

Who Guards the Guardians? Executive Pressure and the Supreme Court of India

Abstract

Everyone agrees that Indian judges should be independent of the government. Far fewer people ask who is supposed to make sure they stay that way. Since the Collegium took control of appointments in the 1990s, and the Court struck down the National Judicial Appointments Commission in 2015, the answer has in practice been the judiciary itself. This paper argues that the arrangement is circular and fragile. It looks at three moments where the strain shows: the supersessions of 1973 and 1977 and the *ADM Jabalpur* decision, the Supreme Court's January 2026 refusal of bail to Umar Khalid and Sharjeel Imam, and the September 2026 stay in *Medha Roopam v. Akriti Chaudhary*. None of these proves that the Court simply does the government's bidding, and the paper does not claim that. Together, though, they suggest that when the Executive controls careers and the Court alone defends itself, deference becomes a predictable habit rather than an occasional lapse. The paper closes with modest structural reforms.

Keywords: judicial independence, Executive interference, Collegium, supersession, UAPA, preventive detention, India

1. Introduction

The Supreme Court has held since *Kesavananda Bharati* (1973) that judicial independence belongs to the basic structure of the Constitution. The text backs this up. Judges of the Supreme Court and High Courts can be removed only through the demanding procedure in Articles 124(4) and 217, their salaries are charged to the Consolidated Fund, and Article 50 tells the State to keep the judiciary separate from the Executive. On paper, independence is about as secure as a constitutional value can be.

The harder question is who enforces it. A promise of independence means little unless some institution can act when the government leans on the courts. In India that institution has become the Court itself. Through the *Second Judges Case* (1993), the *Third Judges Case* (1998) and the *Fourth Judges Case* (2015), the Supreme Court took primacy over appointments and made itself the guardian of its own independence.

That creates an awkward loop. The government still notifies the Collegium's recommendations, and can sit on them. It can ask for a transfer proposal to be changed. It runs the courts' administrative and budgetary machinery through the Law Ministry, appears as the biggest litigant in almost every court, and controls the tribunals and the post-retirement jobs many judges eventually take. The Court is asked to restrain the branch on which it depends.

My research question is simple: **who actually protects the Indian judiciary from Executive interference, and is that enough?** My argument is that interference is not only the dramatic kind, such as a punitive transfer or a defied order. It is often quieter. When advancement and comfort lie in the government's hands, courts can learn, without a single instruction, to be careful.

The paper uses a doctrinal method, working from constitutional provisions, reported judgments and press coverage of very recent events. Because two of the three case studies are unresolved, I have

limited myself to what was on the public record on 30 September 2026. I use "stenographer of the Executive" as the critics' label for a court that repeats the state's account instead of testing it. I treat it as a claim to be examined, not a fact to be assumed.

2. Literature Review

Writing on Indian judicial independence falls into a few groups, and each leaves something out.

The first group tells the institutional history. Granville Austin's *Working a Democratic Constitution* (1999) remains the fullest account of how the Court and the government fought over property, amendment and appointments, and it treats the 1973 supersession as a turning point. Upendra Baxi's *The Indian Supreme Court and Politics* (1980) is sharper about the Court's political entanglements, and reads the Emergency-era judgments as an institution struggling under pressure. Abhinav Chandrachud's *Supreme Whispers* (2018) uses archival material to show how judges of the Emergency years and after actually behaved. These works establish that the Executive has always had leverage. They are mostly historical, and they do not ask who should hold the leverage in check.

The second group debates the Collegium. Arghya Sengupta's *Independence and Accountability of the Indian Higher Judiciary* (2019) argues that the Court's insistence on independence has come at the cost of accountability. Rehan Abeyratne (2016) reads the NJAC judgment against comparative practice and questions the wisdom of judicial supremacy over appointments. Defenders of the Collegium, including many judges and senior advocates writing in the press, reply that the NJAC's design would have handed the Executive a veto. This debate matters, but it is about who *selects* judges. It says much less about who defends them after they are on the bench.

The third group concerns the basic structure doctrine and its theory. Sudhir Krishnaswamy's *Democracy and Constitutionalism in India* (2009) and Gautam Bhatia's *The Transformative Constitution* (2019) explore why the Court claims power to police the constitutional order. They tend to assume, reasonably, that the Court is the guardian of the Constitution. They rarely ask what happens when the Court is itself the party under pressure.

Finally, a large body of commentary in journals and news outlets deals with specific episodes: post-retirement appointments, delays in notifying judges, UAPA bail and preventive detention. This material is rich but scattered.

The gap, then, is one of connection. Historians document Executive leverage, Collegium scholars argue about selection, doctrinal writers assume the Court's guardianship, and commentators track episodes. Few try to ask directly who guards the judiciary and then test the answer against concrete cases. This paper attempts that.

3. Two Kinds of Interference

It helps to separate two things. External interference is the visible kind: a government transfers an inconvenient judge, ignores a ruling, or starves a court of funds. Most people would recognise it and object.

Internalised interference is harder to see. If a judge knows that elevation, a good posting or a comfortable post-retirement role depends on the government's goodwill, the temptation is to avoid unnecessary conflict. Nobody has to be told. The judge simply calculates. Law has long recognised

that independence has an institutional side (tenure, salary) and a psychological one (freedom from the hope of reward or the fear of penalty). Formal guarantees address the first far better than the second.

With that in mind, I look at each case through three questions. How demanding is the standard of review the Court applies to the Executive's claims? Does delay, in practice, let Executive action go unreviewed? And does the Court's reflex favour shielding state officers from criticism?

4. The Emergency: Supersession and *ADM Jabalpur*

On 24 April 1973 the Supreme Court decided *Kesavananda Bharati* by a slim majority, holding that Parliament could not amend the Constitution's basic structure. The next day A.N. Ray, who had been in the minority, was named Chief Justice. Three more senior judges from the majority, J.M. Shelat, K.S. Hegde and A.N. Grover, were passed over, and all three resigned. The government's defence was that seniority was not a binding rule and that a Chief Justice should share the country's social outlook. Put plainly, judicial views on a constitutional question had become relevant to who would lead the Court.

Two years later, on the proclamation of Emergency, the President suspended the right to approach courts to enforce Articles 14, 21 and 22. Several High Courts still entertained habeas petitions. In *ADM Jabalpur v. Shivkant Shukla* (1976), the Supreme Court held by four to one that during the Emergency a detainee could not challenge even a *mala fide* or unlawful detention. The Attorney General had conceded in argument that this would leave no remedy even if an official shot someone out of personal spite, and the majority did not turn away from the logic. Justice H.R. Khanna dissented alone, insisting that the right to life and liberty did not depend on Article 21 alone and that the rule of law outlived the suspension of remedies.

The consequences were swift. A number of High Court judges who had ruled against the government were transferred between courts, a step widely read as punishment. In January 1977, when Ray retired, Khanna was the senior-most judge and the natural successor. The government chose M.H. Beg, who had joined the *ADM Jabalpur* majority. Khanna resigned. The Court later undid this history, most visibly when *Puttaswamy* (2017) overruled *ADM Jabalpur*, and *Sankalchand Sheth* (1977) accepted that transfers made as punishment are unconstitutional.

What matters for this paper is the mechanism. The government never had to instruct the Court. It only had to show, twice, that dissent carried a price. The majority in *ADM Jabalpur* included judges who had shown real courage elsewhere, which suggests that pressure works even on able and honest people. And nobody outside the Court was positioned to defend Khanna. Vindication came decades later, from the same institution, after the damage was done.

It is comforting to treat the Emergency as an exception. I think the better lesson is that the levers it exposed still exist. They are simply used less openly.

5. Umar Khalid, Sharjeel Imam and the Bail Question

Sharjeel Imam was arrested in January 2020 over speeches during the anti-CAA protests, and Umar Khalid in September 2020 in the "larger conspiracy" case over the Delhi violence of February 2020. Both were charged under the UAPA. The trial court refused bail in 2022, the Delhi High Court refused Khalid in October 2022, and again refused both men on 2 September 2025. The Supreme

Court reserved its verdict on 10 December 2025.

On 5 January 2026, a bench of Justices Aravind Kumar and N.V. Anjaria granted bail to five co-accused, Gulfisha Fatima, Meeran Haider, Shifa ur Rehman, Saleem Khan and Shadab Ahmed, but refused it to Khalid and Imam. The Court found a prima facie case under the UAPA against the two, described them as the central figures of the alleged conspiracy, and said prolonged custody weighs less heavily against someone in that position than against a peripheral accused. They were allowed to apply again once the protected witnesses had been examined, or after a year. By then both had spent nearly six years in custody without the trial reaching that stage.

Two lines of authority collide here. *NIA v. Watali* (2019) tells courts deciding UAPA bail to take the prosecution's material at face value, without weighing how reliable it is. *Union of India v. Najeeb* (2021), a three-judge decision, holds that long incarceration and a slow trial can justify bail even under harsh statutes, because Article 21 does not disappear.

Using my three questions:

Standard of review. *Watali*, applied strictly, turns the bail court into something close to a recording clerk. The Court's own distinction between the five and the two rested on the roles the prosecution assigned. Critics say that where the Executive controls the investigation, the framing of charges and the sanction, a review that accepts the framing leaves little room to test it. Supporters would answer that a court cannot try an untried conspiracy at the bail stage, and that the Court did release five people.

Delay. The case took years to reach a decision, and the decision itself postponed the next chance at bail by a year or by the timing of witness examination. Amnesty International India criticised that condition as a restriction on regular judicial review of detention that ties future bail to the pace of the prosecution.

Reflex. The story did not end there. Within months, another Supreme Court bench, in an opinion by Justice Bhuyan, questioned whether the January ruling had properly followed *Najeeb*. It observed that a smaller bench cannot dilute the ratio of a larger one and that bail remains the rule even under the UAPA. That shows the Court can correct itself. It also shows the price of waiting: the men stayed in custody while the Court's own benches disagreed. On 30 September 2026, a Delhi High Court bench of Justices Prathiba Singh and Dinesh Bhatt again denied bail, reasoning that granting it before the conditions in the Supreme Court's order were met would amount to modifying that order. A lower court, bound by discipline, could not do what a higher bench was starting to doubt.

I do not claim the January judgment was wrong in law. My point is narrower. When the standard of review is this deferential, and delay does the rest, the Executive's account is rarely tested before the person concerned has already served something close to a sentence.

6. *Medha Roopam v. Akriti Chaudhary*

Akriti Chaudhary, a Delhi University history graduate, was taken into custody on 11 April 2026, days before a workers' wage protest in Noida turned violent. She was later detained under the National Security Act. On 2 September 2026, a Division Bench of the Allahabad High Court (Justices Atul Sreedharan and Achal Sachdev) quashed the detention. It found the detention order lacking in material and passed without proper application of mind, noted she had no criminal record,

and saw nothing showing she had incited violence. It also ordered Rs 5 lakh compensation to be recovered from the salaries of the responsible officials, and recorded strictures against the Gautam Buddha Nagar District Magistrate, Medha Roopam.

The State and the DM appealed. On 23 September 2026 a bench of Justices Satish Chandra Sharma and N. Kotiswar Singh heard Mukul Rohatgi for the State, Solicitor General Tushar Mehta for the DM, and Colin Gonsalves for Ms Chaudhary. The bench asked how one officer could be singled out for personal liability when the order had passed through several layers of scrutiny, and noted that preventive detention may rest on intelligence inputs. Press reports say the courtroom audio was muted on a judge's direction and the video feed was restricted for most of the hearing. The interim order was pronounced in chambers.

The first version of that order stayed "the operation of the impugned judgment, particularly, para Nos. 27 to 33," and was widely read as suspending the entire ruling, including the release. On 24 September the Court issued a revised order confining the stay to paragraphs 27 to 33, meaning the costs and strictures. The quashing of the detention stayed in force. The matter returns on 7 October 2026.

Some of what happened deserves credit. The Court fixed its own order within a day, and it left the release untouched. It is also fair to ask whether one officer should carry personal financial liability inside a chain of decisions.

Still, three things trouble me. First, an interim order that at first read as suspending the release of a person the High Court found unlawfully detained went well beyond the relief sought, which concerned an officer's liability. Second, closing off the audio and video of a hearing about state power over a citizen's liberty cuts against the Court's own commitment to open justice, which it affirmed in *Swapnil Tripathi* (2018). Third, the reported reasoning leans on the fairness of singling out the officer. But if the High Court was right that each layer failed to apply its mind, the number of layers makes the failure worse, not better. Someone spent five months in detention on that record, and the reported exchange says little about her.

The link to judicial placement should be handled with care. I have found no public record of any appointment or transfer following the stay, and I do not assert one. What is documented is the earlier history of Justice Sreedharan. In 2023 he sought a transfer from Madhya Pradesh and was moved to Jammu and Kashmir. A later recommendation to move him to Chhattisgarh, where he would have sat on the High Court Collegium, was changed before it took effect. According to ThePrint, the Supreme Court Collegium instead sent him to Allahabad "on consideration sought by the government," where his seniority keeps him off that Collegium.

I claim no cause-and-effect between that transfer and the stay. The point is smaller and more solid: the Collegium's own resolution records that the government's preference about where a judge sits was communicated and accepted, and no outside body reviews such choices. The judge then wrote a judgment that condemned Executive conduct in strong terms, and part of it was stayed by the Supreme Court. If a specific later appointment is what the research needs, it should be added once verified.

7. Other Possible Guardians

If the Court cannot reliably guard itself, could someone else?

Parliament holds the removal power and could legislate on judicial standards. But the Executive usually commands the majority, and no judge has ever been removed under Article 124(4). The NJAC shows the danger: a genuine attempt at reform was widely read as a bid for Executive influence.

A judicial council is the standard answer elsewhere, as in South Africa and the United Kingdom. India has none. The NJAC fell partly because the Law Minister and two eminent persons would have given the Executive too much say. The lesson is to design a council properly, not to abandon the idea.

The Bar has an obvious stake, but its members appear before the judges whose independence they would defend, and it is often politically split. During the Emergency, some advocates resisted bravely, but that did not stop *ADM Jabalpur*.

The press and civil society expose problems, as the reporting on Justice Sreedharan's transfer did. But they depend on access to proceedings, which, as the muted hearing shows, the Court itself controls.

Conventions such as seniority for the Chief Justiceship and restraint on post-retirement jobs are flexible but fragile. The 1973 and 1977 supersessions broke one, and the Rajya Sabha nomination of former CJI Ranjan Gogoi in 2020 and Justice S. Abdul Nazeer's appointment as Governor of Andhra Pradesh in 2023, both soon after cases they had sat on, showed how another is wearing down. Whether any judgment was influenced is unknowable, and that is precisely the problem.

Every candidate breaks down in the situation where protection matters most: when the Executive holds a majority, has public support and controls the state's machinery. That is the gap this paper identifies.

8. Some Modest Reforms

I offer these for discussion, not as a finished blueprint.

1. **Reasoned Collegium decisions.** When the Collegium accepts an Executive request to alter a transfer or appointment, it should say so and give reasons. The Sreedharan resolution, at least, disclosed the government's role, and that openness should be normal.
2. **Time limits.** Reiterated Collegium recommendations should be treated as notified after a fixed period, and the long-pending Memorandum of Procedure should be finalised.
3. **Codified norms.** Seniority for the Chief Justiceship, and recorded, reviewable grounds for transfers, would give *Sankalchand Sheth* practical force.
4. **A cooling-off period.** A bar of a couple of years on Executive posts or nominations for retired judges would weaken the incentive to please. Tribunals might need a separate, independently supervised route.
5. **A small independent body.** A commission balanced so that neither government nor judiciary controls it could receive complaints of interference, publish findings and recommend action, without adjudicating. It would give guardianship an institutional home.
6. **Protected open justice.** Live-streaming should not be switched off by a single bench except for recorded, narrow reasons.

7. **Prompt bail hearings under special statutes.** After a set period in custody without trial progress, bail pleas under laws like the UAPA should be heard on a timetable, with *Najeeb* applied as binding, and blanket waiting periods avoided.

Each idea has costs. A new commission could itself be captured, publishing reasons may embarrass judges, and a cooling-off rule may discourage good candidates. Those are real trade-offs, but they are better than leaving guardianship with no one.

9. Conclusion

I set out to ask who protects the Indian judiciary from the government. The honest answer is: mainly the judiciary, with mixed results.

The Emergency showed how promotions can shape conduct without a word of instruction. The Khalid and Imam litigation showed how a deferential standard and long delay can leave the state's story untested for years, though the later bench's criticism shows the Court can correct itself. The *Chaudhary* case, still open, shows a Court quick to protect an officer and slower to dwell on the citizen, in a setting where judicial placement has been shaped by Executive preference on the Collegium's own record.

None of this makes the Supreme Court a mere stenographer. It has often stood firm, and I would not want the paper read as saying otherwise. The claim is about structure. When the government holds the levers and the only formal defender is the judiciary, even independent judges will sometimes defer. The fix is less to demand more courage from individual judges than to build a system where courage is not the only safeguard.

One limit needs stating. Two of my three case studies are unfinished, and the account of the *Chaudhary* stay rests on press reports of an interim stage. The conclusions should be revisited once the Court decides the merits.

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