

# Netanyahu's judicial review agenda has failed in Israel. And Hamas isn't easy to defeat

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File image of Benjamin Netanyahu | Representational image | Kobi Wolf | Bloomberg

In the middle of the war, Prime Minister Benjamin Netanyahu and his government faced significant defeat in the Supreme Court of Israel when the latter overruled the highly disputed reasonableness limitation law on 1 January. It was a historic decision and unprecedented intervention by the Israeli judiciary to assert that it will continue to have the right of judicial review over government laws, legislative bills, and ministerial decisions.

Netanyahu's government, particularly Minister of Justice Yariv Levin, brought a bill against the judicial review system (called the reasonableness clause in the Israeli polity), which barred all courts of Israel from reviewing any law passed in parliament as well as all ministerial decisions of the government in July 2023.

The opposition and the popular protest movement in Israel deeply contested the reasonableness limitation law since it would have effectively ended all checks and balances, granting complete powers to the executive and legislature. Simply put, the Israeli government did not want to be under legal scrutiny. The simple majority in

parliament could decide on any matter, and the courts could not overrule it. This law was part of the larger judicial reform agenda that the government of Netanyahu intended to bring into force from 4 January.

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## **A nationwide protest**

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Netanyahu's divisive ideas of judicial reform — which included having a say in the appointment of judges, challenging the appointment and legal counsel of the Attorney General, granting legal immunity to the Prime Minister, and narrowing the judicial review system — caused strong opposition among most people in Israel. The year-long protest marches and weekly demonstrations took place throughout Israel in 2023. Such was the intensity and spread of the protest that the country went through a national strike, shutting down its only international airport near Tel Aviv on 27 March.

Netanyahu had to suspend the overall judicial reform due to the national strike and widespread mass protests. Yet, one law to curtail the court's powers was enacted on 24 July. Israel came to a standstill during that time; thousands of people marched from Tel Aviv to Jerusalem and camped overnight in front of parliament; hundreds of high-ranking security heads, lawyers, doctors, soldiers, bureaucrats, businesspersons, and intellectuals stood against the idea of limiting the Supreme Court's powers. Israel was facing a civil war-type of situation; however, the government managed to pass the law.

The protest movement took the matters to court even when the government passed the law as Basic Law – structural law akin to a constitutional amendment that the Israeli judiciary never overruled in the past. There was a historic hearing, with the full bench of 15 judges convening to decide whether the courts could have the power to overrule a Basic Law passed by parliament without precedent.

On 1 January, the court ruled that it does have the power of judicial review of basic laws and it can also intervene in exceptional and extreme cases like this one where the government intends to alter the checks and balances of the system. Out of 15 judges, 12 supported overruling the law, which will have far-reaching consequences.

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## **A celebration gone quiet**

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Moreover, the Supreme Court of Israel decided that the law passed on 24 July stands cancelled as it violates the core characteristics of the State of Israel as a democratic state, particularly the principles of separation of powers and the rule of law. The reasonableness clause is a mechanism that holds equality and a sense of justice for all in the context of

Israel's fragile, unwritten constitutional realities. Only eight out of 15 judges agreed with this decision, but this was a good enough majority to quash the bill. Netanyahu's government almost sacrificed stability and peace for months.

For the year-long democratic protest movement, the court's verdict was revolutionary and worthy of celebrations on 1 January. Sadly, the 7 October Hamas attack and the ongoing war in Gaza have altered the immediate concerns and priorities of all Israelis. Hence, the victors embraced their success in silence with dignity. The people's movement and the court's endorsement of the protesters have renewed Israeli society's desire for greater collective responsibility, awareness about institutional strengths, and democratic participation of all.

Netanyahu had to maintain silence while watching the whole agenda of his government wither away. At the moment, he is in a greater fix as it is increasingly difficult for Israel to claim any victory against Hamas or find a way to rescue more than 120 captives in Gaza. The State of Israel, under Netanyahu's watch, has been through one of its most difficult moments internally as well as externally.

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