

The role of constitutional courts in shaping constitutionalism worldwide

The **global scenario today** reveals that **constitutional courts** have become vital actors in **shaping, protecting, and evolving constitutionalism** in democracies across the world. While their influence varies based on legal systems, political cultures, and historical contexts, one common trend is their growing role in **safeguarding fundamental rights, checking executive and legislative overreach, and interpreting constitutions as living instruments**.

1. Guardians of Constitutional Supremacy

Across democratic systems, constitutional courts ensure that **all state actions conform to the constitution**. Whether through abstract judicial review (like in Germany) or case-based review (like in the U.S. and India), courts **prevent unconstitutional laws and executive actions**, reinforcing the idea that **no authority is above the constitution**.

Examples:

- **United States Supreme Court:** In *Dobbs v. Jackson (2022)*, the reversal of *Roe v. Wade* reshaped the federal structure of rights enforcement, showing the power of judicial interpretation in altering constitutional balance.
- **German Federal Constitutional Court (Bundesverfassungsgericht):** Known for its robust protection of the Basic Law and for placing limits on EU law's applicability in Germany when it perceives a threat to constitutional identity.

2. Expansion of Rights Jurisprudence

Constitutional courts around the world are interpreting constitutions **progressively**, expanding rights beyond their textual limits to adapt to **modern social, digital, and environmental challenges**.

Examples:

- **Colombian Constitutional Court:** A leader in socio-economic rights enforcement, recognizing health care, education, and housing as judicially enforceable.
- **South African Constitutional Court:** Has delivered transformative rulings on **dignity, equality, and housing**, making the Constitution a tool for social change.

- **Indian Supreme Court:** Has created doctrines like “**constitutional morality**” and recognized **privacy as a fundamental right** under Article 21, showcasing creative constitutionalism.

3. Safeguarding Democracy and Electoral Integrity

In countries with fragile democratic traditions or authoritarian tendencies, constitutional courts serve as a **bulwark against democratic erosion**. They often **strike down manipulative constitutional amendments**, **review electoral laws**, and **uphold democratic norms**.

Examples:

- **Kenya:** The Supreme Court annulled a presidential election in 2017 citing irregularities, an unprecedented move in Africa.
- **Poland and Hungary:** In contrast, recent years have seen **erosion of judicial independence**, with constitutional courts being captured or weakened by populist regimes — reflecting the fragility of constitutionalism when courts are politically compromised.

4. Responding to Global Challenges: Climate, Technology, and Surveillance

Constitutional courts are increasingly involved in **regulating the intersection of human rights with environmental sustainability and technological evolution**.

Examples:

- **German Federal Court** ruled in 2021 that the government’s climate policies were inadequate to protect future generations’ rights.
- **Brazilian Supreme Court** has taken active steps to protect the Amazon and indigenous rights by compelling government action on climate.

On data and privacy:

- **European Court of Justice (ECJ)** has enforced **strict data protection standards** (e.g., the invalidation of the EU–US Privacy Shield agreement) reflecting the role of courts in global digital governance.

5. Constitutional Dialogue and Transnational Influence

Modern constitutional courts are part of a **global dialogue**, drawing on one another’s jurisprudence, particularly in matters of rights and democracy. Courts from South Africa, India, Canada, and Europe routinely cite international treaties and foreign judgments.

Impact:

This **cross-fertilization of constitutional ideas** enhances global constitutionalism, making courts more aware of **shared values** like equality, rule of law, and liberty, while remaining rooted in local contexts.

6. Role in Post-Conflict and Transitional Societies

In post-conflict nations, constitutional courts often help mediate **political transitions, ethnic balances, and institution-building** by ensuring adherence to newly framed constitutions and inclusive legal systems.

Examples:

- **Nepal's Supreme Court** has played a key role in shaping the new federal, secular democratic system post-monarchy.
- **Tunisia's Constitutional Court**, though still in formation, is expected to be central to maintaining constitutional governance amid political flux.

7. Crisis and Populist Pushback

Despite their increasing power, constitutional courts face **growing resistance from populist and authoritarian regimes**, which try to **weaken judicial independence** or **reshape constitutional courts** through appointments, legal amendments, or funding threats.

Examples:

- **Hungary and Poland** have seen executive takeovers of constitutional courts, leading to democratic backsliding.
- **Israel's Supreme Court** faced unprecedented judicial overhaul plans in 2023–24, sparking national protests about the erosion of checks and balances.

8. Public Trust and Legitimacy

The global authority of constitutional courts depends heavily on **public confidence, transparency, and judicial restraint**. Courts that are perceived as political actors risk losing legitimacy, while those seen as neutral interpreters of the constitution gain widespread respect.

Trend: Courts now increasingly release **plain-language summaries of judgments**, engage in **outreach**, and promote **accessibility** to preserve democratic legitimacy.

Conclusion

In 2025, **constitutional courts stand as both defenders and shapers of constitutionalism** globally. They play a dynamic role in:

- enforcing rule of law
- balancing majority power with minority rights
- interpreting evolving rights in a changing world
- acting as arbiters of democratic conflict

While their influence is profound, it remains **contingent on judicial independence, public legitimacy, and commitment to constitutional ideals**. The global scenario underscores that **constitutional courts are essential to democratic resilience**, but also that **they must be protected from political capture** to fulfill their vital role in safeguarding the constitutional order.

In **India today**, the **Supreme Court and High Courts**, as constitutional courts, continue to play a pivotal role in **shaping, defending, and interpreting the Constitution**. As of 2025, India's constitutional courts have taken on an **activist as well as adjudicative role**, significantly influencing the **evolution of constitutionalism**—the principle that government should operate within a framework of established and enforceable laws based on the Constitution.

Here is a detailed analysis of the **Indian scenario today** regarding the role of constitutional courts in shaping constitutionalism:

1. Judicial Activism and Constitutional Expansion

The Indian Supreme Court has embraced **judicial activism**—not merely enforcing the Constitution, but expanding its scope. The judiciary has repeatedly interpreted the Constitution as a **living document**, evolving with changing times and needs of society.

Key doctrines developed by the Supreme Court include:

- **Basic Structure Doctrine** (*Kesavananda Bharati v. State of Kerala*, 1973): Prevents Parliament from altering the “basic structure” of the Constitution, ensuring checks on constitutional amendments.
- **Transformative Constitutionalism**: Recognized in several recent judgments, this approach envisions the Constitution as a tool to transform Indian society into a more just, equitable, and inclusive one.

2. Protection of Fundamental Rights

The courts have safeguarded **individual liberties and dignity**, expanding the reach of **Articles 14, 19, and 21** to include modern rights and freedoms. Landmark rulings include:

- **Right to Privacy (2017):** Declared a fundamental right under Article 21 (*Justice K.S. Puttaswamy v. Union of India*).
- **Decriminalization of homosexuality (2018):** In *Navtej Singh Johar*, the Court struck down parts of Section 377 IPC, affirming dignity and equality.
- **Recognition of transgender rights (2014):** The *NALSA* judgment granted legal status and protections to transgender persons.

These rulings show how constitutional courts have reinforced **progressive constitutionalism**, asserting that the Constitution must protect marginalized groups and adapt to new societal realities.

3. Balancing State Power and Constitutional Morality

The courts have consistently tried to balance **state authority with constitutional values**, especially in cases of **executive excesses** and **legislative overreach**.

- **Striking down Internet Shutdowns** (*Anuradha Bhasin v. Union of India*, 2020): The SC held that indefinite internet shutdowns violate fundamental rights and must meet tests of necessity and proportionality.
- **Habeas Corpus and Preventive Detention:** High Courts and the Supreme Court have continued to play a critical role in protecting individual liberty through writ jurisdiction under **Article 32 and Article 226**.

At the same time, courts have sometimes faced criticism for **judicial silence** or **delays** in politically sensitive matters, such as the **detentions under Article 370**, **hate speech**, or **electoral disqualifications**, raising concerns about selective activism.

4. Expansion of Socio-Economic Rights

The Indian judiciary has interpreted the right to life (Article 21) to include:

- **Right to education (Article 21-A)**
- **Right to health** (especially during COVID-19)
- **Right to a clean environment**
- **Right to shelter and livelihood**

Such judicial creativity has advanced **social justice constitutionalism**, ensuring that the Constitution works as a **tool for upliftment** and inclusive development.

5. Electoral Reforms and Accountability

The Supreme Court has taken up issues related to **electoral integrity and transparency**, including:

- Mandating disclosure of **criminal records and assets** of candidates.
- Advocating for **electoral bonds transparency** (though pending comprehensive review).
- Instructing Parliament and EC to **ensure free and fair elections**, though it has at times deferred to executive discretion.

While progress has been made, courts are still **hesitant to confront majoritarianism or electoral malpractice** at the highest levels, indicating a tension between judicial activism and institutional caution.

6. Strengthening Federalism and Regional Rights

The constitutional courts have occasionally intervened to uphold the **federal structure**, especially in disputes involving:

- **Centre–State relations** (e.g., Delhi Govt. vs. LG powers)
- **Governor’s discretionary powers**
- **Distribution of legislative competence**

Recent rulings have attempted to clarify the **division of powers**, especially where central authority is seen to undermine elected state governments, as in Delhi and Maharashtra political crisis cases.

7. Judicial Independence and Institutional Credibility

Despite playing a central constitutional role, Indian courts have faced criticism on several fronts:

- **Delayed justice and pending cases** undermine public trust.
- **Allegations of judicial bias or executive influence** in appointments or key decisions.
- **Lack of transparency** in judicial functioning, including in **collegium appointments**.

Reform is needed to enhance **judicial accountability**, **timely delivery**, and **ethical clarity** in decisions—factors essential for maintaining the **legitimacy of constitutionalism**.

8. Promoting Constitutional Literacy and Public Engagement

The courts have begun publishing **plain-language summaries** of judgments, translated verdicts, and used digital platforms to make constitutional values more accessible. This shift is crucial to **democratizing constitutionalism**, allowing citizens to understand and assert their rights.

9. Contemporary Focus Areas (As of 2025)

Indian constitutional courts are actively engaging with:

- **Environmental justice** (climate, pollution, forest rights)
- **Digital freedoms and AI governance**
- **Gender justice and equal marriage rights**
- **Hate speech and communal violence**
- **Data protection and surveillance laws**

These engagements reflect the court's attempt to keep constitutionalism **responsive to contemporary realities**.

In today's India, **constitutional courts are the cornerstone of constitutionalism**, adapting the text of the Constitution to changing social, political, and technological conditions. They have expanded rights, limited state overreach, and addressed structural inequalities. However, their effectiveness is tied to **judicial courage**, **institutional reform**, and **public trust**.

The judiciary's dual role—as **guardian of the Constitution** and **agent of transformation**—makes it one of the most powerful institutions in shaping India's democratic and constitutional journey. The path forward requires a careful balance between **judicial activism and restraint**, **constitutional fidelity and progressivism**, ensuring that constitutionalism in India remains vibrant, inclusive, and resilient.

The **Supreme Court of India** has undergone a notable evolution in its interpretation and application of **constitutionalism** from the early **1990s to the present (2025)**. The contrast lies not only in the scope and nature of rights protected but also in the intensity of judicial intervention, the issues prioritized, and the ideological lens through which constitutional values are understood.

Below is a breakdown of the **key areas of constitutionalism** shaped by the Supreme Court and how they have shifted from the **early 1990s to today**:

1. Fundamental Rights Interpretation

1990s:

- Focused heavily on **civil and political rights**, especially **Article 21 (Right to Life)**.
- Expansion of rights through PILs: clean environment, livelihood, shelter, and education were judicially read into Article 21.
- Notable judgments: *Olga Tellis v. Bombay Municipal Corporation* (right to livelihood), *Unnikrishnan v. State of Andhra Pradesh* (education as a right).

Today:

- The Court addresses **digital rights, privacy, and identity rights** under Article 21.
- Landmark: *K.S. Puttaswamy v. Union of India* (2017) – right to privacy declared a fundamental right.
- Increasing recognition of **intersectionality**: how multiple identities (caste, gender, orientation) affect rights.

2. Judicial Review and the Basic Structure Doctrine

1990s:

- The Court enforced **basic structure** limits, especially in fiscal and land reform matters.
- Strong stance against arbitrary constitutional amendments (e.g., *Indira Sawhney case*, 1992, on reservations).

Today:

- Reaffirmed the **non-amendability of basic structure** but also evolved doctrines of **constitutional morality** and **transformative constitutionalism**.
- Judicial review has extended into questions involving electoral finance, digital surveillance, and algorithmic governance.

3. Public Interest Litigation (PIL)

1990s:

- PILs were a **primary tool for social justice** – addressing bonded labour, pollution, prison reform, and custodial violence.
- Courts relied on NGOs, letters, and newspaper reports to initiate suo motu action.

Today:

- PILs remain prevalent but have expanded into **environmental governance, data rights, LGBTQ+ rights, and urban planning**.
- However, criticisms exist about **PIL misuse**, politicization, and judicial overreach.

4. Gender and Sexual Rights

1990s:

- Gender justice remained a secondary concern.
- Cases like *Vishaka v. State of Rajasthan* (1997) laid foundational sexual harassment norms, invoking international law.

Today:

- Courts actively advance **gender identity, sexual orientation, and reproductive autonomy**.
- Landmark: *Navtej Johar v. Union of India* (2018) decriminalized same-sex relationships.
- Increased focus on marital rape, menstrual health, and same-sex partnership rights (though no formal recognition yet).

5. Federalism and Centre-State Relations

1990s:

- Judiciary largely upheld central authority; federalism concerns were subdued.
- Governors' discretionary powers rarely questioned.

Today:

- Courts more actively adjudicate **Centre–State conflicts**, especially involving:
 - **Delhi vs. LG powers** (2023 Constitution Bench judgment)
 - **Article 370 revocation cases**
 - Financial autonomy, e.g., **GST Council** debates.

Federalism today is a **live constitutional concern**, with courts shaping the boundaries of state autonomy.

6. Secularism and Minority Rights

1990s:

- Courts maintained a formal approach to secularism.
- *S.R. Bommai v. Union of India* (1994): recognized misuse of religion in politics as unconstitutional.

Today:

- Courts face more complex religious freedom challenges—triple talaq (abolished), temple entry rights, anti-conversion laws, and religious hate speech.
- Increasing tension between **individual rights** (of LGBTQ+, women, religious minorities) and **group religious rights** under Article 25.

7. Accountability and Electoral Reforms

1990s:

- Courts emphasized **free and fair elections**, upheld disqualification rules, and pressed for voter awareness.

Today:

- Key judgments on **criminal disclosure by candidates**, **electoral bond transparency** (ongoing), and **eligibility norms**.
- Criticized at times for **judicial evasion** in high-profile political accountability matters.

8. Environmental Constitutionalism

1990s:

- Rise of “green bench” activism. *MC Mehta cases* defined environmental rights as part of Article 21.

Today:

- The scope has broadened: **climate justice**, **intergenerational equity**, **ecological preservation**, and **tribal land rights**.

- Courts are cautious in mega-project approvals, and push for sustainable development balance.

9. Technology and Digital Rights

1990s:

- Virtually no engagement with digital or cyber-related rights.

Today:

- Courts deal with **AI, facial recognition, Aadhaar, data protection, algorithmic bias, and internet shutdowns**.
- *Anuradha Bhasin case* (2020): imposed limits on arbitrary shutdowns and emphasized access to the internet as essential for democratic participation.

10. Constitutional Morality and Transformative Jurisprudence

1990s:

- Jurisprudence was rooted in **textual interpretation** and **fundamental rights framework**.

Today:

- Emphasis on **transformative constitutionalism**: using constitutional principles to actively dismantle social hierarchies.
- “**Constitutional morality**” invoked in *Navtej Johar*, *Joseph Shine (adultery)*, *Sabarimala*, and *NALSA* cases to assert equality over social or religious norms.

The **Supreme Court's constitutional role has significantly evolved** from a rights-enforcer and guardian of legality in the 1990s to a **transformative institution shaping societal values** today. While the 1990s focused on foundational rights and state accountability, the 2020s emphasize **identity rights, digital freedoms, federal balances, and inclusive constitutionalism**.

However, this transformation also brings challenges—**balancing activism with institutional discipline, maintaining impartiality, and upholding constitutionalism** amidst political and ideological pressures. As India continues to change socially and technologically, the Supreme Court remains central to defining what the **Indian Constitution truly means in the 21st century**.