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# THE DICHOTOMY OF SUO MOTU POWERS IN INDIAN JUDICIARY: A COMPARATIVE ANALYSIS OF HIGHER AND LOWER COURTS

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## ABSTRACT

The Indian judiciary, as one of the three pillars of democratic governance, serves as the guardian of constitutional values and fundamental rights. Among its various powers, the suo motu jurisdiction—the authority to take cognizance of matters without formal complaint or application—stands as a critical instrument for dispensing justice and protecting public interest. This research paper presents a comprehensive comparative analysis of suo motu powers exercised by the higher judiciary (Supreme Court and High Courts) and the lower judiciary (Magistrate and Sessions Courts) in India. While the higher judiciary derives its suo motu powers from constitutional provisions under Articles 32, 226, 129, and 215, enabling broad and flexible intervention in matters of public importance, the lower judiciary operates within the confined parameters of the Bharatiya Nagarik Suraksha Sanhita (BNSS) 2023, particularly Sections 210, 175(3), 152, and 163. Through doctrinal analysis of constitutional provisions, statutory frameworks, and landmark judicial pronouncements, this study examines the scope, application, limitations, and implications of suo motu powers across different tiers of the Indian judicial system. The research reveals a significant disparity in the exercise of these powers, with the higher judiciary actively engaging in judicial activism through Public Interest Litigation (PIL) while the lower judiciary remains procedurally constrained. This paper argues that such limitation in the lower judiciary's suo motu powers raises fundamental questions about judicial equality and uniform access to justice. The study concludes that a balanced expansion of suo motu powers to the lower judiciary, accompanied by clear guidelines and adequate training, could enhance judicial efficiency and strengthen the constitutional commitment to justice for all.

**Keywords:** Suo Motu Powers, Higher Judiciary, Lower Judiciary, Judicial Activism, Public Interest Litigation, BNSS 2023, Constitutional Rights, Access to Justice.

## 1. INTRODUCTION

The concept of suo motu, derived from Latin meaning "on its own motion," represents a significant departure from the traditional adversarial system of justice where courts typically act only upon formal complaints or petitions (**Baxi, 2007**). In the Indian context, suo motu powers have evolved as an essential mechanism through which the judiciary fulfills its constitutional obligation to protect fundamental rights and ensure justice even when aggrieved parties cannot approach the court due to various socio-economic constraints (**Sathe, 2002**). India, constituted as a sovereign, socialist, secular, democratic republic, vests considerable authority in its judiciary to act as the guardian of the Constitution and protector of fundamental rights (**Basu, 2013**). The judiciary's power to take suo motu cognizance has become increasingly significant in contemporary times, particularly in addressing systemic violations of rights, environmental degradation, administrative failures, and matters of urgent public importance (**Dhavan, 1994**).

The Indian judicial system operates through a hierarchical structure with the Supreme Court at the apex, High Courts at the state level, and various subordinate courts including District Courts, Sessions Courts, and Magistrate Courts forming the lower judiciary (**Jain, 2014**). While the Constitution explicitly empowers the higher judiciary with broad suo motu jurisdiction through Articles 32, 226, 129, and 215, the lower judiciary's powers in this regard are primarily derived from statutory provisions, particularly the recently enacted Bharatiya Nagarik Suraksha Sanhita (BNSS) 2023, which replaced the Criminal Procedure Code of 1973 (**Rai, 2023**).

This dichotomy in the exercise of suo motu powers across different tiers of the judiciary raises pertinent questions about judicial equality, access to justice, and the effectiveness of the judicial system in addressing grievances at the grassroots level (**Deva, 2009**). The higher judiciary, particularly through the mechanism of Public Interest Litigation (PIL), has demonstrated remarkable activism in taking cognizance of various issues ranging from environmental protection to human rights violations (**Cunningham, 1987**). In contrast, the lower judiciary, despite being the first point of contact for most citizens seeking justice, operates within significantly restricted parameters regarding suo motu intervention.

### 1.1 Research Problem

The central research problem this study addresses is: "Is limiting the suo motu powers of the

lower judiciary in India consistent with the concept of constitutional justice and the principle of judicial equality?" This question assumes significance considering that the lower judiciary handles the vast majority of cases in the Indian judicial system and serves as the primary interface between citizens and the justice delivery mechanism.

## **1.2 Objectives of the Study**

This research aims to:

1. Examine the origin, constitutional basis, and scope of suo motu powers in the Indian judicial system
2. Analyze the nature, limitations, and application of suo motu powers in the higher judiciary
3. Investigate the extent and limitations of suo motu powers available to the lower judiciary
4. Conduct a comparative analysis of suo motu powers across different tiers of the judiciary
5. Evaluate the impact of suo motu powers on access to justice and judicial activism
6. Identify challenges and criticisms associated with the exercise of suo motu powers
7. Propose recommendations for optimizing the use of suo motu powers across the judicial hierarchy.

## **2. RESEARCH METHODOLOGY**

This study adopts a doctrinal and analytical research methodology, relying primarily on legal texts, constitutional provisions, statutory enactments, and judicial pronouncements. The research is based on:

1. **Primary Sources:** The Constitution of India, Bharatiya Nagarik Suraksha Sanhita 2023, landmark judgments from the Supreme Court and High Courts, and official legal databases including All India Reporter (AIR) and Supreme Court Cases (SCC).

- 2. Secondary Sources:** Scholarly books on constitutional law and civil procedure, peer-reviewed academic journals, research papers, legal commentaries, and analytical reports from reputed institutions.

The analytical framework involves critical examination of constitutional provisions, statutory interpretation, case law analysis, and comparative evaluation of powers across different judicial tiers.

### **3. THE RATIONALE FOR SUO MOTU POWERS**

The necessity of suo motu powers in the Indian judicial system emanates from several critical considerations that reflect the socio-economic realities of Indian society and the constitutional commitment to justice (*Sathe, 2002*).

#### **3.1 Ensuring Access to Justice**

A significant portion of India's population faces barriers in accessing formal justice mechanisms due to illiteracy, poverty, geographical remoteness, and lack of legal awareness (*Baxi, 2007*). The suo motu power enables courts to initiate proceedings even when victims cannot formally approach the judiciary, thereby actualizing the constitutional promise of equal justice.

#### **3.2 Protection of Fundamental Rights**

When fundamental rights guaranteed under Part III of the Constitution are violated on a large scale, or when systemic failures threaten constitutional values, suo motu intervention becomes essential (*Basu, 2013*). This power ensures that the judiciary can act as a proactive guardian rather than merely a passive dispute resolution forum.

#### **3.3 Addressing Public Interest Concerns**

Public Interest Litigation, facilitated through suo motu powers, has enabled the judiciary to address issues affecting large sections of society, including environmental protection, prison reforms, bonded labor, child rights, and police accountability (*Cunningham, 1987*).

#### **3.4 Checking Administrative Failures**

Suo motu powers provide the judiciary with tools to hold the executive and other authorities

accountable when they fail to discharge their constitutional and statutory obligations (*Dhavan, 1994*).

### 3.5 Swift Justice in Emergency Situations

In circumstances demanding immediate judicial intervention—such as natural disasters, riots, epidemics, or custodial deaths—suo motu powers enable courts to act expeditiously without waiting for formal litigation (*Deva, 2009*).



Fig. 1. The rationale of Suo Moto powers

## 4. SUO MOTU POWERS OF THE HIGHER JUDICIARY

### 4.1 Constitutional Framework

The higher judiciary in India, comprising the Supreme Court and High Courts, derives its suo motu powers from explicit constitutional provisions that reflect the framers' intent to create a robust mechanism for protecting fundamental rights and constitutional values.

- **Article 32** of the Constitution guarantees the right to move the Supreme Court for enforcement of fundamental rights and empowers the Court to issue directions, orders, or writs for this purpose (*Jain, 2014*). While the article does not explicitly mention suo motu powers, judicial interpretation has recognized the Court's inherent authority to take cognizance of fundamental rights violations even without formal petition.

- **Article 226** confers upon High Courts the power to issue writs for enforcement of fundamental rights and for any other purpose. High Courts have exercised suo motu jurisdiction under this provision to address various matters of public importance (*Basu, 2013*).
- **Articles 129 and 215** declare the Supreme Court and High Courts as courts of record with all powers of such courts, including the power to punish for contempt. These provisions have been interpreted to include inherent powers to take suo motu cognizance (*Sathe, 2002*).

#### 4.2 Scope and Application

The higher judiciary's suo motu powers extend to a remarkably broad range of matters:

- **Public Interest Litigation:** The Supreme Court has liberalized the requirement of locus standi, allowing epistolary jurisdiction where even letters written to the Court can be treated as writ petitions (*Baxi, 2007*).
- **Human Rights Violations:** Courts have taken suo motu cognizance of custodial deaths, police brutality, bonded labor, and other severe violations of human dignity (*Cunningham, 1987*).
- **Environmental Protection:** The judiciary has actively intervened in matters of environmental degradation, pollution, and ecological preservation through suo motu proceedings (*Deva, 2009*).
- **Media Reports as Trigger:** Newspaper reports, investigative journalism, and media coverage often serve as the basis for suo motu cognizance by the higher judiciary (*Dhavan, 1994*).

#### 4.3 Landmark Judicial Pronouncements

The evolution of suo motu powers in the higher judiciary is best understood through significant cases that have shaped this jurisprudence. In **Vishaka v. State of Rajasthan** (1997), the Supreme Court took cognizance of sexual harassment at workplace and laid down comprehensive guidelines, demonstrating how suo motu powers can address legislative

vacuum in protecting fundamental rights (*Jain, 2014*). **M.C. Mehta v. Union of India** represents a series of cases where the Supreme Court exercised suo motu jurisdiction on environmental issues, including the Taj Trapezium case and vehicular pollution in Delhi, establishing the Court as an environmental guardian (*Deva, 2009*). During the COVID-19 pandemic, the Supreme Court took suo motu cognizance of the migrant workers' crisis, directing central and state governments to provide food, shelter, and transportation facilities, exemplifying the humanitarian dimension of suo motu powers (*Rai, 2023*). The Court's intervention in the Delhi air pollution crisis through suo motu proceedings resulted in comprehensive directions for pollution control, demonstrating sustained judicial engagement with complex environmental challenges (*Dhavan, 1994*).

#### 4.4 Characteristics of Higher Judiciary's Suo Motu Powers

The exercise of suo motu powers by the higher judiciary exhibits certain distinctive features:

- i. **Flexibility:** The higher courts enjoy considerable discretion in determining what matters warrant suo motu intervention (*Sathe, 2002*).
- ii. **Constitutional Anchorage:** These powers are rooted in constitutional provisions, giving them fundamental character (*Basu, 2013*).
- iii. **Expansive Jurisdiction:** The scope extends beyond traditional legal disputes to encompass policy matters, systemic reforms, and structural issues (*Baxi, 2007*).
- iv. **Judicial Activism:** The higher judiciary has used suo motu powers as an instrument of judicial activism, often filling gaps left by legislative inaction or executive failures (*Cunningham, 1987*).



Fig. 2. Foundations of Suo Moto powers

## 5. SUO MOTU POWERS OF THE LOWER JUDICIARY

### 5.1 Statutory Framework under BNSS 2023

Unlike the higher judiciary whose suo motu powers emanate from constitutional provisions, the lower judiciary's authority in this regard is primarily statutory, derived from the Bharatiya Nagarik Suraksha Sanhita (BNSS) 2023 (*Rai, 2023*).

- **Section 210 BNSS** deals with cognizance of offenses by Magistrates. While primarily procedural, it allows limited suo motu action in taking cognizance of cognizable offenses under specific circumstances.
- **Section 175(3) BNSS** empowers Magistrates to order investigation in certain cases, providing a narrow window for suo motu intervention in criminal matters.
- **Section 152 BNSS** addresses situations involving communal violence, allowing Magistrates to take preventive action, which includes elements of suo motu authority.
- **Section 163 BNSS** pertains to emergency situations where Magistrates can exercise certain powers without formal application, representing another instance of limited suo motu jurisdiction.



## 5.2 Judicial Interpretation

The scope of lower courts' suo motu powers has been subject to judicial scrutiny. In **R.R. Chari v. State of Uttar Pradesh**, the Court examined the extent to which Magistrates could take cognizance without complaint, establishing certain boundaries for such powers. The landmark judgment in **State of Haryana v. Bhajan Lal** laid down guidelines for quashing of criminal proceedings and indirectly addressed the limitations on lower courts' suo motu powers, emphasizing the need for procedural safeguards (*Jain, 2014*).

## 5.3 Nature and Limitations

The suo motu powers of the lower judiciary are characterized by:

- **Procedural Restrictions:** These powers are primarily procedural rather than substantive, limited to taking cognizance and ordering investigation in specific circumstances (*Rai, 2023*).
- **Cognizable Offenses:** Suo motu action by lower courts is generally restricted to cognizable offenses as defined under the BNSS.
- **Absence of PIL Jurisdiction:** Unlike the higher judiciary, lower courts cannot entertain Public Interest Litigation or take cognizance based on media reports or letters (*Sathe, 2002*).
- **No Constitutional Mandate:** The absence of constitutional backing makes these powers more vulnerable to legislative modification and judicial circumscription (*Basu, 2013*).

Section (BNSS 2023)	Subject Matter	Scope of Suo Motu Power
Section 210	Cognizance of Offenses	Allows Magistrates to take cognizance of cognizable offenses under specific circumstances.
Section 175(3)	Ordering Investigation	Empowers Magistrates to order an investigation in certain cases, providing a narrow window for intervention.

<b>Section 152</b>	Communal Violence	Allows for preventive action to be taken by Magistrates to maintain order.
<b>Section 163</b>	Emergency Situations	Permits the exercise of certain powers without a formal application being filed.

Table 1. Statutory Framework under BNSS 2023

## 6. COMPARATIVE ANALYSIS

A systematic comparison of suo motu powers across the judicial hierarchy reveals significant disparities:

Parameter	Higher Judiciary (Supreme Court & High Courts)	Lower Judiciary (District & Subordinate Courts)
Source of Authority	Constitutional (Articles 32, 226, 129, 215)	Statutory (e.g., BNSS 2023, CPCS)
Scope	Broad and flexible	Limited and procedural
PIL Jurisdiction	Accepted and encouraged	Not available
Judicial Activism	Extensive	Minimal
Constitutional Protection	Strongly protected	Absent
Discretion	Wide	Narrow

Table 2. Comparison of suo motu powers across the judicial hierarchy

This disparity raises fundamental questions about the uniformity of justice delivery and the efficiency of the judicial system at different levels (*Dhavan, 1994*).

## 7. JUDICIAL ACTIVISM VERSUS JUDICIAL RESTRAINT

The exercise of suo motu powers inherently involves a tension between judicial activism and judicial restraint. While the higher judiciary's activism through suo motu proceedings has filled

critical gaps in governance and rights protection, concerns about judicial overreach have also emerged (*Cunningham, 1987*). Conversely, the restraint imposed on the lower judiciary through limited suo motu powers, while preventing potential misuse, may result in delayed justice and inadequate response to local issues requiring immediate intervention (*Baxi, 2007*). Striking an appropriate balance between these competing considerations remains a challenge for the Indian judicial system.

## 8. CHALLENGES AND CRITICISMS

### 8.1 Concerns about Higher Judiciary

- **Judicial Overreach:** Critics argue that expansive suo motu powers have sometimes led the higher judiciary into policy-making domains traditionally reserved for the legislature and executive (*Sathe, 2002*).
- **Inconsistency:** The discretionary nature of suo motu intervention has resulted in perceived inconsistencies, with similar situations receiving different judicial treatment (*Dhavan, 1994*).
- **Resource Strain:** Suo motu cases add to the already overwhelming docket of the higher judiciary, potentially affecting the disposal of regular cases (*Deva, 2009*).

### 8.2 Limitations of Lower Judiciary

- **Inadequate Powers:** The restricted suo motu powers prevent lower courts from addressing urgent local issues that may not reach the higher judiciary (*Rai, 2023*).
- **Delayed Justice:** Absence of PIL-like mechanisms at lower levels means that public interest issues must traverse the entire judicial hierarchy, causing delays (*Jain, 2014*).
- **Unequal Access:** The limitation reinforces inequality in access to justice, as only those who can approach higher courts benefit from expansive suo motu intervention (*Baxi, 2007*).

## 9. RECOMMENDATIONS

Based on the analysis, several recommendations emerge for optimizing suo motu powers across

the judicial hierarchy:

- **Limited PIL Jurisdiction for Lower Courts:** District and Sessions Courts could be empowered with limited PIL jurisdiction for local issues of significant public importance, subject to clear guidelines (*Cunningham, 1987*).
- **Comprehensive Guidelines:** Establishing clear, codified guidelines for exercise of suo motu powers across all levels would enhance consistency and accountability (*Sathe, 2002*).
- **Judicial Training:** Incorporating suo motu jurisprudence in judicial training programs would equip judges with better understanding of the scope and limitations of these powers (*Deva, 2009*).
- **Checks on Overreach:** Institutional mechanisms should be developed to prevent judicial overreach while preserving the essential protective function of suo motu powers (*Dhavan, 1994*).
- **Legislative Clarification:** The Parliament could consider amending the BNSS to explicitly recognize and regulate suo motu powers of lower courts in appropriate cases (*Rai, 2023*).

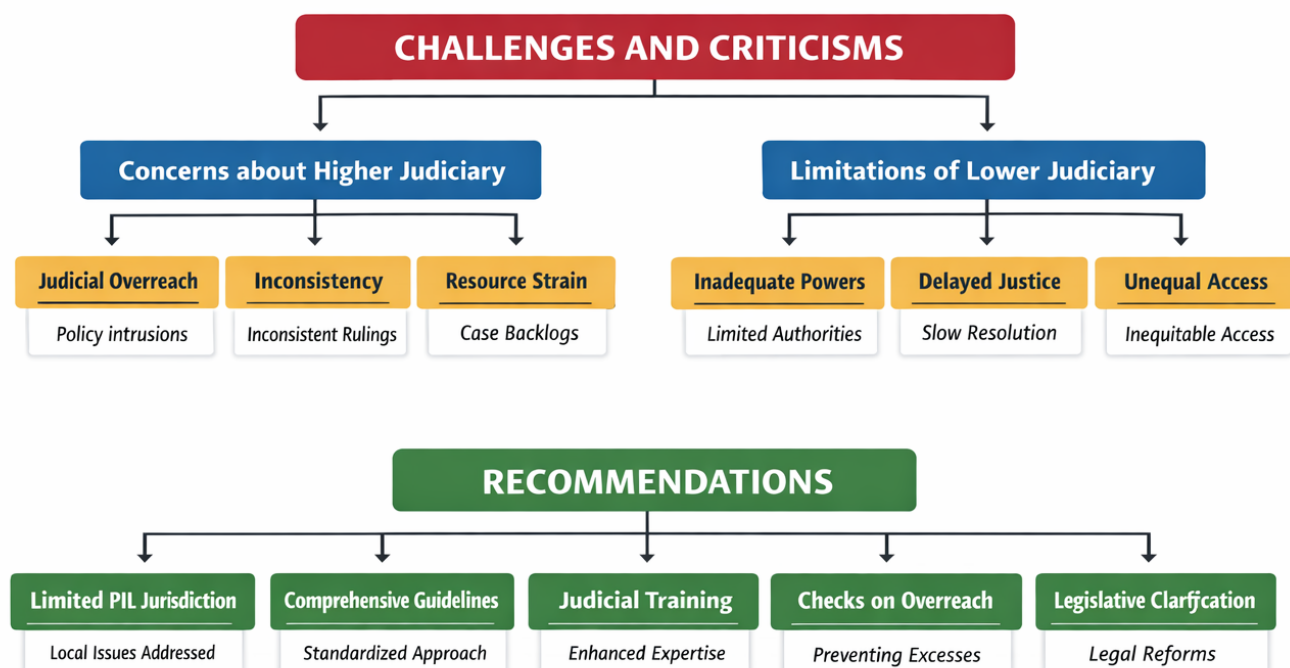


Fig. 3. Judiciary Challenges and Recommendations

## 10. DISCUSSION

The findings of this study underscore a profound structural asymmetry within the Indian judicial hierarchy regarding the exercise of *suo motu* powers. While the Supreme Court and High Courts have utilized their constitutional mandate to transform into "proactive" guardians of justice, the lower judiciary remains largely "reactive," bound by the strict procedural confines of the **Bharatiya Nagarik Suraksha Sanhita (BNSS) 2023**.

### 10.1 The Constitutional vs. Statutory Divide

The primary point of discussion is the source of authority. The higher judiciary's power is "original" and "inherent," derived from **Articles 32 and 226**, allowing it to bypass procedural technicalities in the interest of substantive justice. In contrast, the lower judiciary's authority is "delegated" and "statutory." This research highlights that while the BNSS 2023 has modernized criminal procedure, it has maintained the traditional restraint on Magistrates. Sections 210 and 175(3) of the BNSS provide only a narrow window for intervention, essentially limiting the lower courts to being "umpires" in a legal contest rather than "activists" for social change.

### 10.2 The Grassroots Justice Gap

The most significant implication of this dichotomy is the impact on **access to justice**. Most litigants in India interact exclusively with the lower judiciary. When a local environmental violation or a minor human rights abuse occurs, the current framework forces a choice: either the victim must navigate a complex litigation process, or the matter must be escalated to a High Court via a PIL. This research suggests that by denying lower courts *suo motu* capabilities in local public interest matters, the system inadvertently creates a bottleneck at the higher levels and delays relief for those at the bottom of the socio-economic ladder.

### 10.3 BNSS 2023: A Missed Opportunity?

The transition from the CrPC to the BNSS 2023 offered an opportunity to decentralize judicial activism. However, as analyzed in Section 5, the new code largely preserves the status quo. While Section 152 (communal violence) and Section 163 (emergency situations) allow for

some initiative, they are preventive rather than remedial. The discussion emphasizes that without a legislative shift or a landmark Supreme Court ruling empowering subordinate judges, the "Dichotomy" will continue to persist, leaving the lower judiciary under-equipped to handle modern, systemic legal failures.

#### 10.4 Balancing Empowerment with Accountability

A critical counter-argument explored in this paper is the risk of **judicial overreach**. The higher judiciary has faced criticism for "policy-making" through *suo motu* actions. If similar powers are extended to the lower judiciary without the "checks and balances" inherent in a Court of Record, there is a legitimate fear of procedural chaos or personal bias. Therefore, the discussion moves toward a "middle-path": the expansion of *suo motu* powers to District Courts should not be absolute but must be guided by the "rationality test" and strict appellate oversight to ensure that activism does not devolve into arbitrariness.

### 11. CONCLUSION

*Suo motu* powers represent a vital component of India's constitutional architecture for delivering justice and protecting fundamental rights. The comparative analysis reveals a significant asymmetry between the higher and lower judiciary in exercising these powers. While the higher judiciary's broad *suo motu* jurisdiction, rooted in constitutional provisions, has enabled transformative judicial activism in areas of public importance, the lower judiciary operates within narrow statutory confines that limit its ability to respond proactively to justice concerns at the grassroots level. This disparity raises important questions about judicial equality and uniform access to justice. The lower judiciary, which handles the vast majority of cases and serves as the primary interface between citizens and the justice system, arguably requires adequate *suo motu* powers to effectively fulfill its constitutional mandate (**Basu, 2013**). However, any expansion must be carefully calibrated to prevent abuse and maintain the delicate balance between judicial activism and restraint (**Baxi, 2007**). The research concludes that *suo motu* powers, when exercised judiciously within appropriate constitutional and legal frameworks, strengthen the credibility and effectiveness of the judicial system. A more equitable distribution of these powers across the judicial hierarchy, accompanied by clear guidelines and robust training, could enhance the overall efficiency of justice delivery in India while maintaining necessary safeguards against overreach (**Jain, 2014**). The challenge lies in

reforming the system to empower the lower judiciary without compromising the discipline and procedural integrity that are essential for rule of law.

Ultimately, suo motu powers embody the judiciary's role not merely as a dispute resolution mechanism but as an active guardian of constitutional values and protector of the vulnerable. Ensuring their optimal exercise across all levels of the judiciary remains crucial for realizing the constitutional promise of justice—social, economic, and political—for all citizens of India.

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