

INNOVATIVE RESEARCH ON JUDICIAL INDEPENDENCE AND OVERREACH IN INDIA

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ABSTRACT

The Indian judiciary occupies a central position in the constitutional architecture of the Republic, functioning as the guardian of the Constitution, protector of fundamental rights, and arbiter of institutional boundaries. Through transformative judgments such as *Keshavananda Bharati v. State of Kerala* (Basic Structure doctrine), *Maneka Gandhi v. Union of India* (expansion of Article 21), and *Vishaka v. State of Rajasthan* (judicial guidelines on workplace harassment), the Supreme Court has significantly shaped India's democratic and rights-based framework. Judicial activism, particularly in the post-Emergency era, expanded access to justice through Public Interest Litigation and strengthened accountability where executive or legislative inertia prevailed. This article critically examines the constitutional role of the judiciary, the evolution and safeguards of judicial independence, the rise of judicial activism, the concerns surrounding overreach, and the urgent need for structural, procedural, and transparency reforms. It argues that while judicial independence is indispensable in a diverse and politically dynamic democracy like India, it must coexist with accountability, efficiency, and institutional restraint. Ultimately, preserving public trust through timely justice and constitutional fidelity is essential for sustaining the legitimacy of India's judicial system.

Keywords : Judicial Independence; Judicial Activism, Article 142; Public Interest Litigation (PIL); Collegiums System.

The Indian judiciary is often described as the “**Guardian of the Constitution**” and the “**Last hope of the common man.**” It protects rights, checks abuse of power, and upholds democratic values. Over the years, courts have expanded freedoms, corrected executive overreach, and strengthened accountability. Landmark judgment on privacy, equality, free speech, and social justices how deeply the judiciary influences India's political and social life.

However, this image of strength hides growing concerns. India today faces a **serious justice delivery crisis**, with over five core cases pending across courts. Citizens often wait years or decades to get judgments, turning justice into an expensive struggle. “**Justice delayed is justice denied**” has become reality for many victims, under trials, families, and businesses.

At the same time, debates around **judicial over reach and separation of powers** have intensified. Courts are accused of stepping into policy-making, administrative decisions, or even striking down laws passed by the sovereign parliament, asses in the **NJAC case**. The broad use of **Article 142 (“complete justice”)** has sparked concerns about unelected authority shaping governance. While judicial activism has protected society when institutions failed, critics warn that excess intervention may weaken legitimacy and imbalance constitutional powers.

Thus, the Indian judiciary standpatter crossroads—admired for protecting democracy, yet questioned for delay and overreach. Understanding its strengths, challenges, and reform needs is essential to ensure India’s justice system remains independent, credible, and accessible to every citizen.

I. Constitutional role of judiciary

1. Upholding the Constitution

The judiciary acts as the guardian of the Constitution. It interprets constitutional provisions and ensures that every law, policy or action taken by the government follows constitutional values. This maintains India’s democratic structure and prevents any authority from violating basic principles like liberty, equality or justice.

2. Protecting Fundamental Rights

One of the most important roles of judiciary is to defend people’s rights. Citizens can directly approach courts if their rights are violated. By issuing writs and striking down unconstitutional actions, the judiciary ensures that individuals are not denied freedom, dignity, or justice by the state.

3. Ensuring Rule of Law

The judiciary maintains that the law applies equally to everyone—whether a citizen, official, or leader. By deciding disputes fairly and punishing wrongdoing, courts ensure society is governed by legal principles, not personal power or influence. This strengthens public trust in governance.

4. Checking Abuse of Power

The judiciary works as a watchdog over the legislature and executive. Through judicial review, it can invalidate laws, actions or orders that go beyond constitutional limits. This prevents arbitrary rule, corruption, and misuse of authority, ensuring governance remains accountable.

5. Delivering Justice and Conflict Resolution

Courts adjudicate criminal, civil, family, property, and business disputes. By providing peaceful and lawful settlement of conflicts, the judiciary maintains social order and stabilizes society. Its decisions restore rights, punish offenders, and uphold fairness.

II. JUDICIAL INDEPENDENCE

Judicial independence is not merely an institutional privilege, it is a constitutional necessity. In a democracy governed by rule of law, courts must function free from external pressure, political influence, or personal bias. Without independence, the judiciary cannot protect fundamental rights, enforce constitutional limits, or check abuse of power.

In India’s constitutional design, judicial independence was consciously embedded as a structural safeguard against authoritarianism and majoritarian dominance. The framers of the Constitution understood that political majorities may change, governments may act arbitrarily, and public opinion may fluctuate. Therefore, they created an institution insulated from electoral politics — an institution meant to stand firm when others falter.

Judicial independence, therefore, protects not judges, but citizens.

1. Meaning and Dimensions of Judicial Independence

Judicial independence operates at three interconnected levels:

(a) Institutional Independence

This refers to the separation of judiciary from the executive and legislature. Courts must not be controlled, directed, or pressured by political authorities. Administrative functioning, appointment processes, and adjudicatory decisions must remain insulated from executive dominance.

(b) Decisional Independence

Judges must be free to decide cases based solely on law and conscience. Their judgments must not be influenced by political considerations, public opinion, media pressure, or fear of consequences.

A judge who fears transfer, removal, or career damage cannot deliver impartial justice.

(c) Personal Independence

Security of tenure, fixed salaries, and protection from arbitrary removal ensure that judges are not financially or professionally dependent on political actors.

2. Constitutional Safeguards for Judicial Independence

(1) Security of Tenure

Judges of the Supreme Court and High Courts cannot be removed except through impeachment by Parliament on grounds of proved misbehavior or incapacity. The removal process requires special majority in both Houses, making it extremely difficult.

This ensures judges are not dismissed for unpopular decisions.

(2) Financial Security

Judges salaries are charged on the Consolidated Fund of India and cannot be reduced during their tenure (except during financial emergency). This prevents economic pressure.

(3) Separation from Executive

Article 50 directs the State to separate judiciary from executive in public services of the State. Though part of Directive Principles, it reflects constitutional intent.

(4) Power of Judicial Review

The power to strike down laws ensures judiciary is not subordinate to legislature. Without judicial review, independence would be symbolic.

(5) Contempt Power

Courts can punish for contempt to protect authority and dignity of judicial process.

These safeguards collectively create institutional insulation.

3. Historical Evolution of Judicial Independence

Judicial independence in India was not always secure.

- During the Emergency (1975–77), constitutional rights were suspended, and judicial functioning faced immense pressure. The controversial decision in **ADM Jabalpur** case exposed vulnerabilities.
- After the Emergency, the judiciary strengthened its independence through constitutional interpretation.

- In **Keshavananda Bharati v. State of Kerala**, judicial review was declared part of basic structure. Later through a series of “Judges Cases,” the Supreme Court evolved the collegium system, asserting that judicial appointments must remain primarily within judiciary to protect independence. This marked a shift from executive-dominant appointments to judicial primacy. Supporters saw this as protection against political interference. Critics saw it as judicial self-selection.

4. Collegium System and Judicial appointments

The collegium system gives senior judges authority to recommend appointments and transfers of judges.

The Reasons:

- Executive involvement may compromise independence.
- Political governments may prefer ideologically aligned judges.
- Judicial control ensures autonomy.

However, the system is not mentioned explicitly in the Constitution; it evolved through judicial interpretation.

This has led to criticism:

- Lack of transparency
- No clear evaluation criteria
- Perception of favoritism

The striking down of the **NJAC** in *Supreme Court Advocates-on-Record Association v. Union of India* reinforced judicial supremacy in appointments. The Court held that independence is part of basic structure and cannot be diluted. This decision protected autonomy but intensified debate over accountability.

5. Independence vs Accountability:

Judicial independence must not become judicial insulation.

Unlike the executive and legislature:

- Judges are not elected.
- They are not subject to periodic public accountability.
- Removal is rare.

Therefore, if independence is not balanced with transparency, it risks eroding public trust.

A judiciary that demands accountability from others must also maintain internal accountability.

6. Threats to Judicial Independence

Judicial independence faces both external and internal threats.

External Threats

- Political criticism or pressure
- Delays in appointment approvals
- Executive control over post-retirement positions

- Budgetary dependence

Internal Threats

- Lack of transparency in appointments
- Allegations of favoritism
- Delay in disciplinary actions

7. Post-Retirement Appointments and Perception Issues

Many retired judges accept positions in commissions, tribunals, or gubernatorial roles.

While experience is valuable, frequent post-retirement appointments raise concerns:

- Perception of bias in judgments before retirement

Even if actual bias does not exist, perception affects public trust. Institutional reforms must address this to protect public confidence.

8. Why Judicial Independence Matters More in India

India is socially diverse and politically dynamic. Majoritarian politics can sometimes dominate legislative processes.

In such a context, independent courts:

- Protect minority rights
- Safeguard federal balance
- Check arbitrary detention
- Ensure electoral fairness

Judicial independence becomes especially crucial in polarized environments.

Without it, constitutional guarantees may become fragile.

IV. Judicial Activism:

Judicial activism in India did not emerge as an accident. It evolved as a response to institutional vacuum. During the late 1970s and 1980s, the executive was perceived as weak, corrupt, or indifferent in protecting rights. Parliament was often dominated by ruling majorities. In this context, the judiciary stepped forward.

1. Evolution of Judicial Activism

Judicial activism began with procedural relaxation. Traditionally, only an aggrieved person could approach courts. However, in the post-Emergency period, judges expanded **locus standi** to allow social activists and public-spirited citizens to file petitions on behalf of marginalized groups.

This innovation gave birth to **Public Interest Litigation (PIL)**.

Through PILs, courts intervened in:

- Bonded labour cases
- Prison conditions
- Environmental degradation
- Child labour

- Corruption investigations

The judiciary transformed itself from a passive adjudicator into an active protector of social justice.

This was often called the “epistolary jurisdiction” era — where even letters were treated as writ petitions.

Judicial activism expanded Article 21 into a source of multiple rights:

- Right to livelihood
- Right to clean environment
- Right to legal aid
- Right to speedy trial

These expansions strengthened constitutional democracy.

2. Justification for Judicial Activism

Judicial activism in India has been defended on several grounds:

(a) Failure of Other Institutions

When executive agencies fail to implement laws, and Parliament does not act promptly, courts intervene to protect constitutional values.

(b) Protection of Vulnerable Groups

Marginalized communities often lack political voice. Courts provide them constitutional remedies.

(c) Constitutional Supremacy

The Constitution is supreme, not Parliament. Courts must intervene if constitutional principles are violated.

(d) Moral Legitimacy

Courts derive legitimacy from reasoned judgments, not electoral popularity. Therefore, they can take unpopular but constitutionally correct decisions.

3. Expansion into Governance

Over time, activism expanded into areas that resemble policymaking.

Courts have:

- Ordered environmental bans
- Regulated vehicular standards
- Directed police reforms
- Monitored corruption investigations
- Managed crisis situations like oxygen supply during COVID

In several instances, courts have created guidelines in absence of legislation.

For example, in the absence of statutory framework on sexual harassment, the Supreme Court framed guidelines in **Vishaka v. State of Rajasthan**. These guidelines functioned as law until Parliament enacted legislation.

Supporters argue such intervention was necessary to fill legislative vacuum.

Critics argue that repeated intervention normalizes judicial lawmaking.

4. Judicial Overreach (Criticism)

Judicial overreach refers to situations where courts:

- Enter political questions
- Substitute administrative decisions
- Interfere in policy implementation

The concern is not about protection of rights, it is about institutional balance. When courts dictate how policies must be implemented, allocate resources, or supervise executive tasks continuously, they risk assuming administrative roles.

Democratic accountability lies with elected representatives. Judges are unelected and not directly answerable to the public.

If courts consistently override policy decisions, it may create:

- Institutional friction
- Democratic imbalance
- Perception of judicial supremacy

Judicial activism is praised when it corrects injustice. It is criticized when it substitutes governance.

5. The Need for Judicial Restraint

Judicial restraint does not mean passivity. It means:

- Intervening only when constitutional violation is clear
- Respecting legislative competence
- Avoiding micro-management of executive tasks

A court that intervenes selectively and proportionately commands greater respect than one that intervenes routinely.

6. Criticisms of Judicial Overreach and Misuse of Article 142 (With Case Studies)

Judicial overreach becomes controversial when courts move from interpretation to active governance. While activism has strengthened rights, several judgments have attracted criticism for disturbing institutional balance. The following points highlight major criticisms with case references:

• 1. Interference in Judicial Appointments

Case: *Supreme Court Advocates-on-Record Association v. Union of India (2015)*

The Supreme Court struck down the 99th Constitutional Amendment establishing the **National Judicial Appointments Commission (NJAC)**. Parliament had passed it with near-unanimous support. Critics argued that the Court protected its own collegium system and ignored democratic will. They claimed this amounted to institutional self-preservation and reduced scope for accountability in appointments.

• 2. Judicial Lawmaking in Absence of Legislation

Case: *Vishaka v. State of Rajasthan (1997)*

The Court framed guidelines on sexual harassment at the workplace due to absence of legislation. While widely praised, critics argue that framing binding norms resembles legislative function. Though Parliament later enacted a law, the judgment raised debate about whether courts should create policy frameworks.

• 3. Expansive Use of Article 142

Case: *Union Carbide (Bhopal Gas Tragedy Settlement, 1989)*

The Supreme Court used Article 142 to approve a settlement between Union Carbide and the Government of India. Critics argued that the compensation amount was inadequate and that criminal liability was diluted. They claimed that invoking “complete justice” bypassed detailed judicial scrutiny.

• 4. Continuous Monitoring of Executive Functions

Example: Monitoring of CBI Investigations & Environmental Orders

In several corruption and environmental cases, courts have directly supervised investigations and administrative implementation. Critics argue that courts lack administrative expertise and that such supervision turns judiciary into an executive authority.

• 5. Policy Intervention in Governance

Example: Firecracker bans and COVID oxygen management orders

While motivated by public welfare, detailed administrative directions on resource allocation raised concerns about courts entering executive territory.

VI. Huge pendency:

Total Pending Cases-

- Over 5 crore cases pending, many cases take upto 5-15 years for final disposal.
- **Subordinate Courts:** Around 4.5 Crores pending.
- **High Courts:** Around 60 lakh cases pending.
- **Supreme Court:** Around 70,000+ cases pending; Constitutional matters may take 3-5 years for disposal.

These delays significantly affect litigants and weaken timely justice delivery.

V. Needed Reforms:

Reform is not about weakening judiciary. It is about strengthening it responsibly.

1. Structural Reforms

(a) Increase Judge Strength

India needs substantial increase in judges at all levels. Filling vacancies promptly is essential.

(b) All India Judicial Service

Creating a national judicial service can improve quality and uniformity in recruitment for subordinate judiciary.

(c) Strengthen District Courts

More than 85% of cases are in lower courts. Reforms must focus at grassroots level.

Without strong district courts, constitutional justice remains incomplete.

2. Procedural Reforms

(a) Strict Case Management

Introduce time-bound hearings and restrict adjournments.

(b) Promote ADR (alternative dispute resolution)

Encourage mediation, arbitration and lok adalats to reduce court burden.

(c) Pre-Litigation Settlement

Government departments must resolve disputes administratively before approaching courts.

3. Technological Reforms

Digitization of records, e-filing, virtual hearings, and AI-based case tracking can improve efficiency.

Technology reduces paperwork delays and increases transparency.

However, digital reforms must ensure access for rural and poor litigants.

4. Appointment and Transparency Reform

Collegium system requires transparency:

- Publish selection criteria
- Record reasons for appointment and rejection
- Institutionalize evaluation mechanisms

Independence must coexist with public confidence.

5. Accountability Mechanisms

- Establish internal ethics committees
- Strengthen judicial performance review
- Ensure financial transparency

Accountability strengthens independence — it does not weaken it.

6. Reducing Government Litigation

Government should not appeal every adverse order automatically for political gains.

Reducing state-led litigation can significantly cut pendency.

7. Cultural Reform Within Judiciary

Judicial culture must evolve toward:

- Time discipline
- Institutional humility
- Sensitivity toward litigants
- Respect for separation of powers

Reform is not only structural — it is behavioral.

CONCLUSION

The Indian judiciary occupies a unique and powerful position in the constitutional framework. It is not merely one branch among three, it is the guardian of constitution, the protector of fundamental rights, and the final interpreter of law. From evolving the Basic Structure doctrine to expanding the scope of Article 21, the judiciary has shaped the moral and democratic identity of the Republic. In moments of political crisis and institutional failure, courts have often stood firm and safeguarded liberty. Yet, the strength of an institution is tested not only by landmark judgments but by everyday delivery of justice. The reality of more than 5 crore pending cases reveals a deep structural strain. For millions of citizens, justice is slow, expensive, and uncertain. A right delayed loses its meaning. If courts cannot ensure timely resolution, public trust gradually weakens, regardless of constitutional achievements.

Simultaneously, the growing debate on judicial overreach highlights the delicate balance of separation of powers. While judicial activism has corrected executive inaction and legislative gaps, excessive intervention into policy domains risks blurring constitutional boundaries. Article 142, though intended for exceptional circumstances, must be exercised with restraint. Courts derive legitimacy from constitutional wisdom, not institutional dominance.

Judicial independence remains essential, but independence must walk alongside accountability and transparency. The collegium system must inspire confidence. Appointments must be fair and credible. Internal discipline and ethical standards must be robust. Institutional humility strengthens authority; it does not diminish it.

The future of the Indian judiciary depends on reform and self-correction. Increasing judge strength, reducing government litigation, modernizing infrastructure, and promoting alternative dispute resolution are urgent necessities. Equally important is judicial restraint—intervening decisively when constitutional values are threatened, but respecting democratic roles in matters of policy.

India does not need judicial supremacy; it needs constitutional supremacy.

Ultimately, the legitimacy of the judiciary rests on public trust. Preserving that trust through efficiency, fairness, and constitutional fidelity will determine whether the judiciary continues to be not only the guardian of the Constitution, but the living conscience of Indian democracy.

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