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EDITORIAL ANALYSIS

# The Supreme Court's Unavoidable Role: Guarding Democracy When Executive and Legislature Falter

 THE HINDU

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# The Supreme Court's Unavoidable Role: Guarding Democracy When Executive and Legislature Falter

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## INTERVIEW ANGLE

*"Is the Supreme Court's role as 'last guardian of democracy' an exceptional and reluctant one, or has it become a structural feature of Indian constitutionalism — with implications for accountability and institutional balance?"*

 Source: [Original editorial](#)

The Hindu

## EDITORIAL SUMMARY

As executive and legislative actions increasingly encroach on constitutional guarantees — electoral integrity, federal balance, free speech, minority rights — the Supreme Court bears a principal responsibility for preserving public faith in democratic institutions. This role is not an exception but an emerging structural feature, and one that carries both democratic promise and institutional risk.

## THE PATTERN — THREE CASE CLUSTERS

### Electoral Integrity

The most consequential democracy-protection judgment of recent years was **Association for Democratic Reforms v. Union of India (February 2024)** — the Electoral Bonds case. A 5-judge Constitution Bench unanimously struck down:

- **Electoral Bonds Scheme (2018)** — anonymous purchase of bearer bonds from SBI, redeemable by registered political parties
- Amendments to the **Companies Act** (removing corporate donation caps)
- Amendments to the **Income Tax Act** (exemption from disclosure)
- Amendments to the **FCRA** (allowing foreign company donations)

- Amendments to the **Representation of the People Act** (exemption from donation disclosure)

**Grounds:** Violation of Article 19(1)(a) — the implied “right to know” about political funding sources, held essential to informed voting.

**Impact:** SBI’s mandated disclosure of bond data revealed a pattern: **corporations facing ED/income tax investigations** disproportionately purchased bonds favouring certain parties; many purchasing companies received government contracts soon after. The disclosure became a structural check on political finance opacity.

### **Federal Balance — Governors’ Conduct**

**State of Punjab v. Punjab Governor (2023)** and **State of Tamil Nadu v. Tamil Nadu Governor (2024)** addressed a pattern where opposition-state Governors were withholding assent to state bills indefinitely — sometimes for years — without either returning them for reconsideration (as required under Article 200) or giving assent.

The Court held:

- Under **Article 163**, the Governor acts on the “aid and advice” of the Council of Ministers — discretion is limited to specific constitutional contingencies
- Indefinite delay of assent violates the constitutional structure of state governance
- **Reasonable timeline** — the Court imposed a 3-month guideline for Governor’s decisions on bills

**Impact:** Rebalanced the federal structure by constraining gubernatorial discretion. Critics argued this reduces the Governor’s role as a constitutional sentinel; supporters noted the Governor is not meant to be an unchecked veto.

### **Free Speech**

**Shreya Singhal v. UoI (2015)** — struck down Section 66A of the IT Act as unconstitutionally vague.

**S.G. Vombatkere v. UoI (2022)** — Supreme Court held the colonial-era **sedition** law (**Section 124A IPC**) in abeyance, pending Parliament’s review. The government has now tabled the **Bharatiya Nyaya Sanhita (BNS) 2023** with modifications — but the Court-Parliament dialogue demonstrates the Court’s pre-emptive check.

**Kunal Kamra v. UoI (2024)** — Bombay High Court struck down the Fact Check Unit (FCU) notification under the IT Rules amendment, on Article 19(1)(a) grounds; Supreme Court stayed the reinstatement.

## **WHY THIS HAS BECOME STRUCTURAL**

### **Parliamentary Majorities and Executive Overreach**

The Constitutional design assumed independent legislative scrutiny of executive action. In parliamentary majorities of the current scale, several traditional accountability mechanisms have weakened:

MECHANISM	TRADITIONAL FUNCTION	CURRENT STATUS
<b>Parliamentary Question Hour</b>	Ministerial accountability	Often disrupted; reduced session days
<b>Parliamentary Committees</b>	Bill scrutiny	Sharply lower referral rate (<20% in 17th LS vs ~70% in earlier LS)
<b>Standing Committees</b>	Departmental oversight	Reports often delayed; follow-up weak
<b>PAC, Estimates Committee</b>	Financial accountability	Reports continue but implementation uneven
<b>Committee on Public Undertakings</b>	PSU oversight	Similar issues
<b>Opposition</b>	Deliberative counter	Weakened by seat arithmetic; disqualification events

Where traditional accountability weakens, constitutional challenges become the principal check. This is not an argument against parliamentary democracy — it is an argument for strengthening it.

### **Ambedkar's Warning — Constitutional Morality**

Dr B.R. Ambedkar, in the Constituent Assembly (November 25, 1949), warned that:

*“Constitutional morality is not a natural sentiment. It has to be cultivated. We must realise that our people have yet to learn it. Democracy in India is only a top-dressing on an Indian soil, which is essentially undemocratic.”*

The “top-dressing” metaphor captures the concern: formal constitutional institutions can survive and nominally function even while democratic substance weakens. In that environment, the Supreme Court’s guardianship becomes the last structural check — but a fragile one if popular democratic culture itself corrodes.

## THE COSTS OF OVER-JUDICIALISATION

### **Unelected Judicial Policymaking**

Critics (both liberal and conservative) argue:

- Judicial review of policy decisions drifts toward judicial policymaking
- Judges lack democratic legitimacy for distributive decisions
- PIL-driven environmental, infrastructure, and economic rulings substitute for legislative deliberation

- Court orders on Delhi air quality, river pollution, urban master plans — technically valid under judicial review but institutionally awkward

### Backlog and Capacity

- ~5 crore cases pending across Indian courts (2024 — National Judicial Data Grid)
- Supreme Court alone: ~80,000 pending matters
- Average disposal time at SC: 3-5 years for matters requiring oral hearing
- Constitutional benches (5+ judges) convene infrequently; landmark cases can remain undecided for years

### Politicisation Risk

When every contested policy ends in litigation, the judiciary risks becoming perceived as politically-aligned. The **NJAC judgment (2015)**, **Ayodhya (2019)**, **Article 370 (2023)**, and **Electoral Bonds (2024)** rulings have been praised and criticised along partisan lines — a concerning shift from the historical perception of judicial neutrality.

## COMPARATIVE — COURTS AND DEMOCRACY

COUNTRY	COURT ROLE
<b>USA</b>	Supreme Court has played guardian role throughout history (Brown 1954, Roe 1973, Dobbs 2022 reversal) — but increasingly seen as partisan
<b>UK</b>	No written constitution; parliamentary sovereignty constrains court’s democracy-guardian role
<b>Germany</b>	Federal Constitutional Court (Bundesverfassungsgericht) has strong democracy-protection role; Lisbon Treaty case (2009), NPD ban case
<b>South Africa</b>	Constitutional Court has been an active democracy defender post-apartheid (Glenister, Economic Freedom Fighters v. Speaker)
<b>Brazil</b>	Supreme Federal Tribunal has played decisive role in political crises (Lula/Bolsonaro cases); accused of political overreach
<b>India</b>	Supreme Court’s activism most visible post-1975; unique combination of PIL + Article 142 + writ jurisdiction = strongest constitutional court

India’s Supreme Court sits at the expansive end of the spectrum — both because of constitutional design (Article 142, writ jurisdiction, PIL doctrine) and because of institutional need (weakened parliamentary oversight).

## WHAT “GUARDING DEMOCRACY” ACTUALLY REQUIRES

### *Time-Bound Constitutional Adjudication*

- **Specialised constitutional benches** with dedicated rosters
- **Hearing-day targets** — 30-60 days for listed constitutional matters
- Reducing interim relief delays in free-speech and electoral matters (where delay is itself the harm)

### *Stronger Parliamentary Committees*

- Mandatory committee referral for bills above a complexity/impact threshold
- Committee reports with government response timelines
- Pre-legislative consultation standards

### *Civil Society and Electoral Vigilance*

- Sustained public engagement on democracy issues beyond election cycles
- Media accountability on institutional degradation (not just personalities)
- Electoral commissions’ own accountability under judicial review

## THE LIMITS OF COURT-LED DEMOCRACY PROTECTION

Three structural limitations the Court cannot overcome:

- 1 **Enforcement gap** — Court orders depend on executive compliance; contempt powers are rarely used against state entities
- 2 **Capacity gap** — Court has neither the resources nor the legitimacy to replace democratic deliberation
- 3 **Legitimacy cost** — Over-reliance on Court protection erodes the Court’s own institutional credibility

The Supreme Court can strike down bad laws; it cannot force Parliament to make good ones. It can hold Governors accountable; it cannot make opposition parties electorally competitive. It can protect free speech; it cannot create a culture of free inquiry.

## THE RESPONSIBILITY THAT CANNOT BE REFUSED

Despite these limits, the Court cannot step back. Its constitutional role — interpreting the Constitution, protecting fundamental rights, resolving federal disputes — makes it the final institutional forum when others fail. The phrase “last guardian” describes institutional reality, not aspiration.

But “last guardian” should remain a reserve role, not a first-response one. The path back to institutional balance runs through a stronger Parliament, a more accountable executive, an active civil society, and a vigilant electorate. Until those shifts occur, the Court will carry a load larger than any single institution should bear.

## UPSC RELEVANCE

PAPER	ANGLE
GS2 — Polity	Judicial review; constitutional morality; separation of powers; Articles 13, 32, 142, 163, 200
GS2 — Governance	Parliamentary committees; executive accountability; Governor’s discretion
GS2 — IR	Comparative courts; US Supreme Court, German FCC, South African Constitutional Court
GS4 — Ethics	Institutional integrity; judicial restraint vs activism; Ambedkar on constitutional morality
Mains Keywords	Constitutional morality, ADR v. UoI (Electoral Bonds), Tamil Nadu Governor case, sedition in abeyance, Article 142, Kunal Kamra FCU case, judicial activism, last guardian of democracy

### ● KEY ARGUMENTS AT A GLANCE

**As executive and legislative actions encroach on electoral integrity, federal balance, and constitutional rights, the Supreme Court bears a principal — and increasingly solitary — responsibility for preserving public faith in democratic institutions.**

#### ✓ SUPPORTING

- Electoral bonds judgment (February 2024 — Association for Democratic Reforms v. UoI) struck down anonymous political funding scheme; SBI data revealed pattern of corporate-political quid pro quo.
- Governors' conduct — Tamil Nadu Governor v. State (2024) held that withholding assent indefinitely violates the 'aid and advice' principle under Article 163; set 3-month timeline for gubernatorial decisions.
- Free speech rulings — Kunal Kamra v. UoI (2024 stay on Fact Check Unit notification); Ranjit Kumar v. UoI (2023 sedition law held in abeyance pending Parliament's review under Section 124A).

- The pattern reveals a worrying symmetry: parliamentary majorities enable executive overreach, leaving courts as the primary constitutional check in ways the Founders intended as exceptional, not routine.

### COUNTER

Over-judicialisation carries costs: unelected judges making policy-like rulings; courts expanding their domain into governance (environment, pollution, infrastructure via PIL); and risk that Court itself becomes politicised when every contested policy ends in litigation. Strong courts cannot substitute for accountable legislatures and executives.

### WAY FORWARD

Three-layered institutional balance: (1) Time-bound adjudication on constitutional matters — establishing specialised constitutional benches with deadlines; (2) Stronger Parliamentary oversight committees — subjecting executive actions to genuine legislative scrutiny; (3) Civil society and electoral vigilance — the Court cannot permanently substitute for popular democratic mobilisation.

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### MAINS ANSWER FRAMEWORK

#### QUESTION

*The Supreme Court is increasingly framed as the 'last guardian of democracy' — a framing that reflects both institutional reality and constitutional concern. Examine this role with reference to recent cases on electoral integrity, governors' powers, and free speech. (250 words)*

#### INTRODUCTION

The increasing framing of the Supreme Court as the 'last guardian of democracy' reflects both institutional reality and a concerning constitutional asymmetry. As executive actions expand and legislative majorities enable them, the Court has become the principal forum for constitutional accountability — a role the Founders treated as exceptional, not routine.

**BODY**

Three recent case clusters illustrate the pattern. **\*\*Electoral integrity\*\***: The Electoral Bonds judgment (ADR v. UoI, Feb 2024) struck down the anonymous political funding scheme under Article 19(1)(a)'s implied right to know; SBI's subsequent disclosure revealed quid-pro-quo patterns between corporate donors and contract awards. **\*\*Federal balance\*\***: The Tamil Nadu Governor case (2024) and the Kerala Governor matter (2023) held that gubernatorial refusal or indefinite delay on state bills violates Article 163's "aid and advice" principle; the Court imposed timelines (3 months) on gubernatorial decisions. **\*\*Free speech\*\***: The Kunal Kamra matter (2024) stayed the Fact Check Unit notification under IT Rules; the sedition law (Section 124A IPC) was held in abeyance pending Parliament's reconsideration (S.G. Vombatkere, 2022). The pattern reveals a structural shift: parliamentary majorities enable executive overreach, leaving the Court as the primary check. But this expansion carries costs — unelected judges making policy-like rulings, court backlogs rising to 5 crore pending cases, and the risk that the Court itself becomes politicised when every contested policy ends in adjudication. Ambedkar's warning at the Constituent Assembly that democratic institutions require "constitutional morality" beyond the legal text becomes more urgent: a democracy where only courts defend democracy is a fragile one.

**CONCLUSION**

Restoring institutional balance requires three shifts: time-bound constitutional adjudication via specialised benches, genuine Parliamentary committee oversight that subjects executive actions to pre-emptive scrutiny, and civil-society vigilance that the Court cannot permanently substitute for. The Supreme Court must protect faith in democracy — but India's democracy cannot depend on the Supreme Court alone.


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