

# **The Quiet Sentinel: Courts, Democracy, and the Dialogue Across Borders**

***At Seattle University (India Roundglass Centre)***

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## **A. INTRODUCTION – FRAMING THE INQUIRY**

- 1.** Before I begin, allow me to express my sincere gratitude to Professor Kalantry for the generous invitation to address this distinguished gathering. It is both an honour and a privilege to be in the company of such esteemed judges, academics, scholars, practitioners, and, most importantly, students of the law. The opportunity to engage in dialogue within such a vibrant intellectual community is deeply meaningful to me.
  
- 2.** When I first learned that our conversation today would revolve around themes such as judicial

independence and courts in democratic societies, I was immediately drawn to the evocative image of the judiciary as a **‘quiet sentinel’—an institution that watches, guards, and occasionally intervenes, often without fanfare, but always with consequence.**

3. Given the conversational format of this fireside chat, I thought it fitting to centre our discussion around some of the more difficult and enduring questions that judicial institutions in India—and indeed across the world—are routinely compelled to confront. In this context, I am reminded of a particularly poignant quote by Martin Luther King Jr.—one that captures the moral burden shouldered by institutions tasked with upholding justice.:

*“The arc of the moral universe is long,*

*but it bends toward justice.”*

4. This quote, drawn from the deep well of the American civil rights movement, resonates far beyond its historical context. It speaks to a shared moral trajectory of democratic societies, that must be nurtured, safeguarded, and at times, fiercely defended. The question, however, is this: Who does the bending? Who ensures that the arc does not falter or break? In my view, it is the judiciary that undertakes this task, often without recognition, but with profound impact. Unlike Legislatures, it does not seek votes; unlike Executives, it does not command military or police powers. Yet, it exercises a profound authority—the authority of interpretation, of constraint, and of conscience. It is the sentinel of constitutional morality.

5. My purpose today is to examine this sentinel in the Indian context, and to share insights that may resonate across borders. I speak not just as a legal scholar, but as a part of one of the world's largest and most complex democracies—a democracy marked by pluralism and perseverance. **The Indian judiciary, to my mind, has been instrumental in shaping this very democracy's moral spine.**

**B. JUDICIAL INDEPENDENCE AS DEMOCRATIC SELF-RESTRAINT**

6. When we discuss the notion of judicial independence, we refer to it in the context of a philosophical stance. It is often interpreted as the ability of a judge to decide not merely in isolation from external pressure, but in fidelity to a higher constitutional morality—even when that morality contradicts transient public sentiment or political

will. To maybe put it in more simple terms, judicial independence encompasses the ability to have intellectual and moral independence, that stretches beyond mere institutional autonomy. The underlying purpose of the independence of the judiciary is that judges must be able to decide a dispute before them according to law, uninfluenced by any other factor.

- 7.** The idea of a justice system—anchored in independent adjudication and normative restraint—is not a modern imposition on the Indian subcontinent. It is deeply embedded in its civilizational imagination. One only needs to turn to the Arthashastra, that ancient and remarkably sophisticated treatise on statecraft, to witness the early articulation of the principles underlying the rule of law. In a striking passage, it observes: *‘In the*

*absence of a magistrate (dandadharabhave), the strong will swallow the weak; but under his protection, the weak resist the strong.'*

- 8.** It is remarkable that even in antiquity, Indian thinkers grasped what modern constitutional theory continues to wrestle with—that institutions of justice are not merely instruments of order, but moral guardians of societal equilibrium. The challenge for contemporary courts, then, is to remain faithful to this ancient wisdom while responding to the unprecedented demands of modernity.
- 9.** Perhaps this is why India's judicial history offers profound moments where this philosophical independence was both tested and asserted. The most cited instance that all of you may be well aware

of is the ***Kesavananda Bharati*** decision,<sup>1</sup> which involved a quorum of 13 judges, the largest in Indian history. In this case, the Supreme Court established the Basic Structure Doctrine, which elucidated that while Parliament could amend the Constitution, it could not alter its fundamental identity. Principles such as the Rule of Law, Separation of Powers, and Judicial Review were deemed unamendable. This doctrine, unprecedented at the time, was rooted not in textual literalism, but in an ethical reading of democratic continuity.

**10.** It is equally instructive to juxtapose landmark decisions such as ***Kesavananda Bharati*** with judgments like ***ADM Jabalpur*** and ***A.K. Gopalan***, to acknowledge that the Indian judiciary, too, has

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<sup>1</sup> *Kesavananda Bharati v. State of Kerala*, AIR 1973 SC 1461.

traversed periods of profound trial and transformation. Particularly during the Emergency, the Court grappled with serious challenges to its independence and, at times, exhibited troubling deference to executive power. Yet, this phase of institutional strain gave way to a renewed judicial consciousness—ushered in by the decision in ***Maneka Gandhi***—which marked the beginning of what we now understand as India’s era of transformative constitutionalism. In this period, the Supreme Court has reaffirmed the supremacy of the Constitution and underscored that its foundational values, especially those relating to life and liberty, are inviolable and beyond compromise.

- 11.** This marked the beginning of a new chapter for the Indian judiciary—one in which the Court’s role evolved from a narrow textual interpreter of the



Constitution to a dynamic institution shaping jurisprudence rooted in the foundational principles of liberty, equality, and fraternity. During this phase, the judiciary took on the responsibility of breathing life into the Fundamental Rights enshrined in Part III of the Constitution, while also institutionalizing the mechanism of Public Interest Litigation (**PIL**). Through PILs, the Supreme Court and High Courts were empowered with broad discretionary authority to adjudicate matters of pressing constitutional and societal concerns—ranging from human rights violations and environmental degradation to questions of State accountability. Over time, this jurisprudential shift gave rise to a rich body of decisions that have been widely studied and debated: from the recognition of the right to privacy, to the Court's interventions in

matters of religious practice, environmental sustainability, and the extension of economic and social rights to historically marginalised communities.

**12.** While these developments undeniably attest to the independence of the Indian judiciary, they merely begin to uncover the deeper layers of this complex institutional narrative. The judiciary's evolving relationship with its own independence, lies at the very heart of how India's vast, pluralistic democracy continues to function with remarkable cohesion. It is not merely the existence of judicial independence that is noteworthy, but rather the *degree* and *contours* of that independence—how it is asserted, negotiated, and exercised—that renders the Indian experience particularly distinctive within the global constitutional landscape. In other words, our

judiciary's independence transcends the narrow confines of adjudicative procedure, and instead manifests in its structural autonomy, its institutional culture, and the broader checks and balances that define its engagement with the other branches of government.

- 13.** Most significantly, the Indian Judiciary is vested with the power of judicial review under Articles 32 and 226 of the Constitution, empowering the Supreme Court and High Courts, respectively, to examine the constitutionality of actions undertaken by all organs of the State. This includes the authority to scrutinize decisions made by constitutional functionaries such as the Election Commission, the Speaker of the Lok Sabha,<sup>2</sup> State

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<sup>2</sup> Kihoto Hollohan v. Zachillu and others, 1993.

Legislative Assemblies, and the Governors of States.<sup>3</sup> Most notably, this jurisdiction extends to both Legislative enactments<sup>4</sup> and Executive actions, ensuring that no act of governance is beyond the purview of judicial oversight. **This expansive power of review is a cornerstone of India's constitutional democracy and a part of our basic structure, affirming that legality and constitutionality are fundamental preconditions to the exercise of public power.**

**14.** As a result, even constitutional amendments—whether directly or indirectly seeking to dilute or abrogate this power—have been struck down by the Supreme Court.<sup>5</sup> Judicial review, therefore, is not merely a procedural safeguard; it is a structural

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<sup>3</sup> S.R. Bommai v. Union of India, 1994; Nabam Rebia v. Deputy Speaker, 2016.

<sup>4</sup> Hamdard Dawakhana v. Union of India, 1960.

<sup>5</sup> P. Sambhamurthy v. State of Andhra Pradesh, AIR 1978 SC 663.

commitment to accountability, legality, and the supremacy of constitutional norms.

- 15.** In addition, India offers a compelling model of the substantive application of the doctrine of Separation of Powers. A notable example lies in the control exercised by the judiciary over judicial appointments to the Supreme Court and High Courts through the Collegium System. While the collegium has been subject to sustained criticism—particularly regarding the opacity of its deliberative processes and the lack of publicly articulated criteria—recent efforts by the Supreme Court signal a growing commitment to enhancing transparency and public confidence in the system. **Nonetheless, the key constitutional insight to be drawn here is that, despite its imperfections, the collegium system serves as a crucial institutional**

**safeguard. It significantly limits interference by the Executive and Legislature, thereby preserving the Judiciary's autonomy and insulating judges from extraneous pressures that could otherwise compromise their impartiality.**

- 16.** This enduring commitment to independence enables the judiciary to do more than simply resolve disputes or defend constitutional boundaries. **It allows courts to actively shape the democratic imagination of a society and to function as architects of democratic life.**

**C. THE ROLE OF COURTS IN A LIVING DEMOCRACY**

- 17.** When we speak of democracy, it is often understood as the rule of the majority. But constitutional democracy is something more: it is a system where majorities are checked, where minorities are

protected, and where principles cannot be sacrificed at the altar of popularity. In such a system, courts cannot function as mere referees.

- 18.** In light of our reflections on judicial independence and the expansive scope of judicial review, it becomes evident that the Indian judiciary today occupies a dual and dynamic role. On one hand, it functions as a vital check within the constitutional scheme of Separation of Powers—guarding against executive and legislative overreach. On the other, it has emerged as a potent catalyst for social transformation, often stepping in to articulate and advance the rights of marginalised communities, reinterpret entrenched norms, and give constitutional expression to evolving societal aspirations.

**19.** There exists a rich tapestry of such instances where the Supreme Court of India has stimulated far-reaching structural change through its interpretive and remedial powers. In doing so, the Court has addressed a wide spectrum of socio-economic and human rights concerns—ranging from child labour and bonded labour to environmental degradation and the protection of women's rights. In ***Vishaka v. State of Rajasthan***, faced with legislative vacuum, the Court proactively laid down binding guidelines to address sexual harassment in the workplace, thereby affirming the right to a dignified working environment long before statutory recognition through the 2013 legislation. In ***Bandhua Mukti Morcha***, the Court intervened to liberate bonded labourers, emphasizing the constitutional mandate against exploitation. And in ***Olga Tellis v. Bombay***



***Municipal Corporation***, it expanded the ambit of Article 21 by holding that the right to livelihood was inseparable from the right to life itself. These cases exemplify the judiciary's transformative potential when animated by a vision of justice that seeks to make constitutional promises real for those most in need of them.

- 20.** More recently, I had the opportunity to serve on a bench adjudicating a particularly compelling matter involving alleged human rights violations arising from staged police encounters by State authorities in the State of Assam. The case required a careful evaluation not only of Human Rights protections afforded to accused persons, but also of the procedural safeguards necessary to uphold the Rule of Law in situations where executive power is exercised under the guise of security enforcement.

Importantly, the matter underscored the vital institutional role played by the National Human Rights Commission and State Human Rights Commissions in investigating such incidents, amplifying the voices of victims, and ensuring accountability. In recognising the legal rights of those wronged, we issued directions to guarantee their access to redress, including through the provision of free legal aid with support from District Legal Services Authorities.<sup>6</sup>

**21.** These interventions reflect an Indian theory of judicial responsibility—one that goes beyond the adversarial model, and seeks to embody constitutional compassion. Yet they also invite questions: How far can courts go in shaping policy?

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<sup>6</sup> Arif Md. Yeasin Jawadder v. State of Assam, 2025 SCC Online SC 1251.

Is judicial creativity a virtue or a vice? The answer, I believe, lies in intent and integrity. **When courts act to empower the powerless, grounded in constitutional text and moral clarity, they do not usurp democracy—they deepen it.**

**D. FRAGILITIES AND FORTITUDE: CONTEMPORARY CHALLENGES**

- 22.** It would, however, be reductive to portray the Indian judiciary as an unblemished institution. Like all organs of constitutional governance, it is shaped not only by its triumphs but also by its tensions, contradictions, and moments of fallibility. A particularly enduring concern has been the fine line between judicial activism and judicial overreach. While the judiciary's proactive stance has often filled Legislative or Executive voids in advancing rights and justice, it has also, at times, drawn criticism for

encroaching upon policy domains traditionally reserved for elected branches of government. This tension invites a deeper inquiry into the legitimacy and limits of judicial intervention in a constitutional democracy.

**23.** The concern, fundamentally, is that unelected judges—however well-intentioned—must not displace the role of representative institutions in matters of policy prioritisation and resource allocation. Yet, the judiciary has not remained impervious to these critiques. In recent years, there has been a discernible shift toward greater institutional self-restraint in select domains. The Court has increasingly sought to nudge rather than command, and to engage with other branches of government in efforts to increase dialogic remedies.

**This evolving balance reflects an awareness that**

**judicial authority is most enduring when it is exercised with a sense of humility—when the Court is seen not as an omnipotent arbiter but as a co-traveller in the democratic journey, grounded in constitutional values.**

**E. TRANSNATIONAL DIALOGUE OF COURTS**

**24.** I would also like to briefly touch the topic of transnational dialogue amongst courts. One of the most intellectually exciting dimensions of Indian constitutional law is its dialogue with other jurisdictions. Indian courts have long drawn from—and contributed to—a global constitutional conversation.

**25.** Historically, Indian constitutional jurisprudence has shown a selective but meaningful openness to transnational legal ideas. On occasion,

constitutional decisions have drawn from global doctrines—such as the German concept of 'eternity clauses'—to reinforce fundamental constitutional principles. In the landmark privacy judgment in ***Justice K.S. Puttaswamy v. Union of India***, the Supreme Court referenced seminal decisions like ***Griswold v. Connecticut*** from the United States and rulings of the European Court of Human Rights. This engagement with foreign jurisprudence is not incidental; it reflects the universalist ethos of the Indian Constitution—a document conceived at the intersection of Western liberal constitutionalism, Eastern philosophical traditions, and anti-colonial emancipatory thought.

- 26.** In contemporary judicial practice, this comparative openness is no longer confined to constitutional adjudication alone. **It has increasingly become**

**the norm to engage with jurisprudence from diverse jurisdictions—particularly when grappling with novel legal questions or when seeking interpretive approaches that are especially suited to the demands of a rapidly evolving global order.** As the world grows more interconnected, there is a marked receptiveness to draw from a broad spectrum of legal traditions, not merely as citations of authority but as sources of intellectual cross-pollination.

- 27.** Speaking from personal experience, I too have found immense value in turning to transnational jurisprudence—particularly from the United States—when examining complex areas such as intellectual property rights or undertaking comparative analysis on doctrines like proportionality. These cross-jurisdictional

engagements do not dilute the Indian legal identity; rather, they enrich it by offering new frameworks, conceptual tools, and interpretive insights that are adaptable to our unique constitutional and cultural context

**28. Yet transnational dialogue and citation must be done with care. It must not be mimicry; it must be contextual translation. What works in Pretoria may not work in Patna. What persuades in Washington must still be interpreted in Delhi. At its best, comparative constitutionalism is about mutual enrichment—where courts learn from each other’s reasoning, borrow where appropriate, and resist where necessary.**

**29.** Transnational legal dialogue today however, extends well beyond the interpretive use of foreign



jurisprudence; it has evolved into a more robust and reciprocal exchange of institutional best practices. Jurisdictions across the world are now in active conversation not just about legal doctrines, but also about how to respond institutionally to contemporary challenges—most notably, the accelerating pace of technological change. Courts are increasingly engaging with one another on matters such as digital infrastructure for case management, data protection frameworks, algorithmic accountability, and the legal regulation of Artificial Intelligence. These dialogues reflect a growing recognition that many of the questions facing the judiciary today—questions of privacy, surveillance, free speech in the digital age—which transcend national borders and demand a shared, globally informed jurisprudential response.

**F. THE JUDICIARY'S FUTURE ROLE: A CALL TO  
THOUGHTFUL VIGILANCE**

- 30.** As we begin to imagine the future of judicial institutions, it is worth pausing for a moment of philosophical reflection. The judiciary is undoubtedly the guardian of constitutional fidelity, but its authority is most legitimate when it coexists with dialogue, transparency, and engagement with civil society, the executive, and the legislature. Finality in judicial pronouncements must never be confused with exclusivity in constitutional wisdom.
- 31.** In this context, Ronald Dworkin's idea of courts as 'forums of principle' becomes particularly instructive. According to Dworkin, the judicial function is not merely to resolve disputes, but to interpret the law in its best moral light—to give meaning to abstract constitutional commitments

such as dignity, liberty, and equality. This vision transcends legal formalism and situates courts as institutions of moral reasoning, entrusted with articulating the values that bind a constitutional community together. The Indian judiciary, in its finest moments, has reflected this ethos—from the articulation of socio-economic rights to its insistence on constitutional morality in difficult cases involving external pressures.

- 32.** However, to carry this role into the future—amid growing political polarization and technological complexity—courts must cultivate not just technical acumen but also moral imagination. The judiciary of the future must embrace humility—not as weakness, but as wisdom that resists the seduction of absolutism. It must cultivate empathy—an ability to listen to the lived realities of those most affected

by its pronouncements. And above all, it must continue to strive for moral imagination—the capacity to see beyond existing legal categories and to envision justice in transformative terms.

**33.** These virtues are not peripheral to adjudication; they are central to sustaining the legitimacy of judicial authority in the 21st century. They remind us that the law is not simply a command, nor the Constitution a closed text. They are living instruments, animated by interpretation, history, and above all, by conscience. And in a democracy as vast and diverse as India's, it is only when the judiciary wears its power lightly, and its conscience visibly, that it can remain not only the last word, but also a trusted voice among many in our collective democratic journey.

**G. CONCLUSION: THE QUIET SENTINEL ENDURES**

- 34. As I bring my address to a close, I must highlight that the judiciary may not be the most visible arm of the state, it may not command battalions or shape budgets but it performs a task more difficult: it keeps alive the promise of justice. In India, this task has often been thankless, occasionally triumphant, and always essential. The judiciary is not a savior; it is a sentinel. It does not march. It watches. And when necessary, it speaks—not to please, but to preserve.**
- 35. As we reflect on the role of courts in India and beyond, let us remember that democracy is not a gift to be received—it is a discipline to be practiced. And in that discipline, the judiciary is a quiet guardian.**

- 36.** Let me close with the words of Rabindranath Tagore, who imagined a future India in his immortal prayer:

*Where the mind is without fear and  
the head is held high,  
Where knowledge is free,  
Where the world has not been broken up  
into fragments by narrow domestic walls,  
Into that heaven of freedom, my Father,  
let my country awake.*

- 37.** May our courts, too, awaken into that heaven. I once again take this opportunity to thank the Roundglass India Centre for extending this invitation for me. I hope this discussion has been fruitful for one and all.

Thank you.