

JUDICIAL ACTIVISM VERSUS JUDICIAL OVERREACH

Dr. Rang Nath Singh*

Dr. Santosh Kumar**

Abstract

The constitutional jurisprudence of India represents one of the most vibrant and transformative legal architectures in the democratic world. At the epicenter of this dynamic transformation lies the doctrine of Judicial Activism—a judicial posture wherein the higher judiciary actively interprets constitutional provisions to enforce socio-economic justice, protect marginalized classes, and remedy systemic administrative inertia. From its conceptual inception in the late 1970s through the liberalization of Locus Standi and the institutionalization of Public Interest Litigation (PIL), judicial activism has revolutionized the enforcement of Fundamental Rights under Articles 14, 19, 21, and 32. However, the continuous expansion of judicial intervention has ignited a fierce constitutional debate concerning the boundary separating legitimate 'Judicial Activism' from unwarranted 'Judicial Overreach' (or Judicial Imperialism). This scholarly research paper examines the theoretical genesis, constitutional validity, and functional evolution of judicial activism in India. It systematically analyzes landmark precedents ranging from Kesavananda Bharati, Maneka Gandhi, and Bandhua Mukti Morcha to pivotal contemporary rulings including the Electoral Bonds case (ADR v. UOI, 2024), Same-Sex Marriage recognition (Supriyo v. UOI, 2023), Sub-Classification in Reservations (State of Punjab v. Davinder Singh, 2024), and Demolition Jurisprudence/Bulldozer Justice (In Re: Directions in the matter of Demolition of Structures, 2024). The paper critically interrogates whether the judiciary's assumption of administrative, executive, and legislative functions impairs the tripartite doctrine of Separation of Powers and undermines constitutional equilibrium. Finally, the paper formulates institutional parameters and normative canons for judicial self-restraint to ensure that the judiciary remains a robust sentinel on the qui vive without imperiling democratic legitimacy.

Keywords: Judicial Activism, Judicial Overreach, Public Interest Litigation (PIL), Separation of Powers, Article 21, Constitutionalism, Epistolary Jurisdiction, Judicial Self-Restraint.

1. INTRODUCTION AND THEORETICAL FOUNDATION

Constitutional democracy is anchored upon the quintessential presumption that state power must be harnessed, regulated, and distributed to prevent arbitrary governance and protect sovereign liberties. Within the triadic framework of democratic governance—comprising the Legislature, the Executive, and the Judiciary—the doctrine of Separation of Powers, famously articulated by Baron de Montesquieu in 'De l'esprit des lois' (1748), posits that no single organ should accumulate unchecked authority. In the Indian constitutional matrix, drafted amidst the socio-economic vulnerabilities of post-colonial transformation, the Constitution of India does not adopt a rigid, water-tight compartmentalization of powers as seen in the United States Constitution. Instead, it engrafts an intricate system of institutional checks and balances, making the Supreme Court of India and the High Courts the designated 'sentinel on the qui vive' under Articles 32 and 226 respectively (State of Madras v. V.G. Row, 1952).

*Dean, Department of Law Babu Dinesh Singh University, Garhwa, Jharkhand, India

**Ph.D.(Law), Independent Researcher & Legal Scholar, India

The phrase 'Judicial Activism' was initially coined in the American academic context by Arthur Schlesinger Jr. in a 1947 Fortune magazine article titled 'The Supreme Court: 1947'. Schlesinger categorized Supreme Court justices into activists and champions of judicial self-restraint. In its purest theoretical essence, judicial activism represents an assertive, forward-looking judicial philosophy wherein judges act not merely as mechanical arbiters applying positive statutory text, but as proactive catalysts of social change, infusing dynamic, normative life into organic constitutional mandates. Rather than succumbing to legislative omission or bureaucratic apathy, an activist court invokes equity, natural justice, and transformative constitutionalism to vindicate fundamental human rights.

In India, judicial activism was not an accidental occurrence; rather, it emerged as an existential institutional necessity following the catastrophic institutional eclipse during the Internal Emergency (1975–1977). The infamous ruling in *Additional District Magistrate, Jabalpur v. Shivkant Shukla* (1976), wherein the Supreme Court surrendered citizen liberty to executive absolutism, catalyzed an intense institutional soul-searching. Consequently, in the post-Emergency era, progressive jurists led by Justice P.N. Bhagwati, Justice V.R. Krishna Iyer, and Justice D.A. Desai embarked on an unprecedented mission to democratize justice. By relaxing the orthodox common-law doctrine of *Locus Standi* and creating Epistolary Jurisdiction, the Supreme Court threw open its portals to the marginalized, the destitute, bonded laborers, and undertrial prisoners.

However, the trajectory of judicial activism over the past five decades demonstrates an exponential widening of scope. From an initial crusade for vulnerable human rights, the higher judiciary has steadily expanded its purview into complex policy-making, budgetary allocations, environmental governance, municipal administration, and legislative framing. This phenomenon has provoked critical academic, political, and judicial introspection regarding the exact frontiers separating legitimate 'Judicial Activism' from intrusive 'Judicial Overreach' or 'Judicial Adventurism'. When the unelected judiciary supersedes elected representatives in purely policy-driven choices, it risks diluting the democratic principle of representative accountability. This research paper provides a rigorous, 360-degree constitutional critique of this doctrinal journey, assessing its historical milestones, modern jurisprudential assertions, and the vital imperative for judicial self-discipline.

2. THE HISTORICAL EVOLUTION OF JUDICIAL ACTIVISM IN INDIA

2.1 Phase I: Constitutional Formalism and Strict Positivism (1950–1970)

In the nascent decades following Indian independence, the Supreme Court adopted a conservative, black-letter approach characterized by strict positivism, textual literalism, and judicial restraint. The seminal decision in *A.K. Gopalan v. State of Madras* (AIR 1950 SC 27) typified this era. The Supreme Court rigidly decoupled Article 19 from Article 21, holding that each Fundamental Right constituted a mutually exclusive island. The majority firmly rejected the American substantive 'Due Process of Law' doctrine, holding that the phrase 'Procedure

Established by Law' in Article 21 required only a formally enacted statutory mandate, regardless of whether that statutory procedure was just, fair, or reasonable. During this epoch, the judiciary refrained from scrutinizing socio-economic policy, according near-absolute deference to Parliamentary supremacy in socio-economic enactments.

2.2 Phase II: Doctrinal Assertion and the Basic Structure Milestone (1970–1977)

The 1970s witnessed intense institutional confrontation between the executive-dominated Parliament and the judiciary over property rights, bank nationalization (*R.C. Cooper v. Union of India*, 1970), and the abolition of privy purses (*Madhav Rao Scindia v. Union of India*, 1971). The zenith of structural judicial activism was achieved in the monumental eleven-judge bench decision in *Kesavananda Bharati v. State of Kerala* (AIR 1973 SC 1461). By a narrow 7:6 majority, the Supreme Court formulated the 'Basic Structure Doctrine', holding that while Parliament possessed wide constituent powers under Article 368 to amend the Constitution, it could not alter, destroy, or emasculate the core framework and essential features of the Constitution. This historic judgment established Judicial Review as an unalterable basic feature, laying the permanent foundation for all subsequent activist interventions.

2.3 Phase III: Post-Emergency Resurgence and the PIL Revolution (1978–2000)

The post-1977 era witnessed the true metamorphosis of the Supreme Court of India into a 'Supreme Court for Indians'. In *Maneka Gandhi v. Union of India* (AIR 1978 SC 597), the Court overturned the narrow Gopalan doctrine, establishing an inseparable golden triangle between Articles 14, 19, and 21. The Court held that any procedure depriving an individual of life or personal liberty must satisfy the triadic test of being 'just, fair, and reasonable'—effectively introducing substantive due process into Indian constitutional law through judicial interpretation.

Simultaneously, the procedural barrier of *Locus Standi* was dismantled. In *S.P. Gupta v. Union of India* (AIR 1982 SC 149), Justice P.N. Bhagwati held that any public-spirited citizen or NGO could invoke the extraordinary writ jurisdiction of the Supreme Court (Article 32) or High Courts (Article 226) on behalf of persons who, on account of poverty, ignorance, or socio-economic disability, were unable to access the courts. This gave birth to Public Interest Litigation (PIL) and Epistolary Jurisdiction, where mere letters and postcards addressed to judges were converted into formal writ petitions.

[LANDMARK EXTRACT: *S.P. GUPTA V. UOI* (1982)]

"The court has to innovate new methods and devise new strategies for the purpose of providing access to justice to large masses of people who are denied their basic human rights... The traditional rule of locus standi that a petition under Article 32 can only be filed by a person whose fundamental right is infringed must now give way to public participation in justice delivery."

— Justice P.N. Bhagwati, *S.P. Gupta v. Union of India* (1982)

3. SUBSTANTIVE EXPANSION OF FUNDAMENTAL RIGHTS: THE ARTICLE 21 UMBRELLA

The most striking testament to Indian judicial activism is the expansive hermeneutic reconstruction of Article 21 ('Protection of life and personal liberty'). The Supreme Court moved beyond a mere biological definition of 'life'—viewing it not simply as physical animal existence, but as life with human dignity, quality, and comprehensive well-being (Francis Coralie Mullin v. Administrator, Union Territory of Delhi, 1981). Through creative constitutional construction, the judiciary internalized the Directive Principles of State Policy (Part IV) into Fundamental Rights (Part III), rendering unenforceable socio-economic goals enforceable via writ mandates.

Table 1: Expansion of Enforceable Fundamental Rights Under Article 21 via Judicial Activism

Derivative Fundamental Right	Landmark Judicial Precedent	Core Constitutional Rationale
Right to Free & Speedy Legal Aid	<i>Hussainara Khatoon v. Home Secretary, State of Bihar</i> (1979) 3 SCC 816	Incarceration of undertrials for periods exceeding maximum statutory sentence violates due process.
Right to Livelihood & Shelter	<i>Olga Tellis v. Bombay Municipal Corporation</i> (1985) 3 SCC 545	Deprivation of livelihood directly results in the deprivation of life itself.
Right to a Clean & Healthy Environment	<i>M.C. Mehta v. Union of India</i> (Oleum Gas Leak Case, 1987) 1 SCC 395	Developed absolute liability and held clean environment is indispensable for human existence.
Right to Free & Compulsory Education	<i>Unni Krishnan, J.P. v. State of Andhra Pradesh</i> (1993) 1 SCC 645	Catalyzed the 86th Constitutional Amendment adding Article 21A.
Protection against Sexual Harassment	<i>Vishaka v. State of Rajasthan</i> (1997) 6 SCC 241	Laid down binding workplace guidelines in the absence of enacted legislation under Art. 141.
Right to Privacy as Fundamental Right	<i>K.S. Puttaswamy (Retd.) v. Union of India</i> (2017) 10 SCC 1	Nine-judge bench declared informational, bodily, and spatial privacy intrinsic to Art. 21.
Right to Die with Dignity (Passive Euthanasia)	<i>Common Cause (A Regd. Society) v. Union of India</i>	Recognized advance medical directives (living wills) and

(2018) 5 SCC 1

passive euthanasia under Art.
21.

4. CONTEMPORARY ACTIVISM: VERIFIED CURRENT CASE LAWS & DOCTRINAL RESHAPING

In the modern era, the Supreme Court has deployed judicial activism not merely to remediate human rights abuses, but to safeguard electoral transparency, curb executive arbitrariness, preserve democratic constitutionalism, and redefine social equality. The following verified contemporary rulings demonstrate the sophistication, boldness, and doctrinal rigor of modern Indian judicial review.

4.1 Association for Democratic Reforms (ADR) v. Union of India (2024) 5 SCC 1 — Invalidating Electoral Bonds Scheme

In February 2024, a unanimous five-judge Constitution Bench headed by Chief Justice D.Y. Chandrachud struck down the Union Government's Electoral Bond Scheme, 2018, along with corresponding amendments to the Income Tax Act, 1961, the Representation of the People Act, 1951, and the Companies Act, 2013. The Court held that anonymous political contributions infringed upon the voters' fundamental 'Right to Information' under Article 19(1)(a), which is indispensable for participatory democracy. Applying a structured four-pronged proportionality test, the Court rejected the State's justification that donor anonymity was necessary to curb black money. The Court actively ordered the State Bank of India (SBI) to disclose exhaustive data on bond buyers, denominations, and political party recipients to the Election Commission of India for public dissemination—a profound demonstration of judicial activism ensuring transparency in political financing.

4.2 State of Punjab v. Davinder Singh (2024) INSC 562 — Affirming Sub-Classification within Reserved Categories

In August 2024, a landmark seven-judge Constitution Bench overruled the earlier five-judge bench precedent in *E.V. Chinnaiah v. State of Andhra Pradesh* (2005) 1 SCC 394. By a 6:1 majority, the Supreme Court held that State Legislatures possess the constitutional authority under Articles 15(4), 16(4), and 341 to create sub-classifications within Scheduled Castes (SCs) and Scheduled Tribes (STs) to grant preferential quota benefits to the most marginalized, under-represented sub-castes (such as Valmiki and Mazhabi Sikhs). The Court held that sub-classification does not constitute tinkering with the Presidential List under Article 341, but advances substantive equality under Article 14 by preventing creamy-layer cornering of reservation benefits.

4.3 In Re: Directions in the Matter of Demolition of Structures (2024) INSC 866 — Curbing 'Bulldozer Justice'

Addressing the controversial practice of punitive demolitions of houses belonging to accused persons—popularly dubbed 'Bulldozer Justice'—the Supreme Court in November 2024 stepped in with far-reaching pan-India directions under Article 142. A bench comprising Justice B.R. Gavai and Justice K.V. Viswanathan held that the executive cannot act as a judge, declare an accused guilty, and demolish their immovable property. The Court ruled that such state actions violate the Rule of Law, Separation of Powers, and the Right to Shelter under Article 21. Exercising extraordinary activist supervisory power, the Court mandated a mandatory 15-day prior notice, statutory appellate remedies, digital videography of demolitions, and held administrative officers personally liable for illegal demolitions with costs and restitution.

4.4 In Re: Distribution of Essential Supplies and Services During COVID-19 (2021) 7 SCC 772 — Public Health Governance

During the devastating second wave of the COVID-19 pandemic, the Supreme Court initiated suo motu proceedings to manage the acute national crisis involving medical oxygen supplies, vaccine pricing disparities, and essential hospital infrastructure. The Court constituted a National Task Force of medical experts and public health administrators to formulate an equitable oxygen allocation formula and pushed the Union Government to revise its dual-pricing vaccination policy into a unified, free national immunization scheme. While critics argued that this constituted an intrusion into executive resource allocation, the Court defended its intervention under Article 21, stating that courts cannot remain mute spectators when the constitutional right to health and life is imperiled.

4.5 Supriyo @ Supriya Chakraborty v. Union of India (2023) 11 SCC 1 — Drawing the Line on Same-Sex Marriage

In October 2023, a five-judge Constitution Bench rendered a vital judgment illustrating the conscious exercise of Judicial Self-Restraint amidst activist demands. While unanimously affirming that queer individuals enjoy full constitutional protection against discrimination under Articles 14, 15, 19, and 21, the Court refused to read gender-neutral language into the Special Marriage Act, 1954, or judicially create a legal right to marry for same-sex couples. The majority held that altering the definition of civil marriage was a complex legislative policy function falling squarely within the exclusive domain of Parliament. This case demonstrated that the modern Indian Supreme Court recognizes institutional boundaries where statutory rewriting would cross into legislative usurpation.

5. JUDICIAL ACTIVISM VERSUS JUDICIAL OVERREACH: A CRITICAL COMPARATIVE ANALYSIS

While judicial activism is celebrated as a salutary mechanism for vindicating constitutional guarantees, unguided and unrestrained judicial intervention transmutes into 'Judicial Overreach' (also termed Judicial Imperialism or Judicial Adventurism). The distinction between activism

and overreach is fundamentally qualitative, centered upon whether the judiciary is enforcing constitutional commands or usurping primary legislative and executive functions.

Table 2: Doctrinal Comparison — Judicial Restraint, Judicial Activism, and Judicial Overreach

Comparative Parameter	Judicial Self-Restraint	Judicial Activism	Judicial Overreach
Philosophical Objective	Strict adherence to text, original intent, and statutory positivism.	Dynamic interpretation to advance constitutional equity and social justice.	Judicial substitution of executive/legislative policy preferences.
Locus Standi & Procedure	Rigid, traditional common-law standing required.	Liberalized locus standi (PILs, epistolary letters, suo motu action).	Entertaining petitions on abstract policy choices without legal injury.
Separation of Powers	Rigid deference to executive and legislative branches.	Constructive check and balance to remedy administrative paralysis.	Usurpation of core legislative law-making and executive administration.
Remedial Architecture	Declaratory relief, conventional damages, and standard writs.	Continuing Mandamus, expert investigative committees, guidelines.	Imposing taxes, directing budgets, framing statutes, executive micromanagement.
Democratic Accountability	Indirect (relies on elected branches' supremacy).	High constitutional legitimacy grounded in Fundamental Rights protection.	Democratic deficit; unelected judges dictating purely political questions.

5.1 Prominent Instances of Contentious Judicial Overreach

Scholars, constitutional experts, and former judges have frequently critiqued instances where the higher judiciary traversed beyond constitutional adjudication into executive policy-making:

- **The National Highway Liquor Ban (State of Tamil Nadu v. K. Balu, 2017):** The Supreme Court prohibited the sale of liquor within 500 meters of all National and State Highways across India. While motivated by road safety, the order severely impacted

hospitality businesses, state excise revenues, and municipal zoning, causing widespread regulatory confusion until subsequent modifications were made.

- **Mandatory National Anthem in Cinema Halls (Shyam Narayan Chouksey v. Union of India, 2016):** An interim judicial order directed all cinema halls across the country to play the National Anthem before movie screenings, requiring the audience to stand. This order was widely criticized as judicially mandated patriotism before being modified and recalled in 2018.
- **The Judicial Appointment Commission Invalidation (NJAC Judgment / Supreme Court Advocates-on-Record Association v. UOI, 2016):** By striking down the 99th Constitutional Amendment Act and the National Judicial Appointments Commission (NJAC) Act, 2014, the Supreme Court revived the judge-led Collegium System, making the Indian judiciary one of the few legal systems in the world where judges appoint judges without meaningful executive or legislative checks.
- **Interlinking of Rivers Mandate (In Re: Networking of Rivers, 2012):** The Supreme Court directed the Central Government to implement the multi-billion dollar interlinking of rivers project and set up a specialized committee—a domain involving colossal technical, fiscal, environmental, and inter-state federal complexities traditionally belonging to executive planners.

6. PROCEDURAL & CONSTITUTIONAL INSTRUMENTS OF JUDICIAL ACTIVISM

The institutional efficacy of judicial activism in India is sustained through a unique suite of procedural mechanisms, jurisprudential doctrines, and extraordinary constitutional powers:

6.1 Article 142 and Complete Justice

Article 142(1) empowers the Supreme Court to pass any decree or order necessary for 'doing complete justice in any cause or matter pending before it'. Originally intended as an equitable safety-valve for procedural lapses, the Supreme Court transformed Article 142 into an expansive reservoir of substantive power. In *Union Carbide Corporation v. Union of India* (1991) 4 SCC 584, the Court held that statutory prohibitions cannot restrict its plenary power under Article 142 to dispense justice. Similarly, in the *Babri Masjid / Ayodhya Title Dispute* (*M. Siddiq v. Suresh Das*, 2020 1 SCC 1) and the Constitution Bench decision in *Shilpa Sailesh v. Varun Sreenivasan* (2023 8 SCC 349), the Court invoked Article 142 to dissolve marriages directly on the ground of irretrievable breakdown without waiting for the statutory cooling-off period under the Hindu Marriage Act, 1955.

6.2 Continuing Mandamus and Court-Appointed Monitoring Committees

In conventional litigation, judicial involvement concludes upon the delivery of the final decree. However, in cases involving institutional corruption, environmental restoration, and custodial conditions, the Supreme Court developed the innovative device of 'Continuing Mandamus' (*Vineet Narain v. Union of India*, 1998 1 SCC 226). Under Continuing Mandamus, the Court

keeps the writ petition alive, issuing periodic interim directions and requiring investigative bodies (such as the CBI, CVC, or SIT) to submit sealed progress reports directly to the Court, effectively supervising the administrative executive until systemic corrective measures are accomplished.

6.3 Gap-Filling Directives (Judicial Legislation under Article 141)

When legislative vacuums threaten fundamental liberties, the Supreme Court has repeatedly enacted comprehensive regulatory frameworks treated as the 'law of the land' under Article 141 until Parliament enacts statutory legislation. Classic examples include:

- **Vishaka Guidelines (1997):** Governed workplace sexual harassment prevention for sixteen years prior to the enactment of the POSH Act, 2013.
- **D.K. Basu v. State of West Bengal (1997):** Mandated eleven binding procedural safeguards against custodial torture and unlawful arrest, subsequently codified in the Code of Criminal Procedure (CrPC).
- **Prakash Singh v. Union of India (2006):** Directed systemic police reforms, establishment of Police Complaints Authorities, and security of tenure for top law-enforcement commanders.
- **Arnesh Kumar v. State of Bihar (2014):** Formulated strict guidelines to prevent routine, mechanical arrests under Section 498A IPC and offenses punishable with imprisonment up to seven years.

7. CRITICAL EVALUATION: RISKS OF JUDICIAL EMPIRE-BUILDING AND DEMOCRATIC DEFICIT

Despite its indisputable contributions to human rights and constitutional governance, unfettered judicial activism engenders profound institutional hazards that threaten the structural integrity of constitutional democracy:

7.1 Erosion of Separation of Powers and Polycentric Policy Incapacity

As constitutional jurist Lon Fuller famously conceptualized in 'The Forms and Limits of Adjudication' (1978), courts are inherently structured to resolve bipolar adjudicative disputes based on legal evidentiary standards; they lack the institutional capacity, technical expertise, and fiscal machinery to manage complex 'polycentric' socio-economic problems. When a court directs municipal bus fleets to convert to CNG overnight (*M.C. Mehta v. Union of India*, 2002) or mandates environmental zoning caps, it sets off multi-dimensional economic repercussions that affect employment, state expenditure, and public transport infrastructure without possessing fiscal accountability.

7.2 Backlog, Institutional Overburden, and Neglect of Core Appellate Functions

The Indian judicial hierarchy faces a crippling pendency crisis, with over 80,000 cases pending before the Supreme Court and more than 5.1 crore cases pending across the National Judicial

Grid (NJDG). Excessive judicial immersion in public interest litigation, governance management, and political disputes frequently diverts precious judicial time away from core civil, criminal, and commercial appellate dockets, exacerbating systemic delays for ordinary litigants seeking everyday justice.

7.3 The Peril of Subjectivity: Justice Dependent on the 'Judge's Foot'

Unlike statutory rules, judicial activism often hinges upon the personal ideological leanings, social predilections, and judicial philosophy of individual roster judges. This creates legal uncertainty, unpredictability, and subjective jurisprudence—evoking the historic English critique by John Selden that equity varies according to the length of the Chancellor's foot. Without objective institutional thresholds, PILs risk degenerating into 'Publicity Interest Litigation', 'Pecuniary Interest Litigation', or 'Political Interest Litigation'.

8. NORMATIVE CANONS FOR BALANCED JURISPRUDENCE & JUDICIAL SELF-RESTRAINT

To ensure that the Supreme Court remains a transformative sentinel without undermining democratic institutions, a principled paradigm of 'Restrained Activism' or 'Constitutional Catalysis' must be cultivated. The author proposes the following institutional canons:

- **The Canon of Policy Deference:** Courts must strictly distinguish between the constitutionality of a law and its wisdom. Where a policy choice does not violate fundamental rights or statutory mandates, the judiciary must defer to executive and legislative discretion, as reiterated in *State of Jharkhand v. Ashok Kumar Dangi* (2011).
- **Institutional Polycentric Screening:** Prior to issuing sweeping regulatory orders involving fiscal, technical, or environmental allocation, courts must mandatorily commission comprehensive socio-economic impact assessments through independent statutory commissions rather than ad-hoc amicus curiae opinions.
- **Strict Gatekeeping on PIL Abuse:** The Supreme Court's guidelines laid down in *State of Uttaranchal v. Balwant Singh Chaufal* (2010) 3 SCC 402 regarding genuine locus standi verification, imposition of exemplary costs on frivolous PILs, and bar against political proxy litigation must be rigorously enforced across all benches.
- **Self-Imposed Sunset Clauses on Interim Directives:** When the judiciary issues gap-filling guidelines under Article 141, it should embed explicit temporal limits and formally urge Parliament to enact formal legislation, ensuring that interim judicial rules do not permanently supplant statutory codification.
- **Transparency and Objective Collegium Reform:** To reinforce institutional legitimacy and counter accusations of judicial unaccountability, the higher judiciary must adopt transparent criteria, public disclosure of criteria, and objective merit-cum-seniority evaluations in higher judicial appointments.

9. CONCLUSION

Judicial activism in India has undoubtedly served as a glorious instrument of social transformation, structural justice, and constitutional morality. In a developing post-colonial society characterized by acute socio-economic disparities, periodic legislative gridlock, and administrative apathy, the proactive stance of the Supreme Court and High Courts has redeemed the promise of the Preamble for millions of disenfranchised citizens. From liberating bonded laborers to humanizing custodial conditions, and from safeguarding environmental ecology to enforcing electoral transparency, the judiciary has stood tall as the unyielding guardian of constitutional values.

Nevertheless, judicial activism is a potent medicine that must be administered with surgical precision. If used indiscriminately, it produces institutional toxicity—eroding the doctrine of Separation of Powers, inducing democratic atrophy in elected branches, and breeding judicial unaccountability. The ultimate strength of the judiciary rests neither upon the sword nor the purse, but upon public trust, moral authority, and fidelity to the Constitution. The higher judiciary must therefore master the delicate art of constitutional equilibrium: maintaining courageous activism when Fundamental Rights are infringed, while practicing principled self-restraint where policy and governance belong to the people's elected representatives.

10. REFERENCES AND BIBLIOGRAPHY

- A.K. Gopalan v. State of Madras, AIR 1950 SC 27.
- Additional District Magistrate, Jabalpur v. Shivkant Shukla, (1976) 2 SCC 521.
- Arnesh Kumar v. State of Bihar, (2014) 8 SCC 273.
- Association for Democratic Reforms (ADR) v. Union of India, (2024) 5 SCC 1 : 2024 INSC 113.
- Bandhua Mukti Morcha v. Union of India, (1984) 3 SCC 161.
- Common Cause (A Regd. Society) v. Union of India, (2018) 5 SCC 1.
- D.K. Basu v. State of West Bengal, (1997) 1 SCC 416.
- Francis Coralie Mullin v. Administrator, Union Territory of Delhi, (1981) 1 SCC 608.
- Hussainara Khatoon v. Home Secretary, State of Bihar, (1979) 3 SCC 816.
- In Re: Directions in the Matter of Demolition of Structures, 2024 INSC 866.
- In Re: Distribution of Essential Supplies and Services During COVID-19 Pandemic, (2021) 7 SCC 772.
- In Re: Networking of Rivers, (2012) 4 SCC 51.
- K.S. Puttaswamy (Retd.) v. Union of India, (2017) 10 SCC 1.
- Kesavananda Bharati v. State of Kerala, (1973) 4 SCC 225 : AIR 1973 SC 1461.
- M.C. Mehta v. Union of India (Oleum Gas Leak Case), (1987) 1 SCC 395.
- M. Siddiq (D) Thr. Lrs. v. Mahant Suresh Das & Ors. (Ayodhya Dispute), (2020) 1 SCC 1.
- Madhav Rao Scindia v. Union of India, (1971) 1 SCC 85.
- Maneka Gandhi v. Union of India, (1978) 1 SCC 248 : AIR 1978 SC 597.
- Olga Tellis v. Bombay Municipal Corporation, (1985) 3 SCC 545.
- Prakash Singh v. Union of India, (2006) 8 SCC 1.

- R.C. Cooper v. Union of India, (1970) 1 SCC 248.
- S.P. Gupta v. Union of India (First Judges Case), 1981 Supp SCC 87 : AIR 1982 SC 149.
- Shyam Narayan Chouksey v. Union of India, (2018) 2 SCC 144.
- State of Madras v. V.G. Row, AIR 1952 SC 196.
- State of Punjab v. Davinder Singh, 2024 INSC 562 : 2024 SCC OnLine SC 1860.
- State of Tamil Nadu v. K. Balu, (2017) 2 SCC 281.
- State of Uttaranchal v. Balwant Singh Chaufal, (2010) 3 SCC 402.
- Supreme Court Advocates-on-Record Association v. Union of India (NJAC Case), (2016) 5 SCC 1.
- Supriyo @ Supriya Chakraborty v. Union of India, (2023) 11 SCC 1 : 2023 INSC 920.
- Unni Krishnan, J.P. v. State of Andhra Pradesh, (1993) 1 SCC 645.
- Vineet Narain v. Union of India, (1998) 1 SCC 226.
- Vishaka v. State of Rajasthan, (1997) 6 SCC 241.
- Austin, G. (1999). Working a Democratic Constitution: A History of the Indian Experience. Oxford University Press.
- Baxi, U. (1985). Taking Suffering Seriously: Social Action Litigation in the Supreme Court of India. Third World Legal Studies, 4(1), 107-132.
- Bhagwati, P. N. (1984). Judicial Activism and Public Interest Litigation. Columbia Journal of Transnational Law, 23, 561-577.
- Fuller, L. L. (1978). The Forms and Limits of Adjudication. Harvard Law Review, 92(2), 353-409.
- Kirpal, B. N., Desai, A. H., Subramaniam, G., Dhavan, R., & Ramachandran, R. (Eds.). (2000). Supreme But Not Infallible: Essays in Honour of the Supreme Court of India. Oxford University Press.
- Montesquieu, C. de. (1748). De l'esprit des lois (The Spirit of the Laws). Geneva.
- Sathe, S. P. (2002). Judicial Activism in India: Transgressing Borders and Enforcing Rights. Oxford University Press.
- Schlesinger, A. M., Jr. (1947). The Supreme Court: 1947. Fortune, 35(1), 73-79.
- Seervai, H. M. (2005). Constitutional Law of India (4th ed., Vols. 1–3). Universal Law Publishing.