



Populism and Constitutionalism: Threats to Democracy in the 21st Century

Dr. Santosh Kumar

Advocate

High Court of Judicature at Allahabad

ARTICLE DETAILS	ABSTRACT
Research Paper	
Keywords : populism; constitutionalism; democratic backsliding; separation of powers; judicial independence; rule of law; media capture; emergency powers; electoral integrity; civil society.	<i>Populism has re-emerged as a potent force across consolidated and newly democratizing polities alike. Its characteristic appeal pits “the pure people” against “corrupt elites” and promises swift, unmediated responsiveness. Constitutionalism, by contrast, is a technology of restraint: it imposes procedures, divides authority, guarantees rights, and embeds long-horizon commitments that no fleeting majority may casually discard. This paper argues that the friction between these two logics has become a defining feature of twenty-first-century politics. Through a synthetic and comparative approach, the paper clarifies concepts, traces structural drivers of contemporary populism, and catalogs a recurring toolkit of constitutional erosion—from executive aggrandizement and court-curbing to media capture, emergency exceptionalism, and administrative lawfare. Comparative sketches from Hungary, Poland, Brazil, the United States, and India illustrate distinct pathways by which legal forms can be used to reduce constitutional substance. While populist projects often claim democratic renewal, their long-run effect is frequently to tilt the electoral playing field, weaken rights protections, and normalize the delegitimation of pluralism. The paper also identifies sources of resilience—federal dispersion, impartial election management, independent judiciaries, and a vibrant civil society—and proposes a reform agenda that hardens institutional guardrails while channeling participatory energy into constitutionalized</i>



forms. The central conclusion is that defending constitutionalism does not require resisting change; it requires insisting that change proceed through rules that keep power answerable to law and law answerable to the people.

Introduction

The tension between popular sovereignty and limited government is as old as constitutional democracy itself. Constitutions emerged historically to tame power: to bind rulers and majorities to rights, to channel collective decisions through procedures, and to create institutions capable of saying “no” when immediate passions threaten long-term liberty. Populism, by contrast, valorizes a personalized and unmediated representation of “the people,” typically embodied by a leader who claims a direct mandate to act without obstruction. Where constitutionalism counsels patience, layering, and compromise, populism promises immediacy, clarity, and speed. The friction is built in.

The stakes are not merely doctrinal. Over the last decade, respected monitors such as Freedom House, the Varieties of Democracy (V-Dem) Institute, and the Economist Intelligence Unit have converged on a diagnosis of democratic recession. The mechanism is rarely the classic coup. Instead, it is the slow, legalistic hollowing of checks that once made alternation of power meaningful and rights effective. Populist executives seldom declare the end of constitutional government; they drain it of substance through incremental changes that each look technical in isolation: a tweak to court size here, a new appointment rule there, a modest rebalancing of public-media governance, a revision to campaign-finance disclosure, an emergency decree that never fully sunsets. The language remains democratic, the institutions remain in place, and elections are held; yet the playing field tilts, dissent is chilled, and accountability fades.

This paper situates contemporary populism within that constitutional story. It begins by clarifying concepts and distinguishing ordinary majoritarian politics from a populist project that treats constraints as illegitimate. It then maps the structural drivers of today’s populist surge—economic dislocation, identity polarization, and the disinformation dynamics of digital media. A central section catalogs the standard toolkit of constitutional erosion, showing how incremental steps—each defensible in isolation—accumulate into democratic backsliding. Comparative sketches explore five national trajectories to illustrate variation in instruments and guardrails. The paper closes with a reform agenda that aims not to



freeze politics but to channel change through rules that preserve pluralism, protect rights, and keep power answerable to law.

Method and Scope

This study is synthetic and comparative rather than narrowly empirical. It draws on the growing literature on democratic backsliding, constitutional design, and populist rhetoric to distill recurring mechanisms and to organize case knowledge in a way that highlights institutional commonalities. The comparative sketches are illustrative, not exhaustive. They are chosen because they reveal distinct pathways: constitutional re-engineering under a supermajority; court-curbing without full constitutional replacement; confrontation with federal and judicial counterweights; and tensions between majoritarian mandates and pluralist guarantees. The analysis proceeds at a level of abstraction that permits comparison while remaining grounded in institutional detail.

The paper does not seek to litigate the merits of particular policy programs associated with populist parties. Rather, it assesses how those programs are pursued and what they imply for the institutional architecture that makes democracy liberal—rights-respecting, pluralist, and bound by law. The objective is diagnostic and prescriptive: to clarify risks and to propose reforms that enable democratic responsiveness without sacrificing constitutional safeguards.

I. Concepts: Populism, Constitutionalism, and Their Tension

A. Populism

Populism is often described as a “thin-centered ideology” because it supplies a moral grammar rather than a detailed policy blueprint. Its central claim is that society is divided between two homogeneous and antagonistic camps: the virtuous people and the corrupt elite. Politics should, therefore, be an unmediated expression of the general will of the people. Because it is thin, populism couples readily with thicker ideologies—left-wing redistribution, right-wing nativism, or religious conservatism—without losing its core logic. What unites these varieties is the personalization of power and an anti-pluralist impulse: opponents are cast not as legitimate adversaries but as enemies of the people.

The style of populist rhetoric is revealing. It is moralized rather than merely competitive. Opponents are not simply wrong; they are illegitimate, traitorous, or parasitic. Institutions are not neutral referees; they are depicted as captured by enemies who fear the people’s verdict. This moralization has consequences for constitutional politics. When compromise is reimagined as complicity and rules as weapons of the



enemy, the incentive to honor procedures in defeat disappears. The temptations of executive overreach grow stronger, and political culture acclimates to winner-takes-all expectations.

Contemporary populism also exploits new channels of mobilization. Social media platforms reward outrage and the performance of authenticity. They allow leaders to bypass journalistic gatekeepers and to communicate in a register of grievance that binds followers into emotionally charged communities. Direct leader-follower ties reduce the perceived need for parties and dilute the authority of legislatures. Populists do not oppose elections; they insist they alone can make elections truly representative by stripping away allegedly elitist filters. The danger is an instrumental approach to rules: procedures are valued when they produce victory and denounced as rigged when they impose constraint.

B. Constitutionalism

Constitutionalism is the practice of limiting political power through law and institutions so that collective self-rule remains compatible with individual rights and long-term stability. At a minimum, constitutionalism includes: (1) the supremacy of a higher-law constitution that binds ordinary politics; (2) separation of powers, including an independent judiciary empowered to review governmental action; (3) the protection of fundamental rights, especially those of minorities and dissenters; (4) regular, free, and fair elections conducted on a level playing field; and (5) a culture of legality in which compliance is expected even when outcomes are unwelcome. Constitutional designs vary—from rigid charters with entrenched clauses to flexible arrangements with common-law scaffolding—but the animating idea is that power is safer when fragmented, slowed, and justified.

C. The Inherent Tension

Democracy requires responsiveness to majority preferences; constitutionalism requires that responsiveness be filtered through procedures and constrained by rights. Ordinarily, constitutional politics reconciles these demands: electoral winners enjoy broad discretion within a framework that other institutions police at the margins. Populism escalates the tension by casting the framework itself as elitist obstruction. In that reframing, judges become unelected usurpers, bureaucrats are a deep state, journalists are enemies of the people, and international partners are puppet-masters. Once that narrative takes hold, the very idea of loyal opposition becomes suspect, and constitutional constraints are recoded as democratic betrayals.



II. Why Populism Now? Structural Drivers of the Contemporary Surge

A. Economic Dislocation and Perceived Inequality

Decades of uneven globalization and technological change have left many communities feeling exposed and dislocated. Manufacturing losses in some regions, the rise of precarious work, and wealth concentration among asset-holders all feed a narrative of rigged opportunity. Even where aggregate indicators improved, the distribution of gains felt unfair. Populists convert diffuse grievances into a focused story: distant elites profited from openness while ordinary people paid the price, and institutions designed to moderate change instead insulated those elites from accountability.

B. Identity Polarization and Cultural Backlash

Immigration, urban-rural divides, gender and racial equality movements, and secularization have reconfigured cultural hierarchies. For some constituencies, these changes register as loss and misrecognition. Populists fuse economic and identity anxieties, promising restored status, moral clarity, and borders—literal and symbolic—against cosmopolitan elites and deviant others. This fusion intensifies zero-sum thinking and makes compromise appear like betrayal.

C. Disinformation Ecosystems and the Attention Economy

Digital platforms reward virality over verification and facilitate segmented realities. Recommendation systems amplify outrage; coordinated networks inject conspiracy and delegitimize mainstream media. Populist leaders thrive in this environment, leveraging direct communication to set the agenda and preempt institutional critique. The result is a steady erosion of common epistemic baselines and a corresponding decline in trust in neutral expertise.

D. Institutional Fatigue and Trust Deficits

Longstanding parties and parliaments often appear gridlocked or captured by special interests. When policy complexity collides with slow deliberation, citizens interpret institutional caution as indifference or incompetence. Populists promise speed and simplicity—government by common sense. Constitutional brakes are reframed as the problem to be solved rather than the architecture that prevents rule by impulse.

III. The Populist Toolkit: Mechanisms of Constitutional Erosion

A. Executive Aggrandizement

Populist governments frequently expand executive prerogatives vis-à-vis legislatures and subnational units. Common strategies include rule by decree, aggressive use of ordinances or executive orders,



strategic control of the budget process, and centralization of administrative authority. Even without formal constitutional amendments, reinterpretations of existing powers can tilt the balance substantially. The cumulative effect is to convert what the constitution imagined as a dialogic separation of powers into a series of faits accomplis that parliaments merely ratify.

B. Court-Curbs and Judicial Capture

Independent courts are both a speed bump and a symbol of elitist constraint. Tactics range from packing or shrinking courts, altering appointment rules, manipulating retirement ages, and starving judiciaries of resources, to targeted campaigns against individual judges. Informal pressure—smear campaigns, disciplinary proceedings, or budget threats—can chill judicial review without open defiance. The legal system’s atmosphere changes; litigants recalibrate expectations; and over time, self-censorship replaces contestation.

C. Constitutional Re-engineering

Where political control is sufficient, populists undertake formal constitutional revision. New charters or omnibus amendments entrench majoritarian dominance by diluting supermajority requirements, politicizing independent commissions, extending terms, or weakening federalism. Because these changes proceed through legal forms—parliamentary supermajorities or referenda—they are defended as the people’s will. The paradox is that constitutional forms are used to reduce constitutional substance.

D. Electoral Field Tilt

Backsliding often proceeds through subtle distortion rather than overt fraud. Redistricting and gerrymanders, pliant campaign-finance rules, administrative harassment of opposition parties, and partisan capture of election management bodies can all create a structurally uneven contest while preserving the ritual of competition. Public resources may be deployed to sustain incumbency advantages; government advertising floods friendly outlets; and disinformation networks muddy accountability.

E. Media Capture and Information Control

A plural media environment frustrates narrative dominance. Populist governments pursue a mix of legal and economic tools: defamation and security laws that chill reporting, preferential allocation of advertising, tax or regulatory pressure on independent outlets, acquisition of media groups by politically connected business interests, and public-media leadership changes that transform broadcasters into megaphones. Parallel ecosystems of partisan outlets and influencers reinforce the official line and swamp fact-checking.

**F. Politicization of the Bureaucracy and Security Services**

Merit-based bureaucracies and professional police limit arbitrary power. Purges, loyalty tests, parallel chains of command, and selective prosecutions erode neutrality. Investigative agencies become instruments for rewarding allies and intimidating opponents. The chilling effect extends beyond politics into academia, arts, and civil society, where licensing, funding, and regulatory discretion are used to reward conformity and punish dissent.

G. Emergency Powers and Crisis Exploitation

Crises—terrorism, pandemics, economic shocks—create openings for extraordinary measures. Temporary expansions of surveillance, restrictions on assembly, and delegated rule-making can outlast the emergency. Courts defer; legislatures rubber-stamp; oversight lags. Populists convert exceptionalism into a new normal, and sunset clauses quietly fail to sunset. The emergency state becomes a standing invitation to executive unilateralism.

H. Administrative Lawfare and Civic-Space Narrowing

Even without headline-grabbing reforms, governments can redefine procedures and standing, limit access to information, raise compliance costs for NGOs, and weaponize tax or registration authorities. The accretion of small burdens narrows civic space while insulating executive action from review. Because each step appears technical, the pattern can escape public notice until reversal becomes arduous.

IV. Comparative Sketches**A. Hungary**

Since 2010, Hungary has become a paradigmatic case of illiberal transformation through legal means. The governing party used its parliamentary supermajority to adopt a new constitution and to alter the electoral system in ways that favored incumbency. The Constitutional Court's jurisdiction and composition were revised; appointment processes placed loyalists in key judicial and regulatory posts; and public-media governance shifted toward government narratives. Civil-society organizations, especially those receiving foreign funding, faced stigmatizing regulation. Elections continued, but the field on which competition occurred tilted, and the feedback loop of accountability weakened. Hungary demonstrates how constitutional text, ordinary legislation, and personnel policy can be braided into a comprehensive project that leaves forms intact but transforms functions.



B. Poland

Poland's trajectory illustrates how conflict over a single institution—the Constitutional Tribunal—can cascade into systemic change. Disputes about judicial appointments were followed by legislation restructuring the Supreme Court, revising disciplinary regimes for judges, and expanding political control over judicial councils. Public broadcasters experienced leadership changes and editorial realignment, while civil-service protections were loosened. European Union institutions responded with infringement actions and rule-of-law conditionality, illustrating both the potential and the limits of external checks. The resulting constitutional politics has been polarized and protracted, with courts and ministries trading blows while ordinary governance absorbs the shock.

C. Brazil

Elected amid anti-corruption fervor, Brazil's recent populist presidency featured relentless attacks on electoral authorities and the press, coupled with open confrontation of the Supreme Federal Court. The COVID-19 pandemic magnified tensions between federal and state authorities and exposed the friction between expertise-based administration and populist skepticism. Rhetoric that delegitimized institutions and cast opponents as enemies of the people primed segments of the public to doubt adverse outcomes. Yet federalism, an assertive judiciary, and electoral authorities ultimately constrained the most expansive ambitions, underscoring the importance of dispersed power and professional administration for constitutional resilience.

D. United States

Populist impulses in the United States centered on direct leader-people connection, relentless media confrontation, and the delegitimation of institutions. Unorthodox uses of executive power, sustained resistance to congressional oversight, and post-electoral challenges stressed constitutional norms. The violent breach of the national legislature during the certification of electoral votes symbolized the risks of narrative delegitimation of elections. At the same time, structural features of American constitutionalism—federalism, independent courts, decentralized election administration, and a dense civil society—acted as counterweights, preserving institutional continuity amid strain.

E. India

India's experience highlights tensions between majoritarian mandates and a constitutional text committed to pluralism, rights, and federalism. Contentious statutes and executive measures have prompted debates about equality, secularism, and the scope of dissent. Critics point to shrinking parliamentary deliberation,



expanded use of ordinances, pretrial restrictions on speech and assembly, and pressures on civil society and media through regulatory and fiscal tools. Supporters emphasize electoral legitimacy, welfare delivery, and administrative efficiency. Judicial interventions have at times reinforced rights and procedural regularity, while at other times deference and delay have raised concerns. The ongoing contest illustrates both the adaptiveness of constitutional forms and the fragility of the culture that makes them work.

V. Resilience: What Checks Still Work?

Even in difficult environments, some guardrails have persisted. Federal dispersion of authority complicates central capture; independent budgets and transparent appointment tracks help insulate judiciaries; tenure protections and professionalized civil services slow politicization. International networks—regional courts, rule-of-law conditionality, aid accountability standards, and election observers—can raise the cost of departures from baseline norms. Most importantly, civic habits matter: when voters punish norm breaches, when parties defend rules even in defeat, and when media ecosystems remain plural, populist governments face friction that moderates extremes.

Two cautionary notes are in order. First, institutional strength is path dependent: it is easier to preserve autonomy than to rebuild it after capture. Once a court has been packed or a broadcaster converted into a mouthpiece, formal reversals may not reclaim lost credibility. Second, courts cannot carry the full burden. Over-judicialization of politics invites backlash and encourages elected leaders to frame every judicial check as anti-democratic. The long game requires broad coalitions willing to defend procedures, professional standards, and public-interest ethics across partisan cycles.

VI. A Reform Agenda for Democratic Constitutionalism

A. Hardening Judicial Independence

- Transparent, merit-based appointment processes that require supermajority or multiparty assent, thereby encouraging consensus candidates of high professional standing.
- Fixed, non-renewable terms for apex-court judges to reduce incentives for strategic retirements and to regularize turnover.
- Independent judicial budgets and administrative leadership chosen by peers, coupled with open data on case backlogs and performance to deter politicized funding.



- Clear, narrow grounds for judicial discipline administered by independent bodies, with public reasoning to prevent abuse.

B. Guarding Electoral Integrity

- Impartial election management bodies insulated from executive control through staggered terms, balanced appointment panels, and secure funding.
- Fair districting by independent commissions using transparent, auditable criteria; public mapping processes that allow citizen submissions.
- Robust campaign-finance disclosure, timely reporting of large donations, rapid-response enforcement against illicit state resource use, and equal access rules for public media during campaigns.
- Secure and verifiable voting systems with routine post-election audits to sustain confidence.

C. Rebalancing the Executive-Legislative Relationship

- Strong committee systems with subpoena power, expert staff, and guaranteed minority rights to call hearings.
- Sunset clauses and mandatory legislative review for significant executive regulations and emergency decrees, ensuring temporariness is not a fiction.
- Clear standards for delegation of legislative power, including impact assessments and judicially enforceable guardrails against open-ended grants of authority.

D. Protecting Civic and Informational Pluralism

- Anti-SLAPP rules and proportionate defamation laws that deter harassment of journalists and activists.
- Transparent criteria and independent oversight for government advertising and state-owned media, with published rate cards and allocation data.
- Support for public-interest media and local journalism, including competitive grants administered at arm's length.
- Open-data regimes and platform transparency obligations that enable researchers to study systemic risks, all consistent with privacy and due process.



E. Federalism and Decentralization Safeguards

- Constitutionally protected fiscal transfers and formula-based grants to reduce discretionary central leverage over subnational units.
- Intergovernmental forums with agenda-setting rights, transparent minutes, and dispute-resolution mechanisms that reduce the temptation to bypass elected local authorities.
- Judicial doctrines that protect the core competencies of subnational governments while enabling national coordination in genuine emergencies.

F. Social and Economic Policy to Defuse Grievances

- Inclusive growth strategies, place-based investments, and robust social insurance that reduce the resentment reservoir on which populism feeds.
- Active labor-market policies and lifelong learning systems that cushion technological disruption.
- Civic education that teaches the “why” of constitutionalism—why rights for others and checks on our own champions ultimately protect everyone—and that cultivates habits of disagreement without dehumanization.

VII. Objections and Alternatives: Can Populist Energy Be Constitutionalized?

Not every critique associated with populism is democratically empty. Many movements channel real grievances—economic marginalization, regional neglect, bureaucratic unresponsiveness, or ethical lapses among elites. A reflexive defense of the status quo risks hardening the very divides that fuel populist ascents. The challenge, then, is to separate the democratic energy of participation from the anti-pluralist temptation to delegitimize opponents and dismantle constraints.

One objection to alarm about populism is that some institutions have become unaccountable. Courts may appear to pursue policy under the guise of rights; central banks and regulators may prioritize technocratic goals over distributive concerns; and international commitments may lock in economic orthodoxies that democratic majorities wish to revisit. A healthy constitutionalism must take such concerns seriously. The appropriate response is not to denude institutions of autonomy, but to refine accountability mechanisms. Possibilities include reason-giving requirements with accessible summaries, regular legislative hearings with genuine information rights for minorities, judicial ethics codes with public reporting, and calibrated transparency obligations for agencies.



Practical reforms can channel populist energy into constitutional projects rather than against them. Citizens' assemblies selected by sortition can deliberate on contested reforms, lending legitimacy to compromise. Participatory budgeting and structured public consultations can reconnect policy with lived concerns. Sunset clauses on controversial delegations create space for experimentation without permanent commitment. These devices do not magically cure polarization, but they reduce the perception that important decisions are made by and for distant elites.

VIII. Limitations and Avenues for Future Research

Two limitations of this paper are worth stating. First, the analysis remains at a high level of generality. Country experiences differ in the details of party systems, legal traditions, media markets, and social cleavages. The causal weight of each mechanism—court-curbing, media capture, emergency powers—varies with context. Fine-grained process tracing within countries, and subnational comparisons across regions, would sharpen inference. Second, the paper treats “populism” as a family resemblance concept. That description captures rhetorical and organizational commonalities, but it can blur differences that matter for institutional design. Differentiating inclusionary from exclusionary populisms, and identifying when either stabilizes rather than destabilizes constitutional practice, remains an important research task. Future work could also examine institutional innovations that deliberately incorporate friction without breeding gridlock: for example, how to design legislative rules that ensure minority participation while preventing veto-point overload; how to build platform transparency that serves research and public accountability without replicating censorship; and how to craft fiscal federalism formulas that balance national solidarity with local autonomy. Finally, scholars should attend to the emotional economy of democratic life—resentment, humiliation, hope, and trust—and how constitutional practices can acknowledge these emotions without surrendering to them.

Conclusion

Populism is neither an aberration nor a synonym for authoritarianism. It is a recurring democratic temptation that promises unmediated responsiveness and moral clarity. Constitutionalism, by contrast, is a discipline of restraint: it tells majorities that not everything they can do, they should do; it tells leaders that not everything they can command, they may command. The twenty-first century's distinctive risk is the normalization of constitutional erosion through legal forms—the slow replacement of a constraining constitution by a permissive one that blesses executive unilateralism, tilts the electoral field, and hollows out rights while proclaiming democratic virtue.



Preventing that outcome requires more than clever doctrinal tests. It demands institutions designed for stress, publics capable of distinguishing representation from demagoguery, and parties willing to defend rules even when those rules impede immediate partisan gain. Where courts are independent, media plural, and bureaucracies professional, populist governments face friction that moderates extremes. Where those conditions are absent or degraded, backsliding accelerates and becomes self-reinforcing as captured institutions generate decisions that legitimate their own capture.

The future of constitutional democracy will be decided in the ordinary grind: in how judges are appointed and retired, in how budgets are written and audited, in whether emergency powers truly sunset, in whether opposition legislators can compel answers, and in whether schools teach both the romance of popular rule and the virtues of self-restraint. If constitutionalism is to remain the grammar of freedom, citizens and leaders alike must cultivate the habits that keep power answerable to law and law answerable to the people.

References

- Arato, A. (2019). *Post-sovereign constitution making: Learning and legitimacy*. Oxford University Press.
- Bermeo, N. (2016). On democratic backsliding. *Journal of Democracy*, 27(1), 5–19.
- Blokker, P. (2019). Populism as a constitutional project. *International Journal of Constitutional Law*, 17(2), 536–553.
- Drinóczi, T., & Bień-Kacała, A. (2019). Illiberal constitutionalism: The case of Hungary and Poland. *German Law Journal*, 20(8), 1140–1166.
- Ginsburg, T., & Huq, A. Z. (2018). *How to save a constitutional democracy*. University of Chicago Press.
- Kelemen, R. D. (2020). The European Union's authoritarian equilibrium. *Journal of European Public Policy*, 27(3), 481–499.
- Levitsky, S., & Ziblatt, D. (2018). *How democracies die*. Crown.
- Lührmann, A., & Lindberg, S. I. (2019). A third wave of autocratization is here. *Democratization*, 26(7), 1095–1113.
- Müller, J.-W. (2016). *What is populism?* University of Pennsylvania Press.
- Mudde, C., & Rovira Kaltwasser, C. (2017). *Populism: A very short introduction*. Oxford University Press.
- Norris, P., & Inglehart, R. (2019). *Cultural backlash: Trump, Brexit, and authoritarian populism*. Cambridge University Press.
- Pappas, T. (2019). *Populism and liberal democracy: A comparative and theoretical analysis*. Oxford University Press.



- Roberts, K. (2020). Populism and political crisis in Latin America. *Annual Review of Political Science*, 23, 395–412.
- Runciman, D. (2018). *How democracy ends*. Profile Books.
- Sadurski, W. (2019). *Poland's constitutional breakdown*. Oxford University Press.
- Scheppele, K. L. (2018). Autocratic legalism. *University of Chicago Law Review*, 85(2), 545–583.
- Taggart, P. (2000). *Populism*. Open University Press.
- Urbinati, N. (2019). *Me the people: How populism transforms democracy*. Harvard University Press.
- Waldner, D., & Lust, E. (2018). Unwelcome change: Understanding, evaluating, and extending theories of democratic backsliding. *Democratization*, 25(8), 1241–1266.
- Zakaria, F. (1997). The rise of illiberal democracy. *Foreign Affairs*, 76(6), 22–43.