



Journal of Frontiers in Multidisciplinary Research

Judicial Activism Versus Judicial Overreach in India: Separation of Powers and Constitutional Balance

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Article Info

E-ISSN: 3050-9726

P-ISSN: 3050-9718

Impact Factor (RSIF): 8.25

Volume: 06

Issue: 02

July – December 2025

Received: 12-09-2025

Accepted: 14-10-2025

Published: 16-11-2025

Page No: 607-613

Abstract

Judicial activism has become one of the most influential features of modern Indian constitutional jurisprudence. It has enabled the higher judiciary to respond to violations of Fundamental Rights, administrative inaction, social exclusion and institutional failures through purposive constitutional interpretation, Public Interest Litigation (PIL), continuing mandamus and other remedial techniques. The transformation of Articles 14, 19 and 21, the relaxation of locus standi and decisions concerning bonded labour, custodial safeguards, environmental protection, workplace sexual harassment, privacy and dignity demonstrate the capacity of constitutional courts to make rights meaningful in practice. At the same time, an expansive conception of the judicial role raises a difficult constitutional question: when does legitimate judicial activism become judicial overreach? The issue is especially significant in a constitutional system that distributes public power among the Legislature, Executive and Judiciary while rejecting rigid institutional separation in favour of checks and balances.

This paper examines the theoretical foundations and historical development of judicial activism in India and critically distinguishes judicial review, judicial activism, judicial restraint and judicial overreach. It analyses landmark decisions including *Kesavananda Bharati*, *Maneka Gandhi*, *S.P. Gupta*, *Vishaka*, *Puttaswamy*, the Electoral Bonds judgment in *Association for Democratic Reforms v. Union of India*, *State of Punjab v. Davinder Singh*, *Supriyo v. Union of India* and the 2024 demolition directions. The paper argues that constitutional intervention is strongest where courts enforce clear constitutional guarantees or remedy institutional lawlessness, but the risk of overreach increases where judicial orders substitute judicial preferences for legislative policy or require sustained executive administration without a sufficiently defined constitutional mandate. It proposes a model of restrained constitutional activism based on constitutional mandate, intensity of rights violation, institutional competence, proportionality and democratic substitution. The objective is not to weaken judicial review, but to preserve judicial independence while maintaining constitutional equilibrium and democratic legitimacy.

Keywords: Judicial Activism, Judicial Overreach, Judicial Review, Judicial Restraint, Public Interest Litigation, Separation of Powers, Article 21, Article 142, Constitutionalism, Transformative Constitutionalism

1. Introduction

Constitutional democracy is founded upon the principle that public power must be organised, limited and made accountable. The separation of powers is therefore not merely an institutional arrangement; it is a constitutional safeguard against concentration of authority and arbitrary government. Montesquieu's classical formulation in *De l'esprit des lois* (1748) emphasised the dangers of concentrating legislative, executive and judicial functions in the same hands. The Indian Constitution, however, does not adopt a rigid separation in the manner of a pure presidential model. It creates a system of functional distribution, institutional checks and constitutional accountability. The Legislature makes laws, the Executive administers them, and the Judiciary interprets and enforces the Constitution, but overlaps are deliberately built into the constitutional design.

The Indian constitutional structure therefore requires a distinction between separation of powers and checks and balances. Articles 32 and 226 confer wide remedial jurisdiction on the Supreme Court and High Courts, while Articles 13, 141, 142 and 136 strengthen the judicial role in maintaining constitutional supremacy. Article 50, although located in the Directive Principles,

expresses the constitutional preference for separating the judiciary from the executive in the public services of the State. The institutional design is consequently one of constitutional balance rather than watertight compartments. The expression 'judicial activism' emerged in the United States and is commonly attributed to Arthur M. Schlesinger Jr., who used the term in his 1947 *Fortune* article. In India, however, the concept acquired a distinctive constitutional meaning. It became associated with purposive interpretation, expansion of access to justice, PIL, epistolary jurisdiction, continuing mandamus and the development of substantive content within Fundamental Rights. Its growth was particularly pronounced after the Emergency period, when the judiciary confronted the institutional consequences of excessive deference to executive power.

The distinction between judicial activism and judicial overreach is not simply a distinction between 'active' and 'inactive' judging. A court may intervene strongly without overreaching if the intervention is anchored in a constitutional command. Conversely, a formally narrow order may have significant policy consequences. The real issue is therefore the legitimacy, constitutional basis, institutional competence and remedial scope of judicial intervention. This paper uses that approach to evaluate the contemporary Indian experience.

2. Research Questions, Objectives and Methodology

2.1. Research Questions

What are the constitutional foundations and limits of judicial activism in India?

How can legitimate judicial activism be distinguished from judicial overreach?

How does judicial intervention affect the doctrine of separation of powers and institutional balance?

To what extent do PIL, continuing mandamus and Article 142 enlarge the remedial role of constitutional courts?

What principles of judicial self-restraint can preserve constitutional accountability without weakening Fundamental Rights?

2.2. Objectives

To trace the historical evolution of judicial activism in Indian constitutional law.

To distinguish judicial review, judicial activism, judicial restraint and judicial overreach.

To critically examine selected landmark and contemporary Supreme Court decisions.

To assess the institutional risks of judicial intervention in polycentric policy matters.

To propose a principled model of restrained constitutional activism.

2.3. Research Methodology

The study adopts a doctrinal and analytical methodology. Primary sources comprise the Constitution of India, statutes and judgments of the Supreme Court of India. Secondary materials include constitutional law scholarship, books and academic articles dealing with judicial activism, PIL, separation of powers and institutional competence. Selected cases are examined comparatively to identify patterns of rights protection, remedial innovation and institutional restraint. The analysis is normative as well as doctrinal and focuses on the constitutional developments relevant to the

subject through 2024, including the major contemporary judgments discussed below.

3. Historical Evolution of Judicial Activism in India

3.1. Phase I: Constitutional Formalism and Judicial Restraint (1950–1970)

In the early decades of the Republic, the Supreme Court generally adopted a formal and textual approach to Fundamental Rights. *A.K. Gopalan v. State of Madras*, AIR 1950 SC 27, reflected a compartmentalised reading of Fundamental Rights, particularly Articles 19 and 21. The Court treated 'procedure established by law' as distinct from the American 'due process' formulation. Judicial review existed, but the Court was comparatively cautious in entering fields of legislative and executive policy. This period should not, however, be described as an absence of judicial review; rather, it represented a more restrained conception of the judicial role.

3.2. Phase II: Constitutional Conflict and the Basic Structure Doctrine (1970–1977)

The 1970s witnessed intense constitutional conflict over property, economic legislation and the scope of Parliament's amending power. *R.C. Cooper v. Union of India*, (1970) 1 SCC 248, and *Madhav Rao Scindia v. Union of India*, (1971) 1 SCC 85, illustrated the increasing willingness of the Court to scrutinise governmental action. The decisive moment came with *Kesavananda Bharati v. State of Kerala*, (1973) 4 SCC 225, in which a thirteen-judge Bench held by a 7:6 majority that Parliament's power under Article 368 is wide but cannot destroy the basic structure of the Constitution.

The Basic Structure Doctrine transformed the constitutional relationship between Parliament and the Judiciary. It established that constitutional supremacy imposes substantive limits even upon formal constitutional amendment. Judicial review, constitutional supremacy, rule of law and institutional limitations subsequently became central components of Indian constitutional adjudication. The doctrine, however, also generated a continuing debate about the democratic legitimacy of judicially enforced limits on constituent power.

3.3. Phase III: Post-Emergency Transformation and PIL (1978–2000)

The Emergency period, particularly the decision in *Additional District Magistrate, Jabalpur v. Shivkant Shukla*, (1976) 2 SCC 521, profoundly affected the institutional self-understanding of the Supreme Court. The post-Emergency Court increasingly emphasised access to justice, liberty and constitutional accountability. *Maneka Gandhi v. Union of India*, (1978) 1 SCC 248, transformed Article 21 by requiring a procedure affecting life or personal liberty to satisfy standards of fairness, reasonableness and non-arbitrariness, thereby connecting Articles 14, 19 and 21 in a new constitutional framework.

The relaxation of traditional locus standi was equally significant. *S.P. Gupta v. Union of India*, 1981 Supp SCC 87, and subsequent social action litigation enabled public-spirited individuals and organisations to approach constitutional courts on behalf of persons unable to effectively access justice. Epistolary jurisdiction and PIL brought bonded labourers, prisoners, pavement dwellers and other disadvantaged groups within the practical reach of

constitutional remedies. *Bandhua Mukti Morcha v. Union of India*, (1984) 3 SCC 161, became an important illustration of this rights-oriented transformation.

4. Expansion of Fundamental Rights and The Transformation of Article 21

The development of Article 21 is perhaps the clearest illustration of Indian judicial activism. The Court gradually moved from a narrow conception of life as mere physical existence to a conception of life informed by dignity, autonomy and conditions necessary for meaningful human existence. In *Francis Coralie Mullin v. Administrator, Union Territory of Delhi*, (1981) 1 SCC 608, the Court linked life with human dignity. In subsequent cases, Article 21 became the constitutional basis for a wide range of rights and protections. *Hussainara Khatoon v. Home Secretary, State of Bihar*, (1979) 3 SCC 816, connected speedy trial and legal aid with constitutional protection. *Olga Tellis v. Bombay Municipal*

Corporation, (1985) 3 SCC 545, recognised the relationship between livelihood and life. M.C. Mehta's environmental jurisprudence developed the principle of absolute liability in the *Oleum Gas Leak* case and contributed to the constitutionalisation of environmental protection. *Vishaka v. State of Rajasthan*, (1997) 6 SCC 241, supplied binding safeguards against workplace sexual harassment in a legislative vacuum. *K.S. Puttaswamy (Retd.) v. Union of India*, (2017) 10 SCC 1, affirmed privacy as a fundamental right grounded in dignity, liberty and autonomy. The Article 21 jurisprudence demonstrates the constructive side of judicial activism. Yet it also reveals the central difficulty: constitutional interpretation inevitably involves value choices. The legitimacy of judicial innovation therefore depends on whether the Court is deriving principles from constitutional text, structure, history and established doctrine or replacing constitutionally assigned policy choices with judicial preferences.

Table 1: Illustrative Development of Rights through Article 21 Jurisprudence

Right / Principle	Landmark Decision	Constitutional Significance
Speedy trial and legal aid	<i>Hussainara Khatoon v. Home Secretary, State of Bihar</i> (1979)	Strengthened procedural fairness and access to justice under Articles 21 and 39A.
Dignity and humane conditions	<i>Francis Coralie Mullin v. Administrator, UT of Delhi</i> (1981)	Expanded 'life' beyond mere physical existence.
Livelihood	<i>Olga Tellis v. Bombay Municipal Corporation</i> (1985)	Recognised the close constitutional relationship between livelihood and life.
Environmental protection	<i>M.C. Mehta v. Union of India (Oleum Gas Leak)</i> (1987)	Developed absolute liability and strengthened environmental constitutionalism.
Workplace protection	<i>Vishaka v. State of Rajasthan</i> (1997)	Judicially formulated safeguards in the absence of legislation.
Privacy	<i>K.S. Puttaswamy</i> (2017)	Recognised privacy as a fundamental right grounded in dignity and autonomy.
Dignity at end of life	<i>Common Cause v. Union of India</i> (2018)	Recognised limited constitutional protection for dying with dignity.

5. Contemporary Judicial Activism and Constitutional Adjudication

5.1. Association for Democratic Reforms v. Union of India (2024): Electoral Bonds

In *Association for Democratic Reforms v. Union of India*, 2024 INSC 113, a Constitution Bench examined the Electoral Bond Scheme and related statutory amendments. The Court held that anonymous political contributions implicated the voters' right to information under Article 19(1)(a) and struck down the impugned scheme and connected provisions. The judgment is important to the present debate because it illustrates the difference between judicial review and judicial activism. The Court was not merely formulating a policy preference; it was testing a legislative and executive framework against constitutional rights and democratic transparency. The case nevertheless demonstrates the breadth of constitutional adjudication. The Court required disclosure-related steps to be taken by the State Bank of India and the Election Commission. From one perspective, these directions were necessary to make the constitutional remedy effective; from another, they illustrate how remedial judicial orders can enter operational territory. The appropriate lesson is not that the Court should avoid effective remedies, but that remedial measures should remain closely connected to the

constitutional violation identified by the Court.

5.2. State of Punjab v. Davinder Singh (2024): Sub-classification and Substantive Equality

In *State of Punjab v. Davinder Singh*, 2024 INSC 562, a seven-judge Constitution Bench considered whether Scheduled Castes could be internally sub-classified for the purpose of more equitable distribution of reservation benefits. By a 6:1 majority, the Court overruled *E.V. Chinnaiah v. State of Andhra Pradesh* and held that sub-classification is constitutionally permissible subject to constitutional limitations and evidentiary justification. The case demonstrates that judicial activism may operate through substantive equality: the Court was not simply enforcing a procedural rule but reinterpreting the relationship between equality, affirmative action and Article 341. The decision also shows why judicial activism should not automatically be equated with overreach. The Court was exercising constitutional adjudicatory power in resolving a conflict between competing interpretations of Articles 14, 15, 16 and 341. The more difficult institutional question concerns the implementation of the constitutional standard: courts must avoid converting a constitutional principle into detailed administrative quota design unless the constitutional or statutory framework requires such intervention.

5.3. Supriyo v. Union of India (2023): Judicial Restraint as Constitutional Discipline

Supriyo @ Supriya Chakraborty v. Union of India, 2023 INSC 920, is particularly significant because it demonstrates restraint rather than expansion. The Constitution Bench recognised the constitutional rights and dignity of queer persons but declined to judicially create a legal right to marry or rewrite the Special Marriage Act. The judgment illustrates an important institutional principle: recognition of constitutional rights does not necessarily authorise courts to redesign every statutory institution associated with those rights. Where a remedy requires broad policy choices involving competing social interests and legislative design, judicial restraint may protect rather than diminish constitutional legitimacy.

5.4. In Re: Directions in the Matter of Demolition of Structures (2024)

In Re: Directions in the Matter of Demolition of Structures, 2024 INSC 866, the Supreme Court addressed punitive or arbitrary demolitions and expressly examined rule of law, separation of powers, public accountability, presumption of innocence and the right to shelter. The Court's directions required procedural safeguards, including prior notice and an opportunity to challenge demolition action. The judgment is a strong example of judicial intervention against executive action alleged to operate as punishment without lawful adjudication.

The case demonstrates an important distinction between judicial supervision and judicial administration. Preventing an executive authority from assuming the role of judge is directly connected to constitutional legality. However, continuing judicial supervision must still be calibrated so that the Court does not become the permanent administrator of local government functions. The constitutional legitimacy of the directions therefore lies in ensuring legality and procedural fairness rather than in managing municipal demolition policy on a day-to-day basis.

5.5. COVID-19 and the Judicial Role in Public Health Governance

In *In Re: Distribution of Essential Supplies and Services During COVID-19*, (2021) 7 SCC 772, the Supreme Court intervened during an extraordinary public-health crisis involving oxygen supply, essential medicines and vaccination policy. The Court's intervention reflected the constitutional importance of life and health, while also generating debate about institutional competence and resource allocation. Public-health decisions are highly polycentric because they require medical, logistical, fiscal and administrative expertise. The case therefore illustrates both the necessity of judicial protection in emergencies and the need for careful limits on judicial management of executive policy.

6. Judicial Activism Versus Judicial Overreach: A Doctrinal Distinction

Judicial review is the constitutional power to test legislative and executive action against the Constitution. Judicial activism describes a style or degree of adjudication in which courts interpret constitutional provisions purposively and may adopt innovative remedies to protect rights or constitutional values. Judicial restraint emphasises deference to constitutional actors where multiple legally permissible policy choices exist. Judicial overreach, by contrast, occurs when judicial intervention exceeds a defensible constitutional or remedial mandate and substantially substitutes judicial preference for legislative or executive choice.

The distinction is therefore not determined by the mere fact that a judgment is bold or socially transformative. A strong judgment protecting a fundamental right may be entirely legitimate. Conversely, a court may overreach even while acting with benevolent motives if it assumes functions for which the Constitution assigns primary responsibility to another institution. The central criterion is institutional legitimacy within constitutional boundaries.

Table 2

Parameter	Judicial Restraint	Judicial Activism	Judicial Overreach
Primary orientation	Text, precedent and institutional deference	Purposive constitutional interpretation	Substitution of judicial preference for policy choice
Rights protection	Intervenes where violation is clear	Expands effective protection of constitutional rights	Creates or extends obligations without sufficient constitutional basis
Separation of powers	High deference to elected branches	Checks unconstitutional action while preserving institutional roles	Usurps core legislative or executive functions
Remedy	Conventional writs and declarations	Innovative but constitutionally connected remedies	Detailed policy design, fiscal allocation or continuing administration without clear mandate
Democratic legitimacy	Emphasises representative accountability	Protects constitutional minorities and rights against majoritarian failure	Raises democratic-deficit concerns
Institutional risk	Under-enforcement of rights	Possible expansion of judicial role	Institutional imbalance and judicial unaccountability

7. Case Studies of Contested Judicial Intervention

7.1. State of Tamil Nadu v. K. Balu: Highway Liquor Regulation

The Supreme Court's intervention concerning liquor outlets near national and state highways illustrates the difficulty of judicially prescribing a uniform regulatory standard in a field involving public health, road safety, excise policy, municipal planning and State revenue. The objective of reducing road accidents was legitimate, but the broad operational consequences generated questions about the institutional

competence of courts to determine regulatory distances and exemptions. The case is therefore better understood as a contested boundary case rather than simply being labelled 'judicial overreach'.

7.2 Shyam Narayan Chouksey: National Anthem in Cinema Halls

The interim directions in *Shyam Narayan Chouksey v. Union of India* concerning the playing of the National Anthem in cinema halls became a prominent example in the debate on

judicially mandated expressions of patriotism. The subsequent modification of the directions illustrates how interim judicial orders may acquire substantial social effect before the underlying constitutional questions are finally resolved. The case demonstrates the importance of institutional humility, especially where judicial intervention affects individual choice and public culture rather than correcting a specific legal wrong.

7.3. Supreme Court Advocates-on-Record Association v. Union of India: The NJAC Case

The NJAC judgment, *Supreme Court Advocates-on-Record Association v. Union of India*, (2016) 5 SCC 1, invalidated the constitutional amendment and legislation establishing the National Judicial Appointments Commission. The judgment rested on judicial independence and the basic structure doctrine. Critics, however, have argued that the decision illustrates the democratic-accountability problem inherent in a judge-led appointments system. The case should not be treated as a simple instance of overreach; it is better understood as a constitutional conflict between judicial independence and institutional accountability. Its significance for the present paper lies in demonstrating that judicial power can be constitutionally legitimate while still generating serious questions about institutional design.

7.4. Interlinking of Rivers: Polycentric Governance

The Supreme Court's interventions concerning river interlinking illustrate the polycentric character of environmental and developmental decisions. Such decisions involve inter-State relations, hydrology, ecology, public finance, displacement and long-term infrastructure planning. Courts may legitimately insist upon legal compliance, environmental assessment and constitutional safeguards, but the detailed selection of projects and allocation of public resources generally requires executive and legislative expertise. This distinction provides a useful test for identifying the outer limits of judicial intervention.

8. Procedural and Constitutional Tools of Judicial Activism

8.1. Article 142 and the Power to Do Complete Justice

Article 142(1) empowers the Supreme Court to pass such decree or order as is necessary for doing complete justice in any cause or matter pending before it. The provision enables effective remedies where ordinary procedural rules are inadequate. The Court has used Article 142 in complex matrimonial, constitutional and public-law matters. In *Shilpa Sailesh v. Varun Sreenivasan*, (2023) 8 SCC 423, the Constitution Bench recognised the power of the Supreme Court to dissolve a marriage on the ground of irretrievable breakdown in appropriate cases under Article 142.

The existence of Article 142 does not mean that every desirable remedy is constitutionally available. Complete justice must remain connected to the cause before the Court and must operate within the constitutional framework. The provision should be understood as a remedial power, not a general legislative authority. This distinction is essential if Article 142 is not to become a vehicle for institutional substitution.

8.2. Continuing Mandamus

Continuing mandamus, particularly visible in *Vineet Narain v. Union of India*, (1998) 1 SCC 226, permits the Court to

retain supervisory jurisdiction where ordinary final orders are insufficient to secure compliance. It can be valuable in cases of systemic corruption, environmental degradation or custodial reform. Its danger lies in indefinite judicial supervision of executive institutions. The legitimacy of continuing mandamus is strongest where there is a continuing constitutional violation and a clearly defined remedial objective; it becomes problematic when the Court begins to function as a permanent administrative supervisor.

8.3. Judicial Gap-Filling

Vishaka, D.K. Basu v. State of West Bengal, AIR 1997 SC 610, and *Prakash Singh v. Union of India*, (2006) 8 SCC 1, demonstrate judicial gap-filling where statutory or administrative mechanisms were inadequate to protect constitutional rights. Such directions can be constitutionally valuable, but they should be described as interim constitutional standards rather than ordinary legislation. Courts should identify the constitutional source of the duty, explain the limits of the directions and, where appropriate, leave policy design to the competent law-making institution.

9. Critical Assessment: Risks of Judicial Overreach

9.1. Separation of Powers and Institutional Competence

Lon L. Fuller's discussion of the limits of adjudication is useful in understanding why courts may be institutionally disadvantaged in polycentric disputes. Courts decide concrete controversies on the basis of evidence and legal submissions. Complex policy problems, by contrast, involve multiple stakeholders, uncertain facts, resource constraints and trade-offs that may change over time. A court can identify constitutional limits, but it may not possess the administrative machinery required to implement a nationwide economic, environmental or infrastructural policy.

This does not justify judicial abstention. Institutional competence should operate as a reason for calibrated remedies, not as a reason to tolerate unconstitutional government. The better approach is to distinguish between judicial determination of constitutional legality and executive responsibility for policy implementation.

9.2. Pendency and Institutional Overload

The Indian judiciary faces substantial case pendency at all levels. In such a context, excessive expansion of constitutional courts into routine governance can impose an opportunity cost on ordinary litigants. The concern is not that PIL is inherently undesirable; rather, courts must ensure that public-interest jurisdiction remains focused on genuine constitutional or legal wrongs and does not become a substitute for ordinary administration. Any statistical statement concerning pendency should be tied to a specific date and an authoritative source such as the Supreme Court or National Judicial Data Grid.

9.3. Subjectivity and the 'Judge's Foot'

Judicial activism inevitably involves interpretation, and interpretation can be influenced by competing conceptions of justice, liberty and equality. The historic metaphor of equity varying with the Chancellor's foot captures the concern that broad discretion may reduce predictability. This risk is particularly acute in PILs, where the boundary between public interest and publicity, political interest or private interest can sometimes become blurred. Transparent

threshold requirements, reasoned orders and careful scrutiny of standing can reduce this risk.

9.4. Democratic Deficit and Accountability

Judges derive legitimacy primarily from constitutional office, independence and legal reasoning rather than periodic elections. This independence is essential for protecting minorities and Fundamental Rights, but it also creates a democratic-accountability question when courts formulate broad public policy. The answer cannot be majoritarian control of the judiciary. Instead, it must be constitutional accountability: fidelity to text and structure, reasoned justification, precedent, procedural fairness and institutional self-restraint.

10. A Normative Model of Restrained Constitutional Activism

The appropriate alternative to either unrestricted activism or rigid restraint is restrained constitutional activism. Under this model, courts remain strong in protecting constitutional rights but consciously evaluate the institutional consequences of their remedies. The following five-part framework may assist constitutional courts in determining the legitimacy of intervention.

10.1. Constitutional Mandate Test

The first question should be whether the intervention is connected to an identifiable constitutional provision, structural principle or enforceable legal duty. The clearer the constitutional mandate, the stronger the justification for intervention. Where the Constitution leaves a broad policy choice open, judicial deference should ordinarily increase.

10.2. Rights-Intensity Test

The Court should determine the seriousness of the constitutional injury. A direct and continuing violation of life, liberty, dignity, equality or another core Fundamental Right justifies a stronger judicial response than a dispute involving a marginal policy preference. The intensity of judicial review should correspond to the intensity of the rights violation.

10.3. Institutional Competence Test

Before issuing detailed directions, courts should consider whether the subject requires specialised technical, financial, scientific or administrative expertise. Where such expertise is central, the Court should ordinarily prescribe constitutional standards and require the competent authority to formulate implementation details, rather than itself designing every operational element.

10.4. Proportionality and Remedial Necessity Test

The remedy should be no broader than necessary to cure the constitutional violation. Courts should consider whether less intrusive remedies are available and whether the directions can be implemented without creating unintended institutional consequences. The question should not merely be whether a judicial remedy is desirable, but whether it is constitutionally necessary and appropriately tailored.

10.5. Democratic Substitution Test

The final question should be whether the Court is enforcing constitutional boundaries or choosing among constitutionally permissible policy alternatives. If several policy choices are legally available to the Legislature or Executive, the Court

should normally avoid selecting one simply because it considers that option preferable. Judicial intervention becomes constitutionally suspect when the court's policy preference displaces a legitimate choice of an elected institution.

These tests do not create a rigid formula. They provide a structured reasoning framework capable of making judicial intervention more transparent. They also recognise that constitutional adjudication cannot be reduced to mechanical textualism. The aim is to ensure that judicial creativity remains constitutionally disciplined.

11. Institutional Safeguards and Judicial Self-Restraint

11.1. Strict Gatekeeping of PIL

The principles stated in *State of Uttaranchal v. Balwant Singh Chaufal*, (2010) 3 SCC 402, should be applied rigorously. Courts should verify the bona fides of petitioners, identify the legal injury and impose appropriate costs where proceedings are frivolous or motivated by publicity or private interests. Strong PIL jurisprudence requires strong institutional gatekeeping.

11.2. Clear Limits on Continuing Mandamus

Continuing mandamus should preferably contain a defined constitutional objective, periodic review and a mechanism for eventual judicial exit. The Court should identify measurable compliance requirements rather than indefinitely supervising executive departments. Judicial withdrawal after constitutional compliance is itself an important form of institutional restraint.

11.3. Transparency in Judicial Administration and Appointments

The legitimacy of the judiciary depends not only on the quality of judgments but also on public confidence in institutional processes. The continuing debate around the Collegium system and the NJAC judgment demonstrates the need for greater transparency, objective criteria and reasoned institutional processes while preserving judicial independence. Reform should strengthen accountability without permitting political capture of judicial appointments.

11.4. Judicial Reasons and Institutional Candour

Courts should explicitly identify the constitutional source of an intervention; the institutional limitation being respected and the reasons why an ordinary remedy is inadequate. Such reasoning allows scholars, governments and appellate courts to evaluate whether the intervention represents constitutional enforcement or policy substitution. Institutional candour is therefore an important component of judicial self-restraint.

12. Conclusion

Judicial activism has played a transformative role in Indian constitutional law. It expanded access to justice, strengthened the practical meaning of Fundamental Rights and enabled constitutional courts to respond to situations in which legislative or executive institutions failed to protect vulnerable persons. The development of Article 21, PIL, environmental jurisprudence, workplace safeguards, privacy and other rights demonstrates that a passive judiciary is not always consistent with constitutional democracy. The Constitution expects courts to act as guardians of constitutional limits and individual liberty.

At the same time, constitutional guardianship does not confer

a general licence to govern. The legitimacy of judicial activism depends upon the constitutional source of the intervention, the seriousness of the rights violation, the institutional competence of the Court and the proportionality of the remedy. Electoral transparency, SC sub-classification, demolition safeguards and the restraint shown in *Supriyo* demonstrate that contemporary Indian constitutional adjudication contains both activist and self-restraining tendencies. The crucial task is therefore not to choose between activism and restraint as absolute philosophies, but to determine when each is constitutionally appropriate.

The paper concludes that judicial overreach is most likely where courts move from enforcing constitutional limits to selecting policy among constitutionally permissible alternatives, particularly in technically complex or resource-intensive fields. A disciplined model of restrained constitutional activism can reduce this danger. Courts should be bold where fundamental rights and constitutional supremacy are threatened, but deferential where elected institutions possess legitimate policy discretion. Judicial power derives its enduring authority not from administrative control but from constitutional fidelity, reasoned judgment and public confidence. The strongest judiciary, therefore, is not one that governs the most, but one that protects the Constitution most effectively while respecting the constitutional roles of the other organs of the State.

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How to Cite This Article

Kumar S. Judicial activism versus judicial overreach in India: separation of powers and constitutional balance. *J Front Multidiscip Res*. 2025;6(2):607-613.

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