice. Engineers and developers may not intend to create systems that are racist, sexist, or discriminatory, yet these biases can become embedded in the very code that underpins AI decision-making. This is particularly dangerous in an era where many assume that technology is inherently more objective than human judgment.²¹

Many jurisdictions have sought to advance the *digitalisation of justice*. This development, however, treads a delicate line. On the one hand, digitalisation has facilitated access to justice for individuals who might previously have been excluded, particularly through the use of remote technology. On the other hand, it risks distancing segments of society who lack the resources, or digital literacy necessary to engage with a digital justice system.

²⁰ <https://unesdoc.unesco.org/ark:/48223/pf0000387331>

²¹ <https://www.unesco.org/en/artificial-intelligence/rule-law>

Where access to justice is indeed enhanced through digitalisation, it must be accompanied by an unwavering commitment to the right to a fair trial. Only then can the guarantees of the rule of law be meaningfully secured. Yet, the increasing reliance on artificial intelligence systems in analysing evidence, or in offering recommendations to judges on possible case outcomes, raises profound concerns. While such tools are often designed to aid judicial research, assist in interpreting facts, or even suggest applications of the law to a given set of circumstances, they may compromise the right to a fair trial.

The independence of the judiciary could be imperilled if AI systems are allowed to generate recommendations that steer outcomes towards particular legal or policy preferences.

IX. A Shared Global Responsibility

Judicial independence is not merely a national concern. It is a global responsibility. Countless international covenants recognize the rule of law as a cornerstone of peace.²²

²² Universal Declaration of Human Rights (1948), Art. 10; European Convention on Human Rights (1950), Art. 6.

The **Universal Declaration of Human Rights (1948)** declares in its preamble

Whereas it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law.

If courts in one nation falter, the precedent emboldens deliberate erosion of rights elsewhere. Conversely, when a judiciary stands firm — whether in South Africa during apartheid, or in India during the Emergency — it inspires global confidence in justice.

Thus, advancing judicial independence and accountability is not only about preserving our constitutions; it is about preserving humanity's shared promise of dignity, liberty, and equality.

Conclusion

Distinguished colleagues,

To weaken judicial independence is to imperil the rule of law. To neglect accountability is to imperil legitimacy. Both are indispensable, and both must advance together. And let us not

forget that judicial independence and accountability cannot endure without judicial security, for judges must be free to decide without fear, protected from threats both physical and systemic.

Our task, therefore, is threefold:

1. To guard judicial independence against executive, legislative, or populist capture.
2. To strengthen accountability through transparency, reasoning, and ethical standards.
3. To remember always that the rule of law is not self-executing; it depends on citizens, lawyers, and judges alike to sustain it.

The Constitution is not just a legal document; it is a moral covenant. The judiciary is not just an institution; it is the conscience of that covenant. And the rule of law is not merely a phrase; it is the very architecture of a just society.

Let us, then, in this evolving global landscape, reaffirm our collective resolve:

That no one is above the law. That justice shall not be delayed or denied.

That courts shall remain independent and accountable, guardians

not of power but of principle. For in preserving judicial independence and accountability, we preserve the rule of law. And in preserving the rule of law, we preserve democracy itself.

Thank you.