

Israel's Proposed “Legal Revolution”

Israel does not have a formal Constitution with a detailed bill of rights. Instead, there are “Basic Laws” that are as easy to amend as any regular law. The Supreme Court can strike down laws that contravene the Basic Laws as being unconstitutional, but this seldom happens. Nevertheless, the current government alleges that the Supreme Court is an “activist” court, and declares that it is going to make sure that the “will of the people”—as embodied by the coalition government—is done by allowing the government coalition to carry out its policies without legal barriers, such as the (independently appointed) Attorney General, governmental legal advisors, and the Supreme Court.

Israel's democracy is fragile. The government controls the Knesset, and the Supreme Court serves as the only check on its power.

Recently, the new government – led by the Minister of Justice Yariv Levin and the Chair of the Knesset's Constitution, Law, and Justice Committee, Simcha Rothman – proposed bills that will dramatically weaken the Supreme Court and thus pose a radical, unprecedented, and dangerous change to Israel's system of government.

Below is a summary of the proposed bills, their meaning, and what can be done at this time:

- **It will be nearly impossible for Israel's Supreme Court to strike down unconstitutional legislation:**
 1. Under the proposed legislation, a law can be struck down only by a panel that includes all 15 Supreme Court justices (today, the court decides these issues in panels made up of 9 or 11 judges);
 2. To strike down a law, either at least 80% of the justices (12 judges) or, according to another bill, all 15 justices will have to agree to strike down the law (as of now, a regular majority is required);
 3. Basic Laws cannot be invalidated.

Bottom line: it will very difficult, if not impossible, for the Supreme Court to invalidate a law. It will be impossible to strike down a Basic Law – even if it undermines the basic tenets of democracy.

- **The Override Bill – the Knesset will be able to reinstate a law that was struck down by the Supreme Court:**

1. The Knesset can "override" a Supreme Court decision to strike down a law with a simple majority of 61 Members of Knesset (MKs). According to one of the proposed bills, the Knesset could even decide that a certain law is immune from judicial review, thus rendering the Supreme Court unable to assess it. The government, which is supported by a majority of MKs, could easily nullify any Supreme Court decision it disagrees with or decide that a law cannot be challenged in court.
2. The Knesset's override decision will be valid for 4 years. However, if two Knessets in a row reinstate a law that was struck down, then the Supreme Court can never strike down the law again and the override becomes permanent.

Bottom line: the Knesset has the last word on any and all laws that it passes. A simple majority of 61 MKs (out of 120) can negate laws protecting civil rights and liberties, and the Supreme Court would not be able to review the government's legislation.

- **Removing the Supreme Court's ability to intervene in response to unreasonable government decisions:**

1. The Supreme Court can currently declare a government's or minister's decision to be unreasonable if, for example, it determines that all relevant considerations have not been taken into account in rendering the decision, (e.g. the government's decision not to initiate disciplinary proceedings against Rabbi Shmuel Eliyahu for racist remarks). A proposed bill would negate this ability. The Supreme Court will no longer be able to invalidate government or ministerial decisions.

Bottom line: Government and ministerial decisions will be immune from judicial review. The Knesset cannot objectively assess government decisions since the government effectively controls the Knesset through its majority coalition.

- **The government will not be bound by the legal opinions of the Attorney General:**

1. The government and its ministers will not be obligated to accept the position of the Attorney General or the position of the legal advisors of government ministries.

2. The government and its ministers could decide that the Attorney General will not represent them in courts but rather a private attorney. This will enable the government to select an attorney willing to defend an action that the Attorney General considers to be against the law.
3. Government ministries' legal advisors will no longer be independent, but will be under the supervision of the relevant Minister, who could fire them if they object to illegal or unethical activities.

Bottom line: the government will be able to act in violation of the law and will effectively be above the law.

- **Judicial nominations will be controlled by politicians:**

1. Currently, a committee selects judges in Israel. This committee balances various interests, and includes coalition and opposition politicians, judges, and members of the Israel Bar Association. The proposed legislation will give complete control of the committee to the government. As of now, the committee consists of 2 ministers, 2 MKs (traditionally one from the coalition and one from the opposition), 2 representatives from the Israel Bar Association, and 3 Supreme Court Justices. Under the proposed legislation, the committee would instead be made up of 3 government ministers; 3 MKs (2 of whom would be members of the coalition); 3 judges (Supreme Court Justices or lower courts judges); and, according to one version of the bill, 2 public representatives appointed by the Minister of Justice.
2. Supreme Court Justices will be able to be elected by a regular majority of committee members. Currently, Supreme Court nominations require a super-majority (7 out of 9 members), meaning that both justices and a majority of politicians need to support the nomination. With a simple majority requirement, politicians from the ruling coalition could select new Supreme Court justices without any input from current justices.
3. A public hearing for potential Supreme Court justices will be conducted before the Knesset Constitution Committee, meaning that a justice who does not align with the government's position will not be elected.
4. The seniority system for appointing the Chief Justice of the Supreme Court will be abolished. Since Israel's founding, the unwritten – and thus far unbroken – convention has been that the

longest serving judge on the Supreme Court is appointed as Chief Justice once the previous Chief Justice reaches the mandatory retirement age of 70 years old. After the Chief Justice's retirement, the committee on judicial selection then formally appoints the next justice with the most seniority as Chief Justice. This convention serves as an important form of protection for the judicial independence of the Supreme Court: justices know when and whether they will be appointed as Chief Justice based on objective criteria—seniority. Under the proposed legislation, instead of appointing the most senior judge to serve as Chief Justice, a judge (not necessarily even a Supreme Court Justice) will be appointed by the committee for a period of 6 years, which essentially means that only judges whose philosophy and agenda align with the government will be promoted.

Bottom line: politicians will have total and complete control over the selection and appointment of Supreme Court Justices.

What is the significance of these initiatives?

1. If these laws are passed, the **checks that have thus far prevented the government and its ministers from acting in violation of the law** – the Attorney General, the legal advisors in government ministries, and the Supreme Court—**will no longer have any power**.
2. The Knesset will be able to reinstate laws struck down by the Supreme Court, or decide that a law, however outrageous, cannot be challenged in court. Even if a law is invalidated by all 15 justices, the Knesset could reinstate the law via a simple majority. **The rights of minority groups are especially at risk**. For example, the Knesset could deny the rights of Reform Jews; curtail voting rights for Arabs; or approve gender segregation. Even though these decisions violate the rights to human dignity and equality enshrined in Israel's Basic Laws, there would be no way to challenge them.
3. **The Supreme Court will not be able to invalidate a Basic Law**. This means that if, for example, the clause in Basic Law: The Knesset that states that elections are equal (one person = one vote) is changed, the Supreme Court will not be able to intervene.
4. If the Supreme Court is not able to intervene in unreasonable decisions made by the government or government ministers, **ministers will have free reign to make ANY decision, however egregious, while citizens will have no effective recourse via judicial oversight**.

5. Politicians will have absolute control over the appointment of judges, including Supreme Court Justices and the Chief Justice of the Supreme Court. This will **dramatically weaken and politicize the judiciary.**
6. There is no precedent in any democracy for a legal system that has no checks and balances. Without the Supreme Court, and in the absence of other checks and balances (such as those that exist in other countries: for example, a rigid constitution, 2 houses of parliament, a president with veto power, an international court to which the country is answerable, etc.), there are no restraints on the government and no protections for human rights. **A country that cannot protect human rights, and that centralizes governmental power with no checks and balances is not a true democracy.**

What is the time frame for these proposals to pass?

1. The bills will be presented to the Knesset **any day now.**
2. The Israeli public will be able to submit comments.
3. The government is planning to rapidly speed up the legislative process in the Constitution, Law, and Justice Committee, which is headed by MK Simcha Rothman of the Religious Zionism party. The process already began last week, and it appears that MK Rothman is uninterested in any real deliberation.
4. The government is determined to advance the process quickly in order to leave less time for public opposition. The process could be completed within a few weeks.

What can I do?

1. **Share this information** with as many people as possible in Israel and abroad so that they know about this dangerous situation, and encourage them to join the fight.
2. **Write op-eds** about the situation.
3. **Demand that Jewish organizations you belong to become involved** in the fight to protect Israel's democracy.

4. [Write to Israeli officials](#) and to Israeli embassies and consulates about your opposition to these proposed changes.
5. [Follow IRAC's newsletter](#) for updates and more info.
6. [Support IRAC!](#) Partner with us in fighting these dangerous initiatives.

Remember: Israel is and should remain a democratic state that is the home for all Jews. It is your right to make your voice heard to ensure that Israel lives up to its founding principles of democracy, equality, and pluralism.