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# FROM SENTINEL TO SOVEREIGN: JUDICIAL ACTIVISM, OVERREACH, CONSTITUTIONAL LIMITS OF JUDICIAL POWER IN INDIA

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## ABSTRACT

The Indian Supreme Court has been transformed due to post-emergency era into a proactive interpreter of constitutional rights, generating the phenomenon broadly termed judicial activism. While the Court's expanded role has reinforced democratic accountability and enlarged the protective scope of fundamental rights, it has simultaneously prompted scholarly and constitutional debate over the permissible limits of judicial intervention. Where judicial action crosses from principled rights-enforcement into governance and policymaking, it risks constituting judicial overreach a condition inimical to the separation of powers that underlies India's constitutional order.

This paper contains a doctrinal and critical analysis of the conceptual boundary between judicial activism and judicial overreach. Drawing on the Basic Structure Doctrine and a review of landmark Supreme Court decisions including *Kesavananda Bharati*, *Maneka Gandhi*, *Vishaka*, the NJAC judgment, and *Puttaswamy* it traces the judiciary's evolving interpretive approach and examines the constitutional limits that cabin that approach. Brief comparative reference is made to situate the Indian experience within a broader constitutional framework. The paper concludes with a normative framework for preserving institutional equilibrium between necessary judicial intervention and impermissible judicial excess.

**Keywords:** Judicial Activism, Judicial Overreach, Fundamental Rights, Separation of Powers, Constitutional Interpretation, Basic Structure Doctrine.

## 1. Introduction

India's constitutional architecture rests on an effective separation of powers between the executive branch, judiciary and legislative. The Constitution assigns specific responsibilities to each organ: Parliament makes laws, the administration carries them out, and the courts interpret them, however it does not require a rigid or complete separation. In this framework, the primary instrument of the judiciary for upholding constitutional supremacy and defending fundamental rights is the power of judicial review, which is primarily issued under Articles 13, 32, 136, and 226.

Following the Constitutional Emergency of 1975–77, the India's Supreme Court progressively acquire an expansive and purposive perspective to constitutional interpretation. Through the liberalisation of locus standi and the emergence of Public Interest Litigation, the Court made constitutional remedies accessible to groups and individuals who had previously been excluded from formal legal processes. Significant rulings such as *Maneka Gandhi v. Union of India*, *Vishaka v. State of Rajasthan*, and *K.S. Puttaswamy v. Union of India* illustrate how judicial intervention has shaped the contours of fundamental rights and state accountability.

Yet this same judicial assertiveness has provoked sustained criticism. Critics contend that the Court has, on occasion, ventured beyond the legitimate boundaries of constitutional adjudication substituting judicial preference for legislative or executive judgment, maintaining supervisory oversight of administrative operations, and issuing directions unsupported by constitutional or statutory text. This paper critically examines the demarcation between permissible judicial activism and impermissible judicial overreach, and proposes principled criteria for maintaining the constitutional balance among state institutions.

## 2. Conceptual Distinctions: Activism and Overreach

Judicial activism and judicial overreach, though related, are analytically distinct concepts. Judicial activism denotes a mode of adjudication in which courts interpret constitutional provisions expansively so as to vindicate fundamental rights, fill legislative lacunae, and give effect to constitutional values that might otherwise remain inoperative.<sup>1</sup> It is rooted in purposive or teleological interpretation and draws normative authority from the constitutional text itself notably Articles 13, 32, and 142, which confer broad remedial jurisdiction on the

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<sup>1</sup> S.P. Sathe, *Judicial Activism in India* 1–15 (2nd ed., Oxford University Press 2002).

Supreme Court.

Judicial overreach, by contrast, arises when the judiciary transgresses the outer limits of constitutional interpretation and assumes functions constitutionally allocated to the political branches. Common indicia of overreach include: directives that effectively prescribe public policy rather than enforce constitutional norms; continuing mandamus orders subjecting executive operations to ongoing judicial supervision; and the invalidation of democratic choices on tenuous or unsupported doctrinal grounds.<sup>2</sup>

The significance of this conceptual boundary cannot be overstated. Judicial activism, properly exercised, reinforces constitutional governance; overreach, conversely, destabilises it by displacing democratic accountability with unelected judicial authority. The challenge for Indian constitutional jurisprudence lies in developing doctrinal criteria capable of distinguishing one from the other with sufficient precision and consistency.

### **3. Constitutional Basis of Judicial Review and Its Inherent Limits**

Judicial review in India derives its authority from explicit constitutional provisions and has been acknowledged as an inviolable element of the Basic Structure.<sup>3</sup> Articles 13(1) and (2) render inconsistent laws void to the extent of their repugnancy with Part III. Article 32 confers a guaranteed right to move the Supreme Court for imposing of fundamental rights, while Article 226 vests analogous jurisdiction in the High Courts.<sup>4</sup> These provisions collectively establish the constitutional warrant for judicial intervention in the acts of the legislative and executive branches.

However, the constitutional basis for judicial review simultaneously defines its outer perimeter. The Basic Structure doctrine recognised separation of powers as a fundamental feature operates not as an absolute prohibition on institutional interaction but as a functional constraint: each organ must refrain from substantially usurping the essential role of the others. Judicial review cannot serve as a licence for courts to discharge legislative or executive responsibilities, however laudable the substantive outcome. When it does, the constitutional framework is subverted rather than vindicated.

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<sup>2</sup> T.R. Andhyarujina, *Judicial Activism and Constitutional Democracy in India* 22–35 (N.M. Tripathi 1992).

<sup>3</sup> *Kesavananda Bharati v. State of Kerala*, (1973) 4 SCC 225.

<sup>4</sup> The Constitution of India, 1950, arts. 13, 32, 136, 226.

#### 4. Judicial Activism: Development and Constitutional Function

The emergence in India of judicial activism is traceable to the Supreme Court's post-Emergency determination to reassert constitutional values against executive excess. The institution took on a transformational social function when standing criteria were liberalized, allowing public-spirited individuals and organizations to submit lawsuits on behalf of people who are unable to access courts.<sup>5</sup> By extending Article 21 beyond its literal text, the Court progressively recognised a range of socio-economic entitlements including the rights to livelihood, health, education, and a clean environment as implicit dimensions of Article 21.<sup>6</sup>

In *Maneka Gandhi v. Union of India*, the Court decisively rejected the narrow procedural conception of Article 21, holding that any restriction on personal liberty must be fair, just, and reasonable.<sup>7</sup> This judgment inter-linked Articles 14, 19, and 21 into an integrated framework of rights protection, ensuring that constitutional guarantees operate in a mutually reinforcing manner. Similarly, in *Vishaka v. State of Rajasthan*, confronted with legislative silence on workplace sexual harassment, the Court formulated binding guidelines drawn from international conventions and constitutional rights an intervention widely characterised as legitimate judicial gap-filling rather than excess.<sup>8</sup>

These decisions demonstrate that when judicial activism remains oriented towards rights-enforcement and constitutional fidelity filling spaces that the political branches have left vacant it constitutes a legitimate and indeed necessary expression of the judicial function in a constitutional democracy.

#### 5. Judicial Overreach: Manifestations and Constitutional Concerns

While the benefits of judicial activism are well-documented, the phenomenon of judicial overreach has generated significant constitutional anxiety. Overreach manifests most prominently in three forms: judicial intrusion into economic and administrative policymaking;

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<sup>5</sup> *S.P. Gupta v. Union of India*, AIR 1982 SC 149 (recognising expansive *locus standi* in public interest litigation and permitting third-party petitions on behalf of disadvantaged groups).

<sup>6</sup> *Francis Coralie Mullin v. Administrator, Union Territory of Delhi*, (1981) 1 SCC 608; see also *Olga Tellis v. Bombay Municipal Corporation*, (1985) 3 SCC 545 (extending Article 21 to the right to livelihood).

<sup>7</sup> *Maneka Gandhi v. Union of India*, (1978) 1 SCC 248, 284–87 (holding that any law curtailing personal liberty must satisfy the triple test of being just, fair, and reasonable under Articles 14, 19, and 21 read conjunctively).

<sup>8</sup> *Vishaka v. State of Rajasthan*, (1997) 6 SCC 241 (Supreme Court issuing binding guidelines on prevention of sexual harassment at the workplace in the absence of domestic legislation, drawing on CEDAW and constitutional rights under Articles 14, 15, and 21; the guidelines were superseded by the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013).

continuing supervisory mandates subjecting the executive to recurring judicial scrutiny; and the invalidation of democratically enacted laws or constitutional amendments on contested grounds.

The Supreme Court Advocates-on-Record Association v. Union of India (the NJAC judgment) illustrates the overreach debate in its starkest form. The Court ruled that the National Judicial Appointments Commission established by the 99th Constitutional Amendment was unconstitutional because it compromised judicial independence an element of the Basic Structure.<sup>9</sup> Critics argued that in doing so, the Court overturned a constitutional amendment enacted by an overwhelming parliamentary majority and ratified by the required number of state legislatures, thereby conflating institutional self-interest with constitutional protection. Unresolved questions remain about the proper scope of the Basic Structure Doctrine as a tool for invalidating amendments that alter the relative authority of state organs.

The 2G Spectrum Case<sup>10</sup> and the Coal Block Allocation Case<sup>11</sup> are frequently cited as examples of the Court's incursion into economic governance. In both matters, the Court cancelled large-scale executive allocations on grounds of arbitrariness and breach of public trust. While constitutionally defensible in terms of enforcing the rule of law, the blanket characteristics of the remedies affecting numerous entities not implicated in the impropriety attracted criticism on proportionality grounds. Courts, it was observed, lack the technical expertise and informational capacity required to assess the complex economic consequences of such broad-brush orders.

The weakening of democratic legitimacy is another constitutional issue brought up by overreach. The mandate of the people gives the legislature and executive branch their power and are subject to periodic electoral accountability. Judicial usurpation of their functions, however well-intentioned, removes decisions of public consequence from democratic deliberation and locates them within an institution that is neither elected nor conventionally accountable. This displacement risks fostering executive inertia and, over time, diminishing

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<sup>9</sup> *Supreme Court Advocates-on-Record Association v. Union of India*, (2016) 5 SCC 1 (striking down the Constitution (Ninety-Ninth Amendment) Act 2014 and the National Judicial Appointments Commission Act 2014 as violating the independence of the judiciary, a basic feature of the Constitution).

<sup>10</sup> *Centre for Public Interest Litigation v. Union of India*, (2012) 3 SCC 1 (cancelling 122 second-generation spectrum licences granted by the executive on the ground of arbitrariness and violation of the right to equality under Article 14).

<sup>11</sup> *Manohar Lal Sharma v. Principal Secretary*, (2014) 9 SCC 516 (quashing all coal block allotments made between 1993 and 2010 as arbitrary and contrary to the public interest, and directing fresh auction of the blocks).

parliamentary authority.

## 6. Landmark Case Law: Tracing the Activism-Overreach Spectrum

### **Kesavananda Bharati v. State of Kerala**

The basic act of Indian judicial activism was stated by the Constitution Bench of the thirteen judges. The Court positioned itself as the final defender of constitutional continuity by ruling that Parliament's modifying authority under Article 368 cannot erase the fundamental character of the Constitution. Despite the ruling's transformational potential, it is generally regarded as constitutionally justified: the Court did not create policy but delineated the outer boundary of constituent power a function inherent in the judicial role.<sup>12</sup>

### **Maneka Gandhi v. Union of India**

This case represents a paradigmatic instance of constitutionally warranted activism. By importing substantive due process into Article 21, the Court ensured that restrictions on personal liberty satisfy standards of fairness, justice, and reasonableness. The judgment did not substitute judicial preference for legislative judgment; rather, it gave effective content to an existing constitutional guarantee. Its lasting significance lies in the triangulation of Articles 14, 19, and 21 a jurisprudential innovation that has anchored subsequent rights jurisprudence.<sup>13</sup>

### **Vishaka v. State of Rajasthan**

This case illustrates the Court's preparedness to discharge a quasi-legislative function in areas of legislative inaction. Drawing on international conventions and constitutional rights, the Court formulated binding guidelines on workplace sexual harassment pending enactment of domestic legislation. Crucially, the guidelines were framed as interim measures, designed to lapse upon legislative action as occurred with the Sexual Harassment of Women at Workplace Act, 2013. This conditional, rights-grounded, and temporally limited character distinguishes the intervention from overreach.<sup>14</sup>

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<sup>12</sup> *Kesavananda Bharati v. State of Kerala*, *supra* note 3.

<sup>13</sup> *Maneka Gandhi v. Union of India*, *supra* note 7, at 284–87.

<sup>14</sup> *Vishaka v. State of Rajasthan*, *supra* note 15.

## **K.S. Puttaswamy v. Union of India**

The unanimous ruling by nine-judge in Puttaswamy recognised the right to privacy as a fundamental right implied in Articles 14, 19, and 21, employing a proportionality framework to assess permissible state encroachments.<sup>15</sup> This decision exemplifies the Court at its most conceptually rigorous: expanding fundamental rights through interpretive reasoning tethered to constitutional text and values rather than free-floating judicial preference, and establishing a doctrinal architecture for future privacy adjudication.

## **NJAC Judgment, 2G Spectrum, and Coal Block Cases**

As discussed in Section 5, these three matters occupy the contested territory at the outer boundary of the activism–overreach continuum. In each case, the Court's intervention was constitutionally motivated; in each case, the breadth of the remedy or the nature of the power exercised generated legitimate questions about institutional propriety and democratic accountability. Taken together, they underscore the absence of stable doctrinal limits and the consequent need for principled frameworks to guide judicial decision-making.<sup>16</sup>

## **7. Comparative Constitutional Perspectives**

Comparative constitutional experience offers instructive reference points. The Supreme Court of US operates within a tradition of judicial restraint bounded by doctrines such as the political question doctrine and stringent standing requirements.<sup>17</sup> These doctrines function as self-imposed institutional constraints, limiting judicial intervention to matters of constitutional entitlement rather than general governance demonstrating that a strongly independent judiciary need not be an interventionist one.

The United Kingdom operates under parliamentary supremacy, under which courts historically lacked the power to declare Acts of Parliament as unlawful. Although courts cannot invalidate core legislation, the Human Rights Act of 1998 established the authority to issue rulings of

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<sup>15</sup> *K.S. Puttaswamy v. Union of India*, (2017) 10 SCC 1 (nine-judge bench unanimously holding privacy to be a fundamental right under Articles 14, 19, and 21, and adopting a proportionality framework to evaluate state encroachments).

<sup>16</sup> *Supreme Court Advocates-on-Record Association v. Union of India*, *supra* note 8; *Centre for Public Interest Litigation v. Union of India*, *supra* note 9; *Manohar Lal Sharma v. Principal Secretary*, *supra* note 10.

<sup>17</sup> *Baker v. Carr*, 369 U.S. 186, 217 (1962) (articulating the political question doctrine and enumerating factors identifying non-justiciable questions committed to the political branches); *see also Marbury v. Madison*, 5 U.S. (1 Cranch) 137 (1803) (establishing judicial review in American constitutional law).

incompatibility.<sup>18</sup> This model prioritises democratic control over constitutional adjudication, yielding a judiciary that scrutinises executive action rigorously while deferring to legislative authority.

South Africa's Constitutional Court has adopted a transformative constitutionalism model that bears the closest resemblance to Indian judicial activism.<sup>19</sup> Crucially, however, the Court employs dialogic remedies ordering the state to develop rights-compliant measures rather than prescribing specific policy content. This approach preserves both constitutional accountability and institutional respect, offering a model of principled activism that the Indian judiciary might productively engage.

## 8. Critical Evaluation and Recommendations

A critical assessment reveals that activism and overreach should be understood not as binary opposites but as points along a constitutional continuum whose location shifts with context, remedy, and doctrinal justification. Judicial intervention acquires legitimacy when it is:

- (i) grounded in a cognisable constitutional or statutory right;
- (ii) proportionate in scope to the constitutional violation identified;
- (iii) oriented towards constitutional enforcement rather than policy preference; and
- (iv) mindful of institutional competence relative to the matter under adjudication.

Indian constitutional jurisprudence suffers from the absence of a stable and consistently applied doctrinal framework for distinguishing warranted intervention from institutional overreach. The same judicial conduct issuance of policy directives, continuing mandamus, or invalidation of legislative action may be characterised as activism in one context and overreach in another, with the distinction turning on little more than normative priors. This doctrinal indeterminacy renders judicial decision-making unpredictable and reduces the Court's accountability to

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<sup>18</sup> *R (Miller) v. Prime Minister*, [2019] UKSC 41, [2020] AC 373; Human Rights Act 1998 (UK) s 4 (empowering courts to issue declarations of incompatibility with Convention rights without invalidating the impugned legislation).

<sup>19</sup> *Minister of Health v. Treatment Action Campaign*, 2002 (5) SA 721 (CC) (Constitutional Court of South Africa ordering the state to extend an anti-retroviral programme, while leaving the modalities of implementation to the executive, exemplifying dialogic or weak-form judicial review).

principled legal standards.

Courts are structurally equipped to adjudicate disputes through adversarial proceedings and legal reasoning; they are not equipped to resolve complex questions of resource allocation, macroeconomic management, or technological regulation. Judicial remedies in such domains, however well-intentioned, frequently produce unintended consequences that undermine the public interests they purport to serve.

To restore and maintain constitutional balance, five recommendations merit consideration must be there. First, the Supreme Court should develop and consistently apply a proportionality framework, ensuring that remedies are tailored to the constitutional violation identified. Second, institutional competence should receive explicit recognition as a limiting principle in technical and administrative matters, the Court should declare the constitutional standard and remit operational questions to the appropriate authority. Third, temporary judicial guidelines should carry explicit sunset clauses, lapsing upon legislative enactment. Fourth, dialogic adjudication articulating constitutional standards and inviting legislative or executive response should be more systematically employed. Fifth, enhancing the internal capacity of Parliament and Executive to perform its constitutional duties would naturally reduce the occasions for judicial intervention, thereby restoring the constitutional equilibrium from within.

## **9. Conclusion**

Judicial activism has been an indispensable feature of Indian constitutional governance, in the face of legislative inertia and presidential arbitrariness, the Supreme Court will give constitutional rights operative force. By adopting purposive interpretation and expanding access to constitutional remedies, the Court has made the Constitution a living instrument responsive to evolving social demands.

At the same time, this analysis demonstrates that judicial activism is not unlimited. When the Court ventures beyond constitutional interpretation into governance and policymaking whether through the invalidation of democratically enacted amendments, the prescription of economic policy, or the maintenance of continuing supervisory oversight it risks weakening democratic accountability, undermining the separation of powers, taxing the institutional capabilities of the judiciary.

The distinction between permissible activism and impermissible overreach ultimately turns on the constitutional validity, doctrinal coherence, and proportionality of judicial action rather than on its assertiveness alone. India requires a judiciary that is simultaneously vigilant and restrained one that enforces constitutional limits rigorously while honouring the functional autonomy of co-equal institutions. Sustaining this equilibrium is not merely a jurisprudential aspiration; it is the foundational condition for constitutional democracy.