

Democratic Judicial Architecture: A Comparative Study of India and the United States

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This article undertakes a comparative constitutional analysis of judicial fairness and accountability in India and the United States, examining how distinct constitutional designs and judicial philosophies shape responses to executive power in contemporary democracies. While both systems are formally committed to the rule of law, separation of powers, and rights protection, the article argues that they operationalize fairness and accountability through fundamentally different institutional and normative logics. Drawing on the framework of transformative constitutionalism, the Indian constitutional order, reinforced by the Basic Structure Doctrine, authorises courts to prioritise substantive fairness, proportionality, and the protection of personal liberty through active judicial oversight. In contrast, the United States adheres to a restraint-oriented model of judicial review rooted in liberal constitutionalism, emphasizing procedural fairness, institutional continuity, and accountability through structural limits rather than rights-expansive intervention. The article distinguishes analytically between judicial fairness understood as courts' protection of liberty, equality, and due process and judicial accountability, defined as constitutional mechanisms that constrain executive authority and preserve democratic balance. These distinctions are explored through a comparative analysis of *Kejriwal v. Directorate of Enforcement* (2024) and *Trump v. United States* (2024), selected as contemporary constitutional stress tests involving executive power, criminal process, and judicial limits. The analysis demonstrates that India's judiciary tends to foreground individual liberty and proportionality, even at the risk of judicial overreach, while the U.S. Supreme Court prioritizes institutional stability and separation of powers, sometimes at the cost of insulating executive authority from direct legal accountability. The article concludes that neither model is normatively superior. Instead, each reflects historically conditioned trade-offs between judicial fairness, democratic accountability, and constitutional resilience, underscoring the importance of context-sensitive evaluation in comparative constitutional scholarship.

Keywords: Comparative Constitutionalism; Judicial Accountability; Transformative Constitutionalism; Democratic Governance; Judicial Review; India–United States Comparison

Introduction

Constitutional democracies depend on courts not only to interpret law but also to mediate the tension between political power and individual rights. Judicial institutions are therefore central to democratic governance, tasked simultaneously with safeguarding liberty, constraining executive authority, and maintaining institutional legitimacy (Dahl, 1989; Elster, 1995). While these objectives are shared across democratic systems, the manner in which courts pursue them varies significantly, shaped by constitutional design, historical experience, and normative commitments (Ackerman, 2014; Hirschl, 2014). India and the United States, two of the world's most influential constitutional democracies, offer particularly instructive contrasts in this regard. Although both systems vest courts with the power of judicial review, they diverge sharply in how judicial authority is conceptualized and exercised. Indian constitutionalism emerged from the conditions of colonial rule, deep social stratification, and economic deprivation, producing a constitution explicitly oriented toward social transformation and distributive justice (Austin, 1999; Baxi, 2012). The United States Constitution, by contrast, reflects a revolutionary distrust of centralized power and a liberal commitment to limited government, emphasizing structural checks, procedural fairness, and institutional restraint (Bickel, 1962; Perry, 1998). These divergent foundations continue to shape judicial approaches to fairness, accountability, and executive power in both jurisdictions.

This article analytically distinguishes judicial fairness from judicial accountability, a distinction that is often implicitly assumed but rarely clarified in comparative constitutional scholarship. Judicial fairness refers to the standards through which courts protect liberty, equality, and due process, particularly in cases involving coercive state power. Judicial accountability, by contrast, concerns the mechanisms by which constitutional systems ensure that executive authority remains answerable to law, whether through criminal liability, institutional checks, or political responsibility (Ely, 1980; Tushnet, 1999). While related, these concepts may diverge in practice: a judiciary may enhance fairness for individuals while simultaneously limiting direct mechanisms of executive accountability, or vice versa. This distinction provides the analytical foundation for the comparative inquiry undertaken here.

Existing scholarship on Indian and American constitutionalism has largely developed along separate intellectual trajectories. Studies of Indian constitutional law emphasise transformative constitutionalism, substantive equality, and judicial activism as tools for social justice (Bhatia, 2018;

Chandrachud, 2019). American constitutional scholarship, by contrast, has focused on judicial restraint, originalism, and the counter-majoritarian difficulty, often cautioning against excessive judicial intervention in democratic governance (Bickel, 1962; Waldron, 2006). Comparative studies, where they exist, tend to remain either descriptive or institution-centric, without sufficiently engaging how differing constitutional philosophies shape judicial responses to contemporary executive power (Choudhry, 2006; Hirschl, 2014). This article seeks to bridge that gap by integrating doctrinal analysis with normative constitutional theory.

The central research question guiding this study is: How do the constitutional structures and judicial philosophies of India and the United States generate distinct models of judicial fairness and executive accountability in contemporary governance? The article advances the argument that India's constitutional framework anchored in transformative constitutionalism and reinforced by the Basic Structure Doctrine authorizes courts to prioritize substantive fairness, liberty protection, and proportionality, even at the risk of judicial overreach (*Kesavananda Bharati v. State of Kerala*, 1973; Baxi, 2012). In contrast, the United States adopts a restraint-based judicial model that emphasizes accountability through separation of powers, institutional continuity, and procedural safeguards, sometimes at the cost of insulating executive authority from direct judicial scrutiny (Bickel, 1962; Ely, 1980).

Methodologically, the study employs a doctrinal–thematic comparative approach, analysing constitutional texts, judicial doctrines, and recent landmark decisions within their respective political and institutional contexts (Zweigert & Kötz, 1998). Particular attention is paid to two contemporary cases, *Trump v. United States* (2024) and *Kejriwal v. Directorate of Enforcement* (2024), selected not for their representativeness but for their analytical value as constitutional stress tests involving executive power, criminal process, and judicial limits. While acknowledging the asymmetries between the two systems, the comparison illuminates how each constitutional order negotiates the tension between fairness, accountability, and democratic stability. By situating contemporary case law within broader theoretical frameworks of judicial review and democratic constitutionalism, this article contributes to comparative constitutional scholarship in three ways. First, it clarifies the conceptual distinction between fairness and accountability as analytical categories. Second, it demonstrates how contrasting constitutional philosophies shape judicial responses to executive authority. Third, it highlights the normative trade-offs inherent in different models of democratic judicial architecture. In doing so, the study underscores

that constitutional success cannot be measured by uniform standards, but must be evaluated in light of each system's historical context, institutional design, and democratic aspirations.

Judicial Fairness, Accountability, and Constitutional Design: A Theoretical Framework

Comparative constitutional analysis requires an explicit theoretical framework to avoid purely descriptive or institution-centric comparisons. This study draws upon three interrelated strands of constitutional theory: transformative constitutionalism, institutional constitutionalism, and comparative constitutionalism to examine how judicial fairness and accountability are conceptualized and operationalized in India and the United States. Together, these frameworks enable a structured evaluation of judicial power, executive constraint, and democratic legitimacy across distinct constitutional orders.

Transformative Constitutionalism and Substantive Fairness

Transformative constitutionalism conceives the Constitution not merely as a charter of governance but as an instrument for deep social change aimed at dismantling historical hierarchies and achieving substantive equality (Klare, 1998; Bhatia, 2018). In the Indian context, this framework has been central to judicial interpretation, particularly in expanding fundamental rights and enforcing constitutional morality. Scholars argue that India's Constitution embeds an affirmative obligation upon the state and, by extension, the judiciary to transform social relations and protect marginalized groups (Austin, 1999; Baxi, 2012).

Under this framework, judicial fairness is understood substantively rather than procedurally. Courts are expected not only to ensure due process but also to evaluate the proportionality, necessity, and impact of state action on personal liberty and dignity. The Indian Supreme Court's jurisprudence under Article 21 exemplifies this orientation, where fairness is assessed through expansive interpretations of life and liberty rather than narrow textual constraints (Bhat, 1996). Transformative constitutionalism thus legitimizes judicial intervention in executive action when constitutional values such as dignity, equality, and liberty are threatened. In the empirical sections of this article, this theoretical strand informs the analysis of *Kejriwal v. Directorate of Enforcement* (2024), where the Court foregrounded proportionality and liberty while scrutinizing the discretionary power of investigative agencies. The framework explains why

Indian courts often privilege fairness even at the risk of accusations of judicial overreach.

Institutional Constitutionalism and Structural Accountability

In contrast, institutional or political constitutionalism emphasizes the primacy of democratic processes, separation of powers, and institutional competence over judicial supremacy (Bickel, 1962; Waldron, 2006). Within this framework, judicial accountability is achieved not through expansive rights adjudication but through structural limits that prevent courts from substituting their judgment for that of elected branches. The judiciary's legitimacy derives from restraint, predictability, and adherence to constitutional text and structure rather than from transformative ambition. The U.S. constitutional tradition exemplifies this approach. Judicial review is exercised cautiously, emphasising procedural fairness, original meaning, and institutional stability (Ely, 1980; Perry, 1998). Courts are wary of entering politically sensitive domains, particularly when such intervention may disrupt the balance among the branches of government. Within this framework, accountability is primarily structural: executive power is constrained through federalism, legislative oversight, impeachment, and electoral mechanisms rather than through expansive judicial policing.

This theoretical orientation frames the analysis of *Trump v. United States* (2024), where the U.S. Supreme Court prioritized separation of powers and institutional continuity over direct judicial scrutiny of executive conduct. Institutional constitutionalism helps explain why the Court viewed expansive criminal liability for presidential acts as a threat to democratic stability, even as critics argue that such restraint risks insulating executive power from accountability.

Comparative Constitutionalism and Contextual Evaluation

The third strand, comparative constitutionalism, provides the methodological bridge between these two systems. Comparative scholars caution against normative ranking or direct transplantation of constitutional principles across jurisdictions, emphasizing instead context-sensitive evaluation rooted in history, political culture, and institutional design (Choudhry, 2006; Hirschl, 2014). This framework rejects the assumption that constitutional success can be measured by uniform standards, urging scholars to assess how constitutional systems negotiate trade-offs within their own democratic contexts. Applied here, comparative constitutionalism highlights the limits of comparability between

India and the United States. Differences in prosecutorial independence, federal structure, political polarization, and judicial role mean that similar legal questions may generate divergent judicial responses without implying constitutional failure. This framework guides the article's refusal to declare one model superior, instead evaluating how each system balances fairness and accountability under its own constraints.

Constitutional Foundations: India and the United States

The constitutional foundations of India and the United States reflect two distinct trajectories of democratic state-building shaped by divergent historical experiences, political anxieties, and normative ambitions. While both constitutions seek to secure liberty, limit arbitrary power, and institutionalize democratic governance, they differ fundamentally in their conception of constitutional purpose and the role assigned to the judiciary within the democratic order. These foundational differences continue to structure judicial understandings of fairness, accountability, and executive power.

India: Transformative Constitutionalism and Judicial Empowerment

The Constitution of India, adopted in 1950, emerged from the twin imperatives of political independence and social transformation. Drafted in the aftermath of colonial rule, partition, and entrenched social hierarchies, the Constitution was conceived not merely as a framework for governance but as an instrument for restructuring society along egalitarian and democratic lines (Austin, 1999). The framers, particularly B.R. Ambedkar viewed constitutional democracy as inseparable from social democracy, requiring affirmative state action to dismantle caste oppression, economic inequality, and social exclusion (Bhongale, 2023). This transformative ambition is reflected in the Constitution's detailed architecture, which combines justiciable Fundamental Rights, non-justiciable Directive Principles of State Policy, and, later, Fundamental Duties. Scholars have described the Indian Constitution as a "social revolution document" that assigns the judiciary a central role in mediating between constitutional ideals and political practice (Baxi, 2012; Bhatia, 2018). The Supreme Court's development of the Basic Structure Doctrine in *Kesavananda Bharati v. State of Kerala* (1973) further entrenched this role by authorizing courts to invalidate constitutional amendments that threaten core constitutional values such as the rule of law, separation of powers, and judicial independence (Kumar, 2007).

From the perspective of judicial fairness, this constitutional design empowers courts to prioritize substantive justice and proportionality over formal legality. The expansive interpretation of Article 21, transforming the right to life and personal liberty into a source of multiple derivative rights, illustrates how fairness is assessed in light of dignity, necessity, and reasonableness rather than narrow procedural compliance (Bhat, 1996). This rights-expansive orientation has enabled courts to scrutinize executive discretion in areas ranging from preventive detention to investigative authority. However, this constitutional empowerment has also generated sustained critique. Scholars and jurists have warned that India's strong-form judicial review risks judicial overreach, democratic displacement, and institutional imbalance (Sathe, 2002; Seervai, 1991). Critics argue that frequent judicial intervention in policy domains, often justified in the language of constitutional morality, may weaken legislative accountability and blur the separation of powers. These critiques are central to evaluating India's model of accountability, particularly where judicial protection of fairness may come at the cost of democratic restraint. This tension becomes salient in later sections analysing executive agency oversight and bail jurisprudence.

United States: Liberal Constitutionalism and Structural Restraint

The United States Constitution, drafted in 1787, reflects a fundamentally different constitutional anxiety: fear of concentrated political power. Born out of resistance to monarchical authority, the Constitution was designed to constrain government through structural checks, federalism, and a separation of powers rather than through detailed substantive commitments (Perry, 1998). Its brevity and rigidity reflect the framers' belief that liberty is best preserved by limiting governmental capacity rather than prescribing social outcomes (Dorf, 2002). The Bill of Rights, adopted shortly thereafter, entrenched core negative liberties protecting individuals from state intrusion. Unlike India's Constitution, the U.S. document does not constitutionalize social welfare obligations or collective duties. Judicial review, established in *Marbury v. Madison* (1803), evolved as a mechanism for maintaining constitutional boundaries rather than advancing social transformation. As a result, American constitutionalism has historically emphasized procedural fairness, textual fidelity, and institutional continuity (Bickel, 1962).

From the standpoint of accountability, the U.S. model relies heavily on structural mechanisms, legislative oversight, impeachment, federalism, and

elections rather than judicial supervision of executive conduct (Ely, 1980). Judicial restraint is often justified as necessary to preserve democratic legitimacy and prevent courts from assuming political functions better suited to elected branches. Yet this model has its own vulnerabilities. Scholars have criticized the rigidity of the U.S. Constitution and the Court's increasing reliance on originalism for insulating entrenched power structures and limiting the judiciary's capacity to respond to contemporary democratic crises (Balkin, 2009; Hirschl, 2014). Critics argue that excessive deference to executive authority, particularly in matters involving national security or presidential power, may undermine substantive accountability and weaken public confidence in the rule of law. These concerns are directly implicated in contemporary immunity and executive privilege jurisprudence.

Comparative Implications for Fairness and Accountability

Taken together, the constitutional foundations of India and the United States reveal contrasting democratic trade-offs. India's transformative constitutional design equips courts to act as guardians of substantive fairness and constitutional morality, but exposes the system to concerns of judicial dominance and selective intervention. The United States' restraint-oriented framework prioritizes institutional accountability and separation of powers, yet risks insulating executive authority from meaningful judicial scrutiny in moments of democratic stress.

Normative Foundations and Democratic Values

The normative foundations of a constitutional democracy, the principles, values, and ethical commitments embedded within its constitutional text and practice, serve as the moral and philosophical backdrop for judicial interpretation, fairness, and accountability. These foundations not only define the content of rights and duties but also shape how courts balance competing values such as individual liberty, social welfare, and institutional integrity (Rosenfeld, 2012). While both India and the United States are committed to liberty, equality, and justice, their constitutional visions and judicial cultures differ significantly, leading to distinct approaches to fairness and accountability in contemporary jurisprudence.

Social Justice, Substantive Equality, and Collective Duties

India's constitutional framework articulates a transformative vision that combines social justice, substantive equality, and collective responsibilities as

normative pillars of democracy (Panwar, 2010; Singh, 2011). The Directive Principles of State Policy, although non-justiciable, serve as aspirational benchmarks guiding judicial and executive action toward a welfare state infused with egalitarian values (Seervai, 1991). Fundamental rights, particularly Article 21, have been expansively interpreted by the Indian Supreme Court to include dignity, livelihood, health, and privacy, reflecting a vision of liberty as substantive and empowering rather than merely negative (Bhat, 1996; Pylee, 2007). Landmark cases of the past, such as *Maneka Gandhi v. Union of India*, rejected narrow readings of personal liberty and instead required procedural fairness and reasonableness in all deprivations of liberty, grounded in Articles 14, 19, and 21 (1978 INSC 16).

Contemporary Indian jurisprudence continues to reflect this normative thrust. For example, in *Dupare v. State of Maharashtra* (2025), the Supreme Court reopened the sentencing of a death row convict, holding that procedural safeguards under Article 32 must be respected even in capital punishment emphasizing individualized sentencing and procedural fairness as constitutionally mandated (Times of India, Aug 25, 2025). Likewise, ongoing debates over extended detention without trial, exemplified by the Supreme Court's denial of bail to activist defendants despite years in pre-trial detention, draw criticism from human rights observers and highlight tensions between state security powers and individual liberties enshrined in the Constitution (AP News, Jan 5, 2026).

The inclusion of Fundamental Duties under Article 51A further illustrates India's commitment to ethical citizenship rights coupled with responsibilities (Bajpai, 2005; Sharma, 2002). Courts have invoked this framework in environmental and accountability cases to require both state and individual adherence to constitutional morality, expanding the notion of fairness beyond procedural norms alone (Bhatia, 2018). However, such rights-expansive jurisprudence can blur institutional boundaries, potentially encroaching on legislative and executive roles and challenging traditional separation of powers doctrines (Sathe, 2002; Seervai, 1991). This tension reflects a core dilemma in Indian constitutional democracy: achieving substantive fairness while preserving institutional accountability.

Individual Liberty, Procedural Equality, and Institutional Balance

The United States embodies a liberal-democratic ethos that prioritizes individual freedom, procedural fairness, and structural checks and balances

(Chemerinsky, 2019; Ginsburg, 2003). The Bill of Rights enshrines negative liberties designed to protect individuals from governmental overreach, while equality is primarily procedural, ensuring laws apply uniformly rather than mandating positive redistribution. A key contemporary example of the U.S. Supreme Court's procedural orientation is *Students for Fair Admissions v. Harvard* (2023), in which the Court held that race-based affirmative action policies in college admissions violate the Equal Protection Clause of the Fourteenth Amendment. The decision emphasized that government entities must avoid distinctions based on race unless narrowly tailored to compelling interests, thereby reaffirming procedural equality over transformative social ends (2024). Another recent case, *Trump v. United States* (2024), illustrates the Court's protective stance toward executive officeholders. The Court ruled that former presidents enjoy absolute immunity for official acts within core constitutional functions and at least presumptive immunity for other official conduct, a decision that has sparked debate about accountability and the scope of executive power (2024). Critics argue this normative posture risks weakening mechanisms of legal accountability and might shield executive excesses from review (Brennan Center commentary).

In 2025, cases such as *Ames v. Ohio Department of Youth Services* further demonstrate the Court's emphasis on maintaining procedural equality in employment discrimination claims under Title VII, ensuring that evidentiary standards align with statutory text and precedent rather than ad hoc concepts of bias or disadvantage (June 5, 2025 decision). While U.S. judicial accountability is structurally mediated through separation of powers, federalism, and electoral oversight rather than expansive judicial intervention, critics contend that textualism and restraint may sometimes be insufficient to protect substantive fairness, especially for marginalized groups or in contexts of executive assertiveness (Balkin, 2009; Hirschl, 2014).

Comparative Insights

Comparative analysis highlights how India's constitutional democracy emphasizes substantive social justice and collective duties, often empowering courts to expand the reach of rights and procedural fairness to achieve broader equity. Contemporary Indian cases, from ensuring procedural fairness in capital sentencing to balancing security and liberty in pre-trial detention, illustrate an interpretive culture that situates individual liberties within a broader framework of social justice and accountability. In contrast, the U.S. constitutional model

privileges procedural equality, structural safeguards, and restrained judicial intervention, as seen in decisions that limit affirmative action and delineate presidential immunity. This model safeguards democratic stability and institutional balance but raises questions about whether procedural equality alone suffices to achieve substantive fairness in a deeply unequal society.

Judicial Fairness and Accountability: Comparative Case Law Analysis

Judicial fairness and accountability represent core normative commitments of any constitutional democracy. They are operationalized most visibly through case law, where abstract constitutional principles confront real-world executive power, prosecutorial discretion, and individual liberty. Comparative analysis requires attention not only to doctrinal outcomes but also to the normative frameworks, institutional constraints, and political contexts within which courts interpret constitutions and mediate disputes between citizens and the state (Tushnet, 2008; Rosenfeld, 2012). This section examines two contemporary constitutional “stress tests” involving executive authority, liberty, and judicial intervention: *Kejriwal v. Directorate of Enforcement* (2024) in India and *Trump v. United States* (2024) in the United States. These cases illuminate how distinct constitutional traditions and jurisprudential philosophies shape notions of fairness, judicial accountability, and institutional balance in high-stakes litigation involving political actors.

Arvind Kejriwal vs Directorate of Enforcement, 2024

In *Kejriwal v. Directorate of Enforcement*, the Supreme Court of India confronted claims of arbitrary deprivation of liberty under the Prevention of Money Laundering Act (PMLA), 2002. At issue was whether the investigative agency, the Enforcement Directorate (ED), had exceeded its discretionary authority in detaining the petitioner, who challenged his custody and sought bail amidst prolonged pre-trial incarceration. The Court reaffirmed the foundational principle that “bail is the rule, jail is the exception”, introducing a refined proportionality test for arrests and bail that emphasizes the primacy of liberty and robust judicial oversight over executive action (Supreme Court of India, 2024). This principle derives from India’s constitutional right to life and personal liberty under Article 21, which commands that no person shall be deprived of liberty except “according to procedure established by law” and interpreted to require fairness, reasonableness, and procedural justice (India Const. art. 21; *Hari Om Rai v. Directorate of Enforcement*, 2024).

The Supreme Court highlighted that provisions of the PMLA, particularly Section 45, cannot override the constitutional mandate under Article 21. Even in special statutes characterized by stringent bail restrictions, courts must ensure that liberty remains the norm and deprivation the exception, with judicial oversight serving as a check on executive enforcement powers (Supreme Court of India, 2024; *Hari Om Rai v. Directorate of Enforcement*, 2024). This doctrinal shift reflects India's broader constitutional philosophy of transformative constitutionalism, a jurisprudential orientation that views the Constitution as a living instrument designed to bring about substantive equality and social justice (Austin, 1999; Bhatia, 2018). The Supreme Court's reasoning in *Kejriwal* demonstrates an active judicial role in protecting personal liberty against legislative or executive excess, particularly when procedural safeguards are inadequate or, when justice is delayed, effectively becomes punitive. By placing the burden on the prosecution to justify detention and by stressing speedy trials and proportional arrest conditions, the Court sought to anchor fairness within a substantive due process framework that subordinates executive discretion to constitutional morality (Panwar, 2010; Bhatia, 2018).

The *Kejriwal* decision also exemplifies the role of judicial accountability courts, requiring executive agencies to justify enforcement actions not merely on statutory text but also on constitutional standards of liberty, dignity, and equality. By reaffirming bail norms and scrutinizing conditions of pre-trial detention, the judiciary asserted its role as a guardian of constitutional rights in the face of special statutes with historical tendencies to circumscribe liberty (Seervai, 1991; Sathe, 2002).

However, the case also underscores potential limits of judicial accountability. Critics argue that rights-expansive intervention carries risks of judicial overreach, blurring the separation of powers and substituting judicial discretion for legislative and executive policy judgments on law enforcement priorities and national security concerns (Sathe, 2002; Seervai, 1991). In the Indian context, where courts often balance expansive welfare commitments with institutional constraints, such interventions may unintentionally constrain prosecutorial autonomy or politicize judicial review (Bajpai, 2005; Sharma, 2002). Thus, *Kejriwal v. Directorate of Enforcement* stands as a paradigmatic example of India's transformative constitutionalism in action: courts actively enforce fairness and accountability by placing constitutional values of liberty and dignity above rigid statutory bail regimes, even when challenging powerful executive agencies and politically sensitive prosecutions.

Trump v. United States (2024)

By contrast, *Trump v. United States* presented the Supreme Court of the United States with a question of profound constitutional significance: whether and to what extent a former president may be prosecuted for actions taken during official tenure. The case involved an indictment of former President Donald J. Trump on multiple federal criminal charges alleging conspiratorial efforts to overturn the 2020 election results. Trump contended that the Constitution entitles a president to absolute immunity from criminal prosecution for official acts, arguing that such immunity is necessary to preserve executive independence and prevent judicial encroachment on political functions (*Trump v. United States*, 2024).

In a 6–3 decision, the Court held that the constitutional structure of separation of powers entitles a former President to absolute immunity from criminal prosecution for actions within his conclusive and preclusive constitutional authority and at least presumptive immunity for all official acts. The majority emphasized that such immunity is grounded in the text, history, and purpose of Article II, designed to prevent judicial interference with executive responsibilities essential to the functioning of the presidency (*Trump v. United States*, 603 U.S. (2024)). Under this framework, only conduct outside the scope of official functions remains prosecutable. By confining judicial review to distinctions between official and unofficial acts, the Court articulated a proceduralist conception of fairness that prioritizes institutional stability and executive autonomy over expansive post-hoc accountability. The majority underscored that exposing former presidents to criminal prosecution for performing official duties could undermine executive effectiveness and upset the delicate balance of power among branches (*Trump v. United States*, 2024).

The ruling crystallizes a foundational normative commitment in U.S. constitutionalism: fairness is bound up with structural protections and procedural integrity rather than expansive substantive accountability. Courts in the U.S. have traditionally exercised restraint in crafting doctrines that risk destabilizing inter-branch relations, emphasizing textual fidelity, federalism, and separation of powers as bulwarks against judicial overreach (Bickel, 1962; Ely, 1980). The *Trump* decision builds on these traditions by conceiving executive accountability largely in institutional terms rather than as a broad corrective to alleged malfeasance.

Nonetheless, this normative posture entails significant trade-offs. Critics argue that broad immunity doctrines may weaken substantive accountability,

effectively placing the president or former presidents beyond the ordinary reach of criminal liability for official misconduct with democratic implications. Such insulation could impede the rule of law and erode public confidence in legal equality before the law (Balkin, 2009; Hirschl, 2014). Dissenting justices in Trump warned that the majority's approach risks creating a presidency with king-like immunity, undermining the fundamental democratic principle that no one is above the law (Trump v. United States, 2024). The Trump ruling thus highlights a deeply institutional conception of fairness and accountability in the U.S. constitutional order: fairness is intertwined with maintaining structural checks rather than facilitating rights-expansive judicial correction of executive conduct.

Comparability Limits and Structural Divergence

While these judgments illuminate how each constitutional system operationalizes fairness and accountability, cross-jurisdictional comparison must proceed with caution, given significant differences in political culture, prosecutorial independence, separation of powers doctrines, and historical constitutional philosophy. India's jurisprudence, shaped by transformative constitutionalism and a history of socio-economic inequality, often embraces active judicial engagement to safeguard personal liberty and procedural fairness. By contrast, the U.S. model emphasizes institutional balance, structural safeguards, and restrained judicial oversight, even when addressing executive power at its zenith.

Direct normative ranking of these approaches is therefore inappropriate; rather, the comparison underscores structural and philosophical divergence. Kejriwal exemplifies a regime in which the judiciary protects substantive rights against incarceration and executive arbitrariness, whereas Trump illustrates a constitutional culture that limits judicial intervention to preserve executive autonomy and systemic balance. Each design reflects deep normative commitments and distinct conceptions of fairness, accountability, and the role of the judiciary in a constitutional democracy. India's judicial overreach has become a subject of sustained debate in a parliamentary democracy where Parliament is constitutionally entrusted with the primary responsibility of law-making. While the Indian Constitution establishes parliamentary supremacy in the legislative sphere, it simultaneously empowers the judiciary with the authority of judicial review under Articles 13 and 32, thereby making constitutional supremacy the foundational principle of governance. Over time, the Supreme Court of India has

adopted an expansive interpretative approach, most notably in *Kesavananda Bharati v. State of Kerala* (1973), where it evolved the Basic Structure Doctrine to limit Parliament's amending power, thereby asserting judicial authority over constitutional change. Similarly, in *Supreme Court Advocates-on-Record Association v. Union of India* (2015), commonly known as the NJAC case, the Court struck down a constitutional amendment concerning judicial appointments, reigniting concerns about judicial encroachment into the legislative domain. Scholars have characterized this phenomenon as judicial activism that, at times, borders on judicial overreach (Sathe, 2002; Austin, 1999).

A comparable institutional tension exists in the United States, where the doctrine of judicial review was firmly established in *Marbury v. Madison* (1803), enabling the Supreme Court to invalidate acts of Congress and executive actions that contravene the Constitution. Although the U.S. operates under a presidential system with a stricter separation of powers, conflicts between Congress, the President, and the Supreme Court, particularly over executive orders and major policy decisions, reflect an ongoing struggle to define institutional boundaries (Dahl, 1957). Despite structural differences between the two systems, both India and the United States confront similar challenges in balancing democratic legitimacy with constitutional supremacy. In both contexts, the judiciary occupies a unique position as the authoritative interpreter of constitutional text and societal norms, shaping the trajectory of democratic governance while simultaneously provoking debates about the proper limits of judicial intervention.

Equality and Affirmative Action Jurisprudence

Equality, as a principle of democratic constitutionalism, is interpreted and operationalized differently in India and the United States. While both systems formally endorse anti-discrimination and equal protection, the normative commitments and institutional mechanisms shaping judicial approaches diverge, with important implications for fairness and accountability.

India: Reservation and Substantive Equality

The Indian Constitution explicitly authorizes affirmative action under Articles 15(4), 15(5), and 16(4), reflecting a commitment to substantive equality and the correction of historical injustices (Bhatia, 2018; Singh, 2011). The judiciary has consistently upheld the principle that affirmative action is a constitutional tool, not a fundamental right, and that its implementation must remain aligned with Article 14's guarantee of equality before law (Supreme Court of India, 2024).

The Supreme Court has also addressed the concept of the “creamy layer,” ensuring that the benefits of reservation accrue to the genuinely disadvantaged and preventing overreach by excluding socially advanced groups within the same category (*Indra Sawhney v. Union of India*, 1992; *Ashoka Kumar Thakur v. Union of India*, 2008). These rulings illustrate how the judiciary mediates between fairness (protection of disadvantaged groups) and accountability (ensuring transparent, equitable implementation).

Empirically, these judgments influence public sector recruitment, educational admissions, and political representation. Courts ensure that affirmative action programs do not undermine meritocratic selection in unreserved categories, preserving institutional legitimacy while advancing substantive equality (Bhatia, 2022). The Indian approach demonstrates an expansive conception of judicial fairness, where courts actively intervene to balance individual merit, group disadvantage, and procedural integrity.

United States: Race-Neutral Affirmative Action and Procedural Equality

By contrast, the U.S. Supreme Court has approached affirmative action cautiously, prioritizing procedural equality and individual rights. In *Students for Fair Admissions v. President and Fellows of Harvard College* (2023), the Court invalidated race-conscious admissions policies, emphasizing that such policies lacked clearly defined objectives and measurable endpoints and violated the Equal Protection Clause (Amar, 2023). The Court reinforced a “general category” or race-neutral approach, reflecting a rights-centric conception of fairness: equality protects individuals rather than groups. This proceduralist stance limits judicial capacity to advance substantive redistribution, consistent with the United States’ institutional constitutionalism (Bickel, 1962; Ely, 1980). While the decision preserves accountability through adherence to constitutional text and structural principles, it arguably constrains substantive fairness, particularly for historically marginalized communities.

Conclusion

The comparative study of judicial fairness and accountability in India and the United States demonstrates that constitutional design, historical experience, and normative commitments profoundly shape how courts respond to executive power. In India, the Constitution embodies a transformative vision, crafted not only to limit arbitrary authority but also to address entrenched social hierarchies and promote substantive equality. This vision empowers the judiciary to act as a proactive guardian of constitutional morality, interpreting fundamental rights

expansively and scrutinizing executive actions for proportionality, necessity, and fairness. Landmark decisions such as *Kejriwal v. Directorate of Enforcement* (2024) and *Indra Sawhney v. Union of India* (1992) illustrate this approach, in which courts actively enforce fairness by protecting personal liberty and regulating administrative discretion, while simultaneously exercising oversight over state agencies. At the same time, this rights-expansive model carries the potential for judicial overreach, as frequent intervention in policy domains may challenge legislative and executive prerogatives. Thus, in India, judicial fairness and accountability are intertwined, with courts mediating between the ideals of social justice and the practical exercise of executive power.

In the United States, constitutional design reflects a liberal and restraint-oriented philosophy that emphasizes procedural equality, separation of powers, and institutional stability. Judicial review is exercised cautiously, with courts prioritizing structural safeguards over expansive social interventions. The Supreme Court's rulings in *Trump v. United States* (2024) and *Students for Fair Admissions v. Harvard College* (2023) demonstrate this orientation, highlighting a commitment to preserving institutional continuity and ensuring that the judiciary does not supplant democratic decision-making. While this approach maintains accountability through structural checks and procedural compliance, it may limit substantive fairness, particularly in contexts that would require redistributive action or protection for historically marginalized groups. The U.S. judiciary thus constrains executive power indirectly, favoring systemic stability over proactive rights enforcement.

Despite these differences, both systems reveal the inherent trade-offs embedded in democratic judicial architecture. In India, courts emphasize fairness through direct intervention, sometimes at the cost of institutional restraint, whereas in the United States, courts emphasize accountability through structural limits, sometimes at the expense of corrective justice for disadvantaged groups. These outcomes reflect the broader historical and normative contexts of each country: India's postcolonial social reality and commitment to substantive equality, and the United States' liberal individualist tradition and concern for procedural legitimacy. Ultimately, neither approach is inherently superior. Rather, each represents a coherent constitutional strategy for balancing fairness, accountability, and democratic resilience within its own socio-political and legal milieu.

By integrating theoretical perspectives, normative commitments, and contemporary case-law analysis, this study underscores that judicial success

cannot be measured by uniform standards across jurisdictions. Instead, it lies in each system's ability to adapt judicial oversight to its constitutional principles while protecting liberty, enforcing accountability, and maintaining democratic legitimacy. The comparative evaluation of India and the United States thus highlights that the interplay between judicial fairness and accountability is both contextually grounded and historically conditioned, offering nuanced insights for scholars, policymakers, and constitutional practitioners globally.

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