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JUDICIAL ACTIVISM AS AN INSTRUMENT OF ACCOUNTABILITY IN INDIA: AN ANALYSIS THROUGH RECENT LANDMARK JUDGMENTS

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I. ABSTRACT

The recent landmark judgment in The State of Tamil Nadu vs. Governor of Tamil Nadu & Anr., 2025, wherein the Hon'ble Supreme Court set a deadline for the President and Governors to act upon Bills within a prescribed timeline, has sparked intense debates on the separation of powers and judicial overreach. Judicial activism and the doctrine of separation of powers in India have been subjects of intense debate for decades. Through judicial activism, the Judiciary safeguards the constitutional framework and the rights of the people from the arbitrary exercise of power by the other branches of government. Hence, its role becomes imperative, although it often faces critical remarks and power struggles from the Legislature and the Executive. This Research Article examines the concept of Judicial Activism through the lens of recent landmark judgments. It discusses the constitutional perspective of judicial activism and the separation of powers. It delves into how judicial activism is an instrument for safeguarding constitutional values and helps establish good governance. This research paper highlights the role of judicial activism in laying the foundation for accountable government, safeguarding the rights of the people, and upholding constitutional values in this modern era through the lens of Constitutional Provisions and recent landmark judgments. It further highlights how it led to the formulation of welfare-oriented policies and legislation aimed at advocating the common good and fostering good governance, irrespective of the criticism it faces. The research article employed doctrinal and secondary legal databases to conduct this research.

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II. KEY WORDS

Judicial Activism, Judicial Review, Separation of powers, good governance, Judicial Overreach, State of Tamil Nadu vs. Governor of Tamil Nadu & Anr., Article 142, Constitutional Courts.

III. BACKGROUND

"We never bargained for democracy for this day. President being called upon to decide in a time-bound manner, and if not, becomes law. So, we have judges who will legislate, who will perform executive functions, which will act as super-parliament, and absolutely have no accountability because law of the land does not apply to them,"

The above statement was made by the former Vice President of India, Jagdeep Dhankhar, while addressing the valedictory ceremony of the 6th Rajya Sabha Internship Program held in New Delhi on 17th April 2025. This remark sparked and reignited the long-standing debate on judicial activism and the separation of powers. The Hon'ble Vice-President referred to the recent landmark ruling of the Hon'ble Supreme Court of India in the case of State of Tamil Nadu v. Governor of Tamil Nadu and Anr, 2025. The Hon'ble Supreme Court set the deadline for the President and Governors to act upon the bills presented under Article 200 of the Indian Constitution.

This is not the first time that the judiciary came under the scrutiny of the public domain for its bold and seminal judgments, such discourse has been prevalent since the emergence of an era in which the judiciary began acting proactively, moving beyond merely interpreting the law as it is to propounding principle aimed at upholding constitutional framework and establishing good governance. The proactive role of the judiciary gained momentum, particularly after the emergency period, especially after the ruling of *ADM Jabalpur vs. Shivkant Shukla*.²

The judges' primary role is to interpret the law and lay down principles and guidelines to protect individual liberty and safeguard the constitutional framework and the people

² ADM Jabalpur v Shivkant Shukla (1976) 2 SCC 521

from the arbitrary exercise of power by the legislature or executive. However, the judges must refrain from encroaching upon the exclusive domain of the legislature or executive; however, it is a significant challenge to draw a line between the permissible extent of the judicial directives and enactment of law which falls within the exclusive domain of the legislature.

The independence of the judiciary from the legislature and executive is one of the fundamental tenets of the rule of law. It is one of the basic features of the Indian Constitution, as held by *Kesavananda Bharti v. State of Kerala*. In essence, three organs of the government- the legislature, executive, and the judiciary- are independent in their respective spheres; they perform distinct functions as envisaged by the doctrine of separation of powers. In the landmark Judgment of *State of T.N. v. State of Kerala and Anr.*³ In Paragraph 126.1, The Constitution bench of Hon'ble Supreme court rightly said that *"Even without express provision of the separation of powers, the doctrine of separation of powers is an entrenched principle in the Constitution of India. The doctrine of separation of powers informs the Indian constitutional structure and it is an essential constituent of Rule of law. In other words, the doctrine of separation of power though not expressly engrafted in the Constitution, its sweep, operation and visibility are apparent from the scheme of Indian Constitution. Constitution has made demarcation, without drawing formal lines between the three organs -- legislature, executive and judiciary. In that sense, even in the absence of express provision for separation of powers, the separation of powers between the legislature, executive and judiciary is not different from the Constitutions of the countries which contain express provision for separation of power."*⁴

It is imperative to note that to strengthen the country's governance, better coordination among all three is always essential for good governance. Although their functions are categorized distinctly, they do not function in isolation. Instead, they perform independently to rule out bias and protect people's liberty.

³ *State of Tamil Nadu v State of Kerala* (2014) 12 SCC 696

⁴ *Supra* Note 3.

The Hon'ble Supreme court of India in the landmark case of Rai ***Sahib Ram Jawaya Kapur and Ors. Vs. The State of Punjab***.⁵ Held that “*The Indian Constitution has not indeed recognized the doctrine of separation of powers in its absolute rigidity but the functions of the different parts or branches of the Government have been sufficiently differentiated and consequently it can very well be said that our Constitution does not contemplate assumption, by one organ or part of the State, of functions that essentially belong to another.*”

Judicial activism is not just a tool to transform the legal fraternity, but more importantly, to effectively uphold constitutional values. India has witnessed how this tool has shaped the Indian constitution. It is the outcome of judicial activism that we can file a PIL (public interest litigation), one of the most crucial and indispensable mechanisms of our modern era, and right to privacy as a fundamental right under Article 21⁶ in today's digital landscape.

IV. INTRODUCTION

The concept of judicial activism is one of the most debated topics in the Indian context, and it has affected the power relations between the branches of the state. The Constitution of India, supreme law of the land, has vested powers and functions to all the three branches i.e. the Legislature, the Executive and the Judiciary and all these branches are bound to exercise their powers within the constitutional framework As enshrined in the constitutional scheme; the judiciary is the guardian and protector of the fundamental rights of the people of India granted By Part III of the Constitution.⁷

The enduring power struggle between the two constitutional institutions, the Legislature and the Judiciary, is not new. The three constitutional organs of the government are independent in their respective spheres, perform distinct functions, and cannot encroach upon one another's roles to establish good governance and uphold the sanctity of the

⁵ Ram Jawaya Kapur v State of Punjab AIR 1955 SC 549

⁶ Constitution of India 1950, Art. 21

⁷ Judicial Activism in India: A festschrift in honour of Justice V. R Krishna Iyer, by Dr. Lokendra Malik, Universal Law Publishing Co. pvt. Ltd. Lokendra Malik, Judicial Activism in India: A Festschrift in Honour of Justice V R Krishna Iyer (New Delhi :Universal Law Publishing Co Pvt Ltd, 2013)

Constitution. However, the Judiciary, notably the third independent organ, plays a pivotal role in upholding constitutional values and ensuring checks and balances over the other organs of the government. Indian federalism is inherently unique; it has not been incorporated with absolute rigidity into the Indian Constitution. Instead, it includes a quasi-federal structure, and as a result, we often see constitutional discourse over the separation of powers and judicial overreach.

Through this research Article, we will explore how judicial activism serves as an instrument of good governance with reference to constitutional provisions and the most recent judgments, and how it has evolved over the period to strengthen the constitutional framework and protect the fundamental rights of citizens of India. This paper will also examine recent landmark judgments wherein the Hon'ble Supreme Court has acted in the people's best interest by exercising judicial activism.

A. Research Questions

The research questions this paper seeks to answer include:

1. How does judicial activism serve as a mechanism for governmental accountability and ensure good governance?
2. Whether the constitution of India incorporates the idea of judicial activism in India?
3. How have recent landmark judgments shaped the doctrine of separation of powers?

B. Research Methodology

1. **Research Design:** This paper has employed doctrinal legal research that relies on secondary data such as Journal Articles, Constitutional Provisions and their interpretation, Academic Textbooks, Recent Judicial Pronouncements, etc. It primarily focuses on qualitative data. This paper has employed doctrinal legal research that relies on secondary data such as Journal Articles, Constitutional Provisions and their interpretation, Academic Textbooks, Recent Judicial

Pronouncements, etc. It primarily focuses on qualitative data. This paper has employed doctrinal legal research that relies on secondary data such as Journal Articles, Constitutional Provisions and their interpretation, Academic Textbooks, Recent Judicial Pronouncements, etc.

- 2. Nature and Scope of the Research:** This research paper is primarily based on theoretical and analytical aspects of constitutional provisions and Judicial Interpretation concerning Judicial Review and Judicial Activism in India. It primarily focuses on qualitative data. It examines the Constitutional Framework for judicial review in India. Furthermore, it delves into the aspect's separation of powers and judicial activism. It delves into the most recent landmark judgments that highlight the Proactive role of the Judiciary in upholding constitutional values. The research paper highlights the recent incidents of judicial activism in India.

The Scope of Study is confined to the Legal Position in India.

3. Sources of Data:

Primary Sources: The primary sources are the basis of this research article, and it includes:

- Constitutional provisions relevant to the study.
- Statutory enactments, rules, regulations, and notifications.
- Judicial pronouncements from the Supreme Court, High Courts, of India

Secondary Sources: Apart from primary sources the secondary sources have been used to critically assess the opinions of scholars with respect to status of judicial Activism and related aspects that include academic textbooks, Peer-reviewed law journals and articles, Reports and government publications. Authentic online legal databases, including SCC Online Manupatra, HeinOnline, JSTOR, and other E-journals.

V. JUDICIAL REVIEW AND SEPARATION OF POWERS

Unlike the American constitution, which under article III section 1 declares that *“the judicial power of the United States of American shall be vested in one Supreme Court and in such*

inferior courts as the congress may from time to time ordain and establish,” the Indian constitution does not have any such express provision to that effect.⁸

Similarly, one can look through the lens of **Article 50**⁹ placed in Part IV (Directive Principles of State policy), of the Constitution of India, it talks about “**Separation of judiciary from executive**”; The State shall take steps to separate the judiciary from the executive in the public services of the State.¹⁰ In the case of *Union of India v. Sankalchand Himatlal Sheth*.¹¹ (*Five Judges Bench*), Hon’ble Chief Justice Y.V Chandrachud stated that “*Having envisaged that the judiciary, which ought to act as a bastion of the rights and freedom of the people, must be immune from the influence and interference of the executive, the Constituent Assembly gave to that concept a concrete form by making various provisions to secure and safeguard the independence of the judiciary. Article 50 of the Constitution, which contains a Directive Principle of State Policy, provides that the State shall take steps to separate the judiciary from the executive in the public services of the State.*”¹²

Although a directory provision, it acts as a guiding principle for states, it is not enforceable in the court of law. It is one of the imperative provisions of the Indian Constitution that explicitly makes reference to the separation of powers between the executive and the Judiciary to maintain judicial Independence and prevent the concentration of powers, and conflict of interest. It strengthens democracy and aims to prevent the overlapping judicial and executive functions that tend to boost public confidence in constitutional democracy.

The framers of the Constitution gave enormous power of judicial review to the constitutional courts of India, especially in safeguarding fundamental rights of citizens and constitutional values; they could never have envisaged such enormous growth of the

⁸ However, Article 53(1) of the Constitution of India 1950 provides that “the executive power of the Union shall be vested in the President and shall be exercised by him either directly or through officers subordinate to him in accordance with this Constitution.”

⁹ Constitution of India 1950, art 50.

¹⁰ Ibid

¹¹ *Union of India v. Sankalchand Himatlal Sheth*. (1977) 4 SCC 193

¹² Ibid

judiciary with such considerable powers. Hon'ble former Chief Justice R.S pathak gave a statement in the case of ***Union of India vs. Raghubir Singh***¹³ that "the range of judicial review recognized in the superior judiciary in India is perhaps the widest and most extensive known in the world of law." It is with utmost respect that the statement of the Hon'ble Judge is very much correct, and it would have been possible only due to judicial activism exhibited by the constitutional Courts.¹⁴

Dr. B.R. Ambedkar, when asked what he considered the most essential provision of the Constitution of India, replied: *"If I was asked to name any particular Article in this Constitution as the most important-an article without which this Constitution would be a nullity-I could not refer to any other Article except article 32. It is the very soul of the Constitution and the very heart of it."* Under Article 32¹⁵ of the Constitution of India, an aggrieved person, whose fundamental rights have been infringed, may approach the Supreme Court directly. even though he also has a right to approach the jurisdictional High Court under articles 226¹⁶ and 227¹⁷ of the Constitution of India in case of violation of fundamental rights or other rights¹⁸

The Hon'ble Supreme court of India in the landmark case of ***C. Ravichandran Iyer v. Justice A.M. Bhattacharjee***¹⁹ held that *"The role of the Judge is not merely to interpret the law but also to lay new norms of law and to mould the law to suit the changing social and economic scenario to make the ideals enshrined in the Constitution meaningful and a reality. Therefore, the Judge is required to take judicial notice of the social and economic ramification, consistent with the theory of law. Thereby, the society demands active judicial roles which formerly were considered exceptional but now a routine."*

¹³ Union Of India & Anr vs Raghubir Singh (Dead) By Lrs. Etc, 1989 (2) SCC 754

¹⁴ Dr GB Reddy, Judicial Activism in India (1st edn, Global Law Agency 2004) chap. 5

¹⁵ Constitution of India 1950, art 32

¹⁶ Constitution of India 1950, art 226

¹⁷ Constitution of India 1950, art 227

¹⁸ See supra, note 7.

¹⁹ C Ravichandran Iyer v Justice AM Bhattacharjee (1995) 5 SCC 457, Page No. 471

Judicial Review is deemed an exception to the doctrine of Separation of Powers. It is often defined as the judiciary's authority to scrutinize the constitutional validity of laws enacted by the legislature or administrative actions of the executive. If found to be in contravention of constitutional provisions, the court has the authority to declare such law or actions null and void. The doctrine of judicial review is the basic feature of the Indian Constitution, as held by Kesavananda Bharti (supra), and subsequently by the numerous landmark decisions of the Hon'ble Supreme Court. The concept of judicial review originated in the case of *Marbury v. Madison*.²⁰ In the United States of America, and thereafter, it has been widely used worldwide.

One cannot assert that judicial review is the antithesis of separation of powers; it would be fundamentally flawed to do so, for the profound reason that it is one of the tenets of constitutional belief that serves as a mechanism of checks and balances. It upholds constitutional supremacy by staving off the abuse of power by the other two organs. It ensures that the legislature and executive function within their constitutional limits and do not maltreat their constitutional powers. In modern times, the effective implementation of the doctrine of separation of powers is impossible due to the growth of delegated legislation and administrative tribunals. The concept of judicial review safeguards constitutional supremacy.

The Hon'ble Supreme Court of India in the landmark case of *Minerva Mills v. Union of India*²¹ emphatically held that *"The Constitution has created independent machinery, namely, the judiciary which is vested with the power of judicial review to determine the legality of executive action and the validity of legislation passed by the Legislature. It is a solemn duty of the judiciary under the Constitution to keep the different organs of the State, such as the Executive and the Legislature, within the limits of the power conferred upon them by the Constitution. This power of judicial review is conferred on the judiciary by Articles 32 and 226 of the Constitution."*

²⁰ *Marbury v. Madison*, 1803 USA

²¹ *Minerva Mills v. Union of India* AIR 1980 SC 1789

The doctrine of separation of powers has been eloquently propounded by a French philosopher Montesquieu and expounded in his book “The Spirit of Law” and it well emphasize on the avoidance of the concentration of power in one or two organs meaning thereby one branch of government cannot assume the functions performed by other, as enshrined under the Indian constitution too. It is distinctly undisputable that there is no clear demarcation of separation of powers in India, unlike the position of separation of powers in the US and Australia. However, the doctrine of separation of powers does not happen to be a miracle to keep three organs of the government within the strict limitations of their functions.²²

As held in case of Rai Sahib(Supra) that the constitution has not recognized separation of powers in absolute rigidity therefore certain degree of overlapping can always be perceived from the functions of organs of the government and the best example one can quote is that of legislative power of president under **Article 123**²³ of the constitution and governor’s power under **Article 213**²⁴respectively who is vested with executive functions under the Indian constitutional Framework.

The Hon’ble Supreme Court, through plenty of landmark decisions, has held that all three branches of the government are creatures of the constitution and the constitution is the supreme and considered to be the grundnorm from where all the organs derive their power. The Constitution has beautifully balanced the power relations with checks and balances. It is the judiciary that is vested with the power to uphold the constitutional ethos and protect the fundamental rights of citizens and act as the guardian of the constitution to enforce the constitutional values to rule out concentration of power in any one organ, as it may lead to destruction of core constitutional beliefs. And such judicial power has been provided under Articles 32 and 226 of the Constitution.

²² Bandhua Mukti Morcha v. UOI, 1984,3 SCC 161 para 81,

²³ Constitution of India 1950, art 123

²⁴ Constitution of India 1950, art 213

The doctrine of separation of powers contemplates an absence of overlapping of the separate powers and distinct functions of organs, structurally and functionally. In modern times, it has been substituted by a more flexible concept, i.e., the concept of checks and balances.²⁵

VI. JUDICIAL ACTIVISM: A PERSPECTIVE FROM THE CONSTITUTION OF INDIA

*“Constitution in India, which is a living document, not a relic cast in stone. It is a magna carta of socio-economic transformation”*²⁶ Judicial Activism refers to the proactive role played by the judiciary in shaping the legal framework. It is often described as judicial supremacy. It also denotes that the judges do not merely declare law but are also creators of law. The primacy of judicial activism in the contemporary era has become vital and a defining characteristic of the judiciary to turn constitutional ideals into a reality. It has substantially influenced the entire legal system, with the courts stepping beyond merely interpreting the law to propound the legal principles that accurately align with the present-day needs of society and fill the legislative vacuum that has remained unfilled for years. The changing dynamics of society have enabled the judiciary to uphold constitutional ideals in an absolute sense. This approach has enabled the higher courts to apply, interpret, and expound the principles enshrined in the constitution, especially concerning enforcing fundamental rights and the rights of minorities and the underprivileged.

The term Judicial Activism has nowhere been found in the constitution of India; instead, it has emerged as a result of the proactive role played by the judiciary, especially after the National Emergency period of 1975. The power of the Supreme Court under Article 32²⁷

²⁵ Dr GB Reddy, *Judicial Activism in India* (1st edn, Global Law Agency 2004) chap. 1.

²⁶ Shri Pranab Mukherjee, speech at the inauguration of the 4th Retreat of Judges of the Supreme Court at the National Judicial Academy, Bhopal, 16 April 2016, last visited on 31st August 2025, available at (<https://www.presidentofindia.gov.in/shri-pranab-mukherjee/speeches/speech-president-india-shri-pranab-mukherjee-inauguration-fourth>).

²⁷ Constitution of India 1950, art 32

& 142²⁸, and that of the High Court under Article 226²⁹ and 227³⁰, is one of the excellent sources that empowers the Hon'ble Courts to enforce fundamental and legal rights by issuing writs and passing appropriate orders to uphold justice and constitutional values. These articles form the foundation upon which the concept of judicial review is based. The epitome of judicial activism is the broad expansion of Article 21 of the Indian Constitution. Let us now discuss all the essential articles that form the constitutional basis of judicial activism in India, a significant instrument to protect the constitutional structure.

Article 13³¹, One of the most profound articles from which the concept of judicial review flows, it addresses laws inconsistent with or derogating from fundamental rights. Clause (2) states,³² *"The State shall not make any law which takes away or abridges the rights conferred by this Part and any law made in contravention of this clause shall, to the extent of the contravention, be void."*³³ Article 13³⁴ of Part III is considered the bedrock of judicial review in India. It prescribes the methods for checking the constitutional validity of laws made by parliament. The state is not empowered to make any laws that take away or infringe the fundamental rights of citizens. If any such law is found to be in contravention of part III, the higher judiciary is competent to declare it null and void to that extent. In essence, Article 13³⁵ sets the parameters for courts to decide any law or executive actions; if found inconsistent, such law or executive actions shall not stand and shall be declared void ab initio.

The Hon'ble Supreme Court in the case of *L. Chandra Kumar v. Union of India and Ors.*³⁶ Held that *"That power of judicial review is an integral and essential feature of the Constitution*

²⁸ Constitution of India 1950, art 142

²⁹ Constitution of India 1950, art 226

³⁰ Constitution of India 1950, art 227

³¹ Constitution of India 1950, art 13(2)

³² Ibid

³³ Constitution of India, 1950, Art.13(2)

³⁴ Ibid

³⁵ Constitution of India 1950, art 13

³⁶ *L Chandra Kumar v Union of India* (1997) 3 SCC 261

constituting the basic part, the jurisdiction so conferred on the High Courts, and the Supreme Court is a part of inviolable basic structure of Constitution of India."

Hence, Article 13 is regarded as the core provision underpinning the power of judicial review, from which judicial activism naturally flows; that is viewed as the instrument of distributive Justice when the legislature and executive fail to address the real, genuine concerns of the people.

Article 32.³⁷ provides for the *"Remedies for enforcement of rights conferred by part III"* Art.32 of Indian Constitution is regarded as one of the most pivotal provisions of the constitution; Clause (1)- *"The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this Part is guaranteed."* It provides for the mechanism for the enforcement of fundamental rights conferred by Part III of the Indian Constitution; without this provision, Part III would be incomplete. It is, in itself, a basic right, as it enables citizens to approach the Supreme Court directly to seek the protection of their fundamental rights in case of any violation thereof.

Clause (2)³⁸ states – *"The Supreme Court shall have power to issue directions or orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warrant and certiorari, whichever may be appropriate, for the enforcement of any of the rights conferred by this Part."* It grants vast power to the Supreme Court to pass any appropriate directions, orders, or writs for the enforcement of the fundamental rights. Dr. B. R Ambedkar termed Art. 32 the "Heart and Soul" of the Indian Constitution.

It is not merely a mechanism provided for the enforcement of Part III; rather, it serves the very purpose of the constitution. It gives the Supreme Court immense power to exercise judicial review over any legislation or executive actions that tend to infringe upon the rights conferred by Part III. The core of judicial activism is rooted in Article 32. The notion of judge-made laws finds its space through the powers exercised under Article 32. Because the control exercised by the Supreme Court under Article. 32 is wide-ranging

³⁷ Constitution of India 1950, art 32

³⁸ Constitution of India 1950, art 32, Clause (2)³⁸

and nearly unfettered except that they do not directly encroach upon the control exercised by the other two organs.³⁹

Article 32 gave birth to Public Interest Litigation (PIL), which is widely considered a significant tool of Judicial Activism in India.

Article 226⁴⁰: Power of High Court to issue certain writs. Clause (1) states *“Notwithstanding anything in article 32, every High Court shall have power, throughout the territories in relation to which it exercises jurisdiction, to issue to any person or authority, including in appropriate cases, any Government, within those territories directions, orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, or any of them, for the enforcement of any of the rights conferred by Part III and for any other purpose.”*

It is a provision similar to Art. 32⁴¹, available exclusively to high courts. However, it is wider in scope than the power of the Supreme Court under Article 32, as Article 226 not only empowers high courts to pass any directions, orders, or any writs for the enforcement of fundamental rights but also for the enforcement of other legal rights. This is one of the most influential provisions of the Constitution vested in the High Courts, granting them immense power to exercise judicial review to protect and enforce both fundamental rights and other legal rights. This provision broadens the exercise of judicial activism by the respective High Courts.

Art.226⁴² Has played a pivotal role in shaping the Indian legal framework. It has played a significant role in expounding the principle of judicial activism, especially in enabling inclusive justice that extends beyond fundamental rights, benefiting all groups, including marginalized and underprivileged. Art .226 has thus proved to be the underpinning of judicial activism at the level of High Courts. ⁴³

³⁹ Constitution of India 1950, art 32

⁴⁰ Constitution of India 1950, art 226

⁴¹ Constitution of India 1950, art 32

⁴² Constitution of India 1950, art 226

⁴³ Constitution of India 1950, art 226

In the case of *Lnj Power Ventures Ltd vs. Rajasthan Electricity Regulatory Commission*⁴⁴ the Hon'ble High Court Held that *"The power of judicial review vested in High Courts under Article 226 of the Constitution of India is one of the basic features of the Constitution and any legislation cannot override or curtail jurisdiction of the High Court's under Article 226 of the Constitution of India."*

Article 141⁴⁵; states that *"Law declared by the Supreme Court to be binding on all courts within the territory of India."* It is also known *"doctrine of stare decisis"* which means *"to stand by things decided"* meaning thereby the judgment of Hon'ble Supreme Court becomes law of the land having a binding effect on all courts and tribunals.

It is the most imperative provision of the Indian Constitution by virtue of which the judgment of the Hon'ble Supreme Court has a binding effect, acts as precedent, and carries the force of law within the territory of India, thereby filling the legislative gaps. Without this provision, there would be no basis for judicial activism, as it ensures the very purpose of fulfilling the gaps and needs of society that evolve with the passage of time.

Another foremost import provision is **Article 142**⁴⁶ It empowers the Hon'ble Supreme Court to pass any such decree or order as necessary to do complete justice. This provision provides a broad ambit of judicial activism; it opens up the hands of the Supreme Court to even pass an order in matters for which there is no law or even where a law exists, but a gray area remains. The exercise of power under Art. 142⁴⁷ was recently seen when the Supreme Court passed judicial directives setting a deadline for the Governor and the President to act upon a bill under Article. 200⁴⁸ & 201⁴⁹, within the prescribed deadline of 3 months. This has sparked an intense debate among the public. Even our former vice

⁴⁴ *Lnj Power Ventures Ltd v Rajasthan Electricity Regulatory Commission*, S.B. Civil Writ Petition No 7312 of 2019 (Rajasthan HC, Jodhpur Bench) para 34(d).

⁴⁵ Constitution of India, 1950, Art.141

⁴⁶ Constitution of India, 1950, Art.142

⁴⁷ Ibid

⁴⁸ Constitution of India 1950, art 200

⁴⁹ Constitution of India 1950, art 201

president criticized this move by stating that Article 142⁵⁰ of the Constitution has become a "nuclear missile available with judges against democratic forces."⁵¹

The Hon'ble Supreme Court in the case of *Supreme Court Bar Association vs. Union of India and Anr.*⁵² **In paragraph 47, Held that** *"The plenary powers of this Court under Article 142 of the Constitution are inherent in the Court and are complementary to those powers which are specifically conferred on the Court by various statutes though are not limited by those statutes. These powers also exist independent of the statutes with a view to doing complete justice between the parties. These powers are of very wide amplitude and are in the nature of supplementary powers. This power exists as a separate and independent basis of jurisdiction apart from the statutes. It stands upon the foundation and the basis for its exercise may be put on a different and perhaps even wider footing, to prevent injustice in the process of litigation and to do complete justice between the parties."*

Another important Article that provides unique aspects of political tensions is **Article 131**.⁵³ It provides original jurisdiction of the Hon'ble Supreme Court in disputes between the Union and a State or between States. It offered exclusive jurisdiction to deal with such disputes, meaning the Hon'ble Court can deal with federal conflicts directly. This, in essence, provides vast power in the hands of the Supreme Court to uphold the rule of law in power struggles between governments and to keep an eye on intergovernmental accountability. This makes the Supreme Court the guardian of political tussles to some extent. Thus, it paves the way for judicial activism by exercising the discretionary power vested in the Article. 131⁵⁴ in matters of inter-governmental disputes, which frequently deal with public policy and plenty of policy matters, which the Hon'ble court must decide bearing the public interest at the back of the mind.

⁵⁰ Constitution of India 1950, art 142

⁵¹ Vice President of India, Jagdeep Dhankhar, remarked while addressing the 6th batch of the Rajya Sabha Internship Programme in New Delhi on 16 April 2025. Last visited on 30th July 2025 Available at (<https://vicepresidentofindia.nic.in/speechesinterviews/address-excerpts-shri-jagdeep-dhankhar-honourable-vice-president-valedictory-2>)

⁵² Supreme Court Bar Association v Union of India (1998) 4 SCC 409

⁵³ Constitution of India 1950, art 131

⁵⁴ Ibid

In the landmark case of **State of Rajasthan v. Union of India**⁵⁵ it was held that *“The requirement is that the dispute must involve a question, whether of law or fact, on which the existence or extent of a legal right depends. It is this qualification which affords the true guide for determining whether a particular dispute is comprehended within Article 131. The purpose of Article 131 is to afford a forum for the resolution of disputes which depend for their decision on the existence or extent of a legal right.”*

Another lifeguard for the rights of the people is **Article 136**⁵⁶. It provides for a special leave petition and states the power of the Supreme Court to grant special leave to appeal to the Supreme Court against any Judgment, decree, order, or sentence passed by any court or tribunal within the territory of India. The power granted under Article 136 is the discretionary power of the Supreme Court; hence, no one can claim it as a matter of right, unlike Articles 32 and 226. By virtue of this Article the Supreme Court is vested with discretionary power to allow an appeal to do complete justice, even if no statutory right of appeal exist, such wide discretionary power acts as remarkable tool for judicial activism, empowering the court to do full justice irrespective of whether right of appeal is available to person, especially when there is case of grave injustice, or matter of public interest. Art.136 plays an imperative role in upholding the spirit of the constitution by providing an exceptional mechanism to serve justice. Art. 136 is an exemplary instrument for judicial activism by enabling the Supreme Court to overlook procedural technicalities and ensure complete justice.

Article 137⁵⁷:- *“Review of judgments or orders by the Supreme Court--Subject to the provisions of any law made by Parliament or any rules made under article 145, the Supreme Court shall have power to review any judgment pronounced or order made by it.”* This provides a wide power for the Supreme Court to review. However, the power is subject to rules made by the Supreme Court under Article 145 and any law made by parliament. And it is heard by the same judge who decided the matter, subject to his retirement. The article's purpose

⁵⁵ State of Rajasthan v Union of India (1977) 3 SCC 592

⁵⁶ Constitution of India 1950, art.136

⁵⁷ Constitution of India, art.137

is minimal, only to the extent of providing a remedy for any apparent error or grave injustice due to the judgment. It can only be exercised when there is an apparent error on the face. In the case of *Northern India Caterers (India) Ltd vs Lt. Governor of Delhi*.⁵⁸ The Hon'ble court held *"That a party is not entitled to seek a review of a judgment delivered by this Court merely for the purpose of a rehearing and a fresh decision in the case. Normally the principle is that a judgment pronounced by the Court is final and departure from that principle is justified only when circumstances of a substantial and compelling character make it necessary to do so. If the attention of the Court is not drawn to a material statutory provision during the original hearing the Court will review its judgment. The Court may also reopen its judgment if a manifest wrong has been done and it is necessary to pass an order to do full and effective justice."*

An article is one of the vital provisions in the exercise of judicial activism, through which the Hon'ble court revisits its previously decided rulings to correct and apply the law in a manner that best serves the purpose of Justice.

Last but not least, the Preamble of the Indian Constitution, which represents the will of the people, casts a duty upon each organ of the government to abide by and uphold constitutional ideals. The word "Justice-Social, Economic, and Political" has a broad and inclusive meaning, thereby empowering all the organs of the Government to work for the welfare of people. Accordingly, through judicial activism, the judiciary has consistently upheld the constitutional goals to secure justice. It is axiomatic in the evolution of profound principle of Public Interest Litigation (PIL), to safeguard the interest of one who cannot raise their voice for themselves it has made justice more accessible for those who cannot represent themselves; further, in the protection of environment through the principles like "Polluters Pays" and the public trust doctrine.

Through the exercise of judicial activism, the Hon'ble Supreme court has broadened the scope of judicial recognition that includes but not limited to right to life includes right to live in clean and healthy environment, right to life against adverse effect on climate

⁵⁸ Northern India Caterers (India) Ltd v Lt Governor of Delhi (1980) 2 SCC 167

change, the right to life with human dignity, and other related rights under Article 21⁵⁹ of the Indian Constitution. All developments that are also a law by virtue of Article 141⁶⁰ is, in essence, fruits of judicial activism that ultimately flow from the constitutional goals to secure social, economic, and political justice for all citizens and to protect individual liberty. Judicial activism has, therefore, played an enormous role in shaping the Indian legal framework.

VII. AN ANALYSIS OF RECENT LANDMARK JUDGMENTS IN LIGHT OF JUDICIAL ACTIVISM

"The inevitable truth is that law is not static and immutable but ever increasingly dynamic and grows with the ongoing passage of time."

---S. Ratnavel Pandian, J.⁶¹

The Hon'ble Supreme Court and the High Courts are imperative in defining and developing the Indian federal structure. They are exclusively granted the power of judicial review to protect the fundamental rights of citizens. The Indian Federal structure of India is enshrined in the Indian Constitution and is maintained to maintain the separation of powers. The Higher judiciary in India has gradually shifted from the strict interpretation of laws to judicial activism, especially post-emergency. Since the Indian judiciary has changed its positivist approach into a catalyst approach for the socio-economic goal enshrined in the preamble of the Indian Constitution, it acts as the protector of fundamental human rights and the environment.⁶²

When one refers to the role of judicial activism in shaping the Indian legal system and broadening the scope of fundamental rights, one must acknowledge the significant contribution of the landmark judgments such as *Kesavananda Bharti v. State of Kerala*

⁵⁹ Constitution of India, art.21

⁶⁰ Constitution of India, art.141

⁶¹ Supreme Court Advocates-on-Record Association v Union of India (1993) 4 SCC 441

⁶² Karamdeep Saini, 'Relationship between International and Municipal Law: A Case Study of India' (International Journal of Advanced Research and Development, ISSN 2455-4030)

1973⁶³, *Maneka Gandhi v. Union of India* 1978⁶⁴, *Vishaka v. State of Rajasthan* 1997⁶⁵, and *Shreya Singhal v. Union of India* 2015.⁶⁶ These judgments had played a pertinent role in widening the scope of fundamental rights and upholding the sanctity of the constitution, which ultimately led to progressive change in the socio-economic condition of India.⁶⁷

We have seen a plenty of crucial judgments that have had a significant influence on public affairs, especially in the recent past few years, be it Sabarimala, Triple Talaq, Electoral Bonds or emblematic decision on right against adverse effect of climate change, and the most recent, state of Tamil Nadu vs. Governor 2025, Judgments and many more. The growing Proactive role of the judiciary can be seen with the naked eye. The Constitutional Courts have always tried to plug the gaps or loopholes in the legal system through their progressive Judgments, and all of this has been possible through judicial activism. It has proved to be one of the significant mechanisms adopted by the higher judiciary to establish Good Governance. Through this, the higher judiciary has actively tried to preserve the constitutional ethos and helped lay down the foundation for welfare policies. Let us discuss some of the most recent judgments that have had a significant socio-legal implications in enforcing good governance and holding the government accountable.

The most recent instance of judicial activism can be observed in the landmark case of, *State of Tamil Nadu vs. The Governor of Tamil Nadu and Anr* 2025.⁶⁸ In this case, the Division Bench of the Hon'ble Supreme Court invoked Article 142 to prescribe a specific timeframe for the Governor and the President to act upon the bills under Articles 200 and 201, respectively. The Hon'ble court resorted to Art. 142 for doing complete justice and

⁶³ Kesavananda Bharati v State of Kerala (1973) 4 SCC 225

⁶⁴ Maneka Gandhi v Union of India (1978) 1 SCC 248

⁶⁵ Vishaka v State of Rajasthan (1997) 6 SCC 241

⁶⁶ Shreya Singhal v Union of India (2015) 5 SCC 1

⁶⁷Judicial activism in India: an empirical analysis of landmark cases and their socio-legal impact
dr.s.gajendra raj ijfans international journal of food and nutritional sciences issn print 2319 1775 online
2320 7876, Volume 13, Iss 04, 2024

⁶⁸ State of Tamil Nadu vs. The Governor of Tamil Nadu & Anr, 2025 INSC 481

declared the bills in question as “deemed assent”, an executive power exercised by the Governor. This is the best example of judicial activism at present.

One of the reasons for invoking Article 142 was to address and fill a legislative gap, as no enactment by the parliament nor did any provision in the constitution previously stipulate such a timeframe. This lacuna had created a vacuum, which enabled the Governor to exercise arbitrary powers for assenting to bills presented under Article 200. The Hon’ble court observed that, to some extent, the Governor was merely acting as an agent of the central government. Such an approach poses a significant threat to the principles of federalism as enshrined in the Indian Constitution.

The Hon’ble Court sated as under *“Keeping in mind the constitutional significance of Article 200 and the role it plays in the federal polity of the country, the following timelines are being prescribed. Failure to comply with these timelines would make the inaction of the Governors subject to judicial review by the courts: (i) In case of either withholding of assent or reservation of the bill for the consideration of the President, upon the aid and advice of the State Council of Ministers, the Governor is expected to take such an action forthwith, subject to a maximum period of one-month; (ii) In case of withholding of assent contrary to the advice of the State Council of Ministers, the Governor must return the bill together with a message within a maximum period of three months; (iii) In case of reservation of bills for the consideration of the President contrary to the advice of the State Council of Ministers, the Governor shall make such reservation within a maximum period of three months; (iv) In case of presentation of a bill after reconsideration in accordance with the first proviso, the Governor must grant assent forthwith, subject to a maximum period of one-month.”* Though this remarkable decision was made in light of the principle of federalism, it attracted intense debate on the doctrine of separation of powers and judicial overreach. The judgment was heavily criticized with the remark that Article 142 has become a weapon to encroach upon the legislative domain. Even our former Vice President of India, Mr. Jagdeep Dhankhar, criticized this move and termed *“Article 142 as nuclear missile available in the hands of supreme court 24/7 against democratic forces”*

This judgment is crucial from the perspective of the accountability of the office of the Governor, as it is the constitutional office of high dignity, and the holder must respect the constitutional values attached to it. Thus, judicial activism has proved to be one of the most crucial tools to maintain good governance and hold the constitutional officeholder accountable.

Another, one of the most imperative judgments having a huge social impact, especially for law graduates and judicial service aspirants, is *All India Judges Association vs. Union of India 2025*.⁶⁹ In this case the three-judge bench of Hon'ble Supreme court held that "*Candidates desirous of appearing in Civil Judge (Junior Division) examination must have practiced for a minimum period of three years.*" The Supreme Court held that candidates seeking to become a Civil Judge (Junior Division) must have practiced as an advocate or law clerk for at least three years, the decision overruled the Court's own Judgment from 2002.⁷⁰ It is pertinent to note that most High Courts highlighted that fresh law graduates with no experience at the Bar found it difficult to handle day-to-day court proceedings and procedural issues.⁷¹ And some of the High Courts highlighted fresh law graduates having no experience at the Bar lack maturity and experience in handling court proceedings" and that they often displayed behavioral and temperament problems. Complaints were received about their conduct towards advocates, litigants, and staff.⁷²

The Hon'ble Supreme Court referred to the "*Second All India Judges Association Case*," where the Supreme Court had previously directed all States to prescribe a minimum of three years' practice, this was based on the premise that a judge needs experience before deciding on vital matters of life, liberty, property, and reputation.⁷³

The Hon'ble directed all the state Governments to amend their service rules and prescribe a mandatory requirement of three years of legal practice to produce the best judges.

⁶⁹ All India Judges Association and Ors Vs. Union of India and others, 2025 INSC 735

⁷⁰ Ibid

⁷¹ Ibid

⁷² Ibid

⁷³ Ibid

However, the Judgment is being heavily criticized for its disproportionate impact on candidates from marginalized communities, those without a legal background, and first-generation lawyers. Women candidates, in particular, are adversely affected, as they often face societal pressures to marry soon after completing their law degree.

Furthermore, it has been observed that senior lawyers do not pay juniors but instead exploit them under the guise of providing training and learning. This requirement places an extra burden on female candidates. It is most respectfully concluded that this judgment appears to be more regressive than progressive, as the Hon'ble court failed to take note of ground realities and did not approach the issue with rationality.

Another most recent judgment of the Hon'ble Supreme Court, in line with accountability and good governance, is the case of *Dr. Sunil Kumar Singh vs. Bihar Legislative Council & Anr 2025*.⁷⁴ In this case, an important issue was raised regarding the judicial review of Article 212(1) of the Indian Constitution. The problem was: Can the Hon'ble Court, in exercising its writ jurisdiction, review the proportionality of the punishment imposed by the House? Clause (1) of Art 212, read as "*The validity of any proceedings in the Legislature of a State shall not be called in question on the ground of any alleged irregularity of procedure.*"

The petitioner herein filed a writ petition under Article 32 of the Indian Constitution, challenging the report of the ethics committee of the Bihar Legislative Council, recommending his expulsion as a member of the Legislative Council.

The Hon'ble court interpreted Art 212(1)⁷⁵ and held that clause (1) deals only with the "proceedings in the legislature" on the ground of procedural irregularities and does not exclude judicial review of legislative actions that may have a tendency to encroach upon the fundamental rights of the members or citizens.⁷⁶

It was emphasized by the Hon'ble Court that the constitutional courts are entrusted with the duty to ensure lawfulness of the legislature's decisions, rather than substituting those

⁷⁴ Dr Sunil Kumar Singh v Bihar Legislative Council and Another 2025 INSC 264

⁷⁵ Constitution of India 1950, Art. 212

⁷⁶ Dr Sunil Kumar Singh v Bihar Legislative Council and Another 2025 INSC 264, Para 11, Page 14

decisions to determine the parties' rights. Any decision-making authority, be it legislature or otherwise, must exercise its powers sparingly and within the limits set by the constitution. If any such decisions are found to be in excess of the power granted by the Constitution or a violation of fundamental rights, they are subject to judicial review.⁷⁷

In the recent case of *Vihaan kumar vs the State of Haryana 2025*.⁷⁸ The Hon'ble Supreme Court has dealt with the issue of handcuffing and the requirement to provide information regarding the grounds of arrest while referring to *Pankaj Bansal vs Union of India 2024*.⁷⁹ One of the prominent judgments with respect to the Interpretation of Art. 22(1). It held that Article 22(1) mandates that the proper ground of arrest must be furnished in writing to the arrestee, and non-compliance would vitiate the arrest and all subsequent remands. The Hon'ble Court went on saying that filing a charge sheet at a later stage cannot cure the defect, the right to life and personal liberty of a human being is a basic tenet of the Constitution, and it cannot have an exception in any case or otherwise.

The relevant Para of the judgment can be read as. "*Article 22(1) mandates that an arrested person be informed of the grounds of arrest "as soon as may be," ensuring the ability to challenge detention and seek legal remedies. The communication of grounds must be meaningful and effective, preferably in writing, to avoid disputes. While Article 22(1) does not explicitly require written communication, the Court ruled that vague assertions or oral claims by police are insufficient. The Court thus held that non-compliance with Article 22(1) vitiated the arrest, rendering all subsequent custody unlawful.*"⁸⁰

Further, in paragraph 29, the Hon'ble court heavily criticized the act of handcuffing on a hospital bed without justification, as the police handcuffed the arrestee on a hospital bed and also chained him. The court held that such handcuffing constitutes a gross violation of the right to life and fundamental rights enshrined in Article 21 of the Indian Constitution. The relevant paragraph can be read as. "*Handcuffing and chaining to a hospital*

⁷⁷ Dr Sunil Kumar Singh v Bihar Legislative Council and Another 2025 INSC 264, Para, 16, P a g e 16

⁷⁸ Vihaan Kumar v State of Haryana 2025 INSC 162

⁷⁹ Pankaj Bansal v Union of India (2024) 7 SCC 576.

⁸⁰ Vihaan Kumar v State of Haryana 2025 INSC 162, 42, Para 11-13, Page 18-21

bed without justification shocking and unconstitutional. The Court directed the State to issue guidelines to prevent such practices, emphasizing that custodial treatment must respect human dignity.”⁸¹

The above judgment is imperative to understand the role of constitutional courts in safeguarding the individual's fundamental human rights. Although society has come so far and is well-equipped with many advanced mechanisms and laws, we still find cases where people are denied fundamental human rights and liberty. Such a violation is deeply concerning, and such continued instances require judicial intervention. Hence, the judiciary's role has become vital in upholding individual liberty and promoting good governance by wiping out the arbitrariness and upholding principles enshrined in the constitution. Thus, judicial activism emerges as an essential tool in ensuring constitutional integrity.

Another most important judgment having huge impact on socio-legal is the case of *Property owners' association vs. State of Maharashtra, 2024*.⁸² The judgment was decided by a judges' bench of the Hon'ble Supreme Court with a 7:2 majority. The judgment involves the interpretation of Article 39(b) and 31-C of the Indian Constitution, having a significant socio-economic effect on society. Article 39(b) read as “*that the ownership and control of the material resources of the community are so distributed as best to subserve the common good.*” And Article 31-C talks about protecting certain legislation from being challenged under Articles 14 & 19 of the Constitution. However, the only requirement is that the legislation has a nexus with Art. 39(b) & 39(c).

The Hon'ble Court had to decide what constitute material resources of community under Article 39(b) of the constitution, the major issue was “*Whether privately owned property constitutes ‘material resources of the community’ which can be acquired and distributed by the state in furtherance of Article 39(b) of the Constitution.*” The majority of 7:2 held that not all private property constitutes “material resources” of the community in Article 39(b) and

⁸¹ Vihaan Kumar v State of Haryana 2025 INSC 162, Para 29 page 33

⁸² Property Owners Association & Ors. vs State of Maharashtra & Ors., 2024 INSC 835

(c) and cannot be acquired and redistributed by the state. This Judgment overturned the decision of *Sanjeev Coke Manufacturing v. Bharat Coking Coal*. This held that private resources also come under the material resources of the community, and the state can redistribute them for the common good. Justice D Y Chandrachud gave the majority judgment. At the same time, Justice B. V. Nagarathna wrote a partly dissenting opinion holding that all privately owned property/resources except for personal effects can constitute “material resources of the community” and private property can be transformed into community resources through nationalization or acquisition. Justice Sudhanshu Dhulia wrote a dissenting opinion holding that income inequality is enormous and hence a broad interpretation of “material resources of the community” is required, and he said that the view decision of *Sanjeev Coke* (Supra) is correct.⁸³ With respect to Article 31-C “All Nine Judges held that Article 31-C continues to prevent statutes from being struck down for violating Articles 14 and 19 if they give effect to Articles 39(b) and (c).⁸⁴

The judgment holds great significance as it impacts the community at large. However, the majority held that privately owned property cannot be termed “material resources” under Article 39(b) &(c). However, to some extent, minority opinion also carries considerable importance given the current prevailing socio-economic conditions. A broad interpretation was needed in India, where substantial income inequality exists within society. The state must strive to eradicate income inequality through effective policies. In essence, Article 39(b) becomes essential in this sense.

Another prominent case is *State of U.P. vs M/s. Lalta Prasad Vaish and sons 2024*⁸⁵. Which relates to federal relation between state and the Union and law making power of states covering “intoxicating liquor” under entry 8 of state list as well as the Union’s power to legislate on industries under its control under Entry 52 of List 1(Union list) and union’s power to legislate industry which are in control of union under entry 52 of list

⁸³ Ibid

⁸⁴ Ibid

⁸⁵ *State of UP v M/s Lalta Prasad Vaish and Sons*, 2024 INSC 812.

1(union list) of 7th schedule and there was overlapping of power between union and state.⁸⁶ *“The Court also observed that whenever a conflict between the legislative powers of the Union and States arises, the Court must read the entries harmoniously and the federal supremacy of the Parliament should be invoked only when there is an irreconcilable conflict.”*⁸⁷

The majority held that the expression “intoxicating liquors” under Entry 8 of the State List was inclusive of all kinds of alcohol that are detrimental to health. This includes denatured spirits used as raw materials to produce potable alcohol.⁸⁸

The above judgment has tried to balance out the federal democracy of India. It has attempted to harmonize the overlapping power of the union and the state with respect to law-making power over “intoxicating liquor”; the judgment extensively dealt with the scope of judicial creativity to give a balanced conclusion by keeping the federal structure of India.

In line of proactive role played by Supreme Court in recent past is the classic case of *Sukanya Shantha vs. union of India 2024*.⁸⁹ In this landmark judgment, the Hon’ble court has tried reinforcing the principle of equality enshrined under Article 14 of the Constitution. The Hon’ble court through this judgment has directed the state governments and issued judicial directives to ensure that draconian caste-based law governing the prison system shall be omitted and caste-based work assigned to prisoners shall be stopped, such discrimination violates right to the fundamental rights granted under Article 14, 15, 17, 21 and 23 of the constitution respectively.

This case arose when a journalist, Sukanya Shantha, wrote an article, “From Segregation to Labour, Manu’s Caste Law Governs the Indian Prison System.” The article broadly highlighted the caste-based discrimination in prisons in the country. The petitioner sought directions to repeal the discriminatory provisions of prison manuals.⁹⁰

⁸⁶ Ibid

⁸⁷ State of UP v M/s Lalta Prasad Vaish and Sons, 2024 INSC 812, Para 51, 51

⁸⁸ Ibid

⁸⁹ Sukanya Shantha v Union of India 2024 INSC 753.

⁹⁰ Sukanya Shantha v Union of India 2024 INSC 753, Para 1 page 4

And three Judge Bench of the Supreme Court held *“that the challenged Prison Manual provisions were unconstitutional and violated the following articles of the Constitution: Article 14 (equality), Article 15 (prohibition of caste discrimination), Article 17 (abolition of untouchability), Article 21 (life and liberty), and Article 23 (forced labour). The Court ordered the States to revise their prison manuals within three months. It also asked for a status report from the states.”*

The Hon’ble Court categorically held that provisions which demarcate between citizens based on “caste”, “custom”, “habit”, “superior mode of living”, and “natural tendency to escape” are unconstitutional. It held that by assigning cleaning and sweeping work to “marginalized castes” and allowing the “high” castes to do cooking, the manual directly discriminates based on caste, and thus it clearly violates Article 15(1) of the Constitution.

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Hence, the Hon’ble played a significant role by declaring the prison manuals containing such provisions unconstitutional and violative of fundamental rights enshrined in Part III of the Constitution.

One of the notable judgments of 2024, having significant social impact, is the *state of Punjab vs. Davinder Singh 2024*⁹² Wherein, a seven-judge bench of the Hon’ble Supreme Court, by a 6:1 majority, held that states are permitted to sub-classify the Schedule to provide reservations as provided by Article 16(4) &(4A) of the Constitution. This made a new perspective, as the Supreme Court adopted a progressive approach to disadvantaged people among the Schedule-Castes. The majority held that the landmark decision of Indra Sawhney did not create any bar on the Sub-classification of Schedule Caste because the sub-classification of SCs was not in question in the case.⁹³

⁹¹ Sukanya Shantha v Union of India 2024 INSC 753, Para 171

⁹² State of Punjab v Davinder Singh 2024 INSC 562.

⁹³ Ibid 59, Para 98 page 69

This judgment is considered a progressive development as it aims to ensure that the benefits of reservation reach the most marginalized people within the Scheduled Castes, those who are actually worthy of upliftment, rather than those who have already achieved higher social and economic status through reservation benefits.

Another Important judgment having significant socio-legal impact on society especially for legal fraternity is the case *Gaurav Kumar vs. union of India 2024*.⁹⁴ Through this judgment the Hon'ble supreme court had an occasion to interpret Section 24(1)(f)⁹⁵ of Advocates Act 1962 which stipulates the fees charged by State Bar councils (SBCs) for Enrollment as an Advocate.

The Hon'ble Supreme Court held that *"SBCs cannot charge enrolment fees beyond the fees set out in Section 24(1)(f) of the Advocates Act and charging of such exorbitant fees is violative of right to equality under Article 14 and right to practice any profession under Article 19(1)(g) of the Constitution. The Court held that SBCs and Bar Council of India cannot demand additional payment of fees other than the enrolment fees and stamp duty set out in the Advocates Act."*⁹⁶

It was observed by the Hon'ble court that different State Bar Councils were charging different Enrollment Fees, ranging between Rs. 15000/- to Rs. 42000 /-, which was totally against the mandate of section 24(1)(f) of the Advocates Act 1961. Such exorbitant fees acted as an entry barrier for marginalized and law graduates with limited financial resources. Thereby, violating Article 14 and 19(1)(g) of the Constitution. This judgment is important in the socio-economic approach adopted by the Supreme Court to uphold the principle of equality and fair opportunity for all. Such an interpretation was highly needed, and the apex court's intervention has made it easier for law graduates belonging to marginalized communities to enroll, pursue, and practice the law profession, thereby enabling them to serve society for the common good.

⁹⁴ Gaurav Kumar v Union of India 2024 INSC 558.

⁹⁵ the Advocates Act, 1961, Section 24(1)(f)

⁹⁶ Gaurav Kumar v Union of India 2024 INSC 558, Para 109, page 67

Another crucial judgment that upholds the accountability of Member of Parliament under Article 105(2)⁹⁷ of Indian Constitution is, *Sita Soren vs. union of India 2024*.⁹⁸ The judgment was decided by 7-judge bench with full majority. The issue was “*whether a legislator enjoys immunity from prosecution under Article 105(2) or Article 194(2) of the Constitution of India for accepting bribes to vote in Parliament or a State Legislative Assembly?*” The bench unanimously held that members of parliament or state legislative assemblies cannot claim immunity under Article 105(2) or 194(2)⁹⁹ of the Constitution for the act of bribery. The Hon’ble Court overturned the judgment of P V Narasimha Rao¹⁰⁰ which was earlier decided by Constitution bench 5 judges that had held that “*the immunity from criminal prosecution provided to parliamentarians (under Art. 105(2) of the Constitution of India) extended not only to anything said or any vote given but also to acts connected to a speech or vote in the Legislature.*” This position is reversed by the current judgment, and the Hon’ble Court held that immunity only applies when the activity pertained to a collective function of the legislature, and the action in question must be inherently linked to the fulfillment of the duty of a legislator or clearly part of the legislative process.¹⁰¹

The Hon’ble Supreme Court has done a remarkable job limiting the interpretation of Art. 105(2) or Art. 194(2) to exclude acts of bribery from the scope of immunity against prosecution. This ensures greater transparency in legislative functioning and prevents the misuse of parliamentary privilege for improper or abusive purposes.

The Hon’ble Court emphasized that immunity is granted under Article. 105(2) is to ensure the independence of legislators for health and the smooth functioning of democracy. However, if legislators were allowed to claim immunity from prosecution for an offence of bribery, it would place them above the law. Hence, it would violate the basic principle of the rule of law, which is also a fundamental feature of the constitution. Thus,

⁹⁷ Constitution of India 1950, art. 105

⁹⁸ *Sita Soren v Union of India*, 2024 INSC 161.

⁹⁹ Constitution of India 1950, art. 194

¹⁰⁰ *PV Narasimha Rao v. State (CBI/SPE)*, (1998) 4 SCC 626

¹⁰¹ *Sita Soren v Union of India*, 2024 INSC 161, Para 148, page 102

the members of parliament or legislative assembly cannot claim any privileges or immunity unconnected with the working of the entire house.¹⁰²

It is accentuating that the Hon'ble Supreme Court has persistently upheld the core constitutional principles through its progressive judgments. It is one of them, as it not just holds members of the legislature accountable but also upholds the spirit of constitutional belief that expects its stakeholders to act in the best interest of the people, and providing immunity for acts of bribery shakes the very idea of this principle envisaged by the court.¹⁰³

Another best example of judicial activism is *Association for Democratic Reforms vs. Union of India*¹⁰⁴ firmly known as Electoral Bond Case. This judgment was delivered by a Five-Judge constitution bench of the Hon'ble Supreme Court declaring the electoral bond as violative of Article 14 and 19(1)(a) of the Indian Constitution. The Hon'ble Court held "*That the Electoral Bond Scheme, 2018 and the amendments made by the Finance Act to Section 29C of the RP Act, Section 182(3) of the Companies Act and Section 13A(b) of IT Act are unconstitutional. The Court also held the deletion of the proviso to Section 182(1) of the Companies Act permitting unlimited corporate contributions to political parties even for loss making companies is arbitrary and violative of Article 14.*"¹⁰⁵

The Hon'ble Supreme Court applied the test of proportionality to determine the extent of restriction on the fundamental right to information of voters put through the scheme and found that the scheme did not balance the right to information of voters and the privacy of the donor.¹⁰⁶

The Hon'ble court observed that the main reason for corporate funding of political parties is to influence the political process which may in turn improve the company's business performance and unlimited donations by the companies is against the concept of fair

¹⁰² Sita Soren v Union of India, 2024 INSC 161, Para 83, page 59

¹⁰³ Sita Soren v Union of India, 2024 INSC 161, Para 13.1 Page 12

¹⁰⁴ Association for Democratic Reforms v Union of India, 2024 INSC 113.

¹⁰⁵ Ibid, Para 210 Page 146

¹⁰⁶ Ibid, Para 167 Page 118

election because it allows the companies to influence policy making for their own benefits and hence, it would be breach of trust of people who reposed their faith in government.¹⁰⁷ Additionally, the Hon'ble court observed that voters have the right to information guaranteed under Article 19(1)(a) of the Constitution that allows them to cast their vote rationally, including the right to information about the candidates. And this right to information also extends to political parties as well, as voters associate candidates with the ideologies of their respective parties.¹⁰⁸ Through this judgment, the Hon'ble court upheld the voter's right to information and gave primacy to the voter's right to information over the right to privacy of the donor. This is one of the most celebrated cases and is debated among the public. This case is the epitome of the role of judicial activism in upholding government accountability in a democratic country with a complex legal system.

Another prominent case with a significant socio-legal impact wherein the Hon'ble Supreme Court played a proactive role is the case of *Supriyo @ Supriya Chakraborty vs. Union of India 2023*.¹⁰⁹ The judgment was delivered by five-judge constitution bench. The case involved plenty of constitutional and legal questions having great social importance that includes (1). "*Whether members of the lesbian, gay, bisexual, transgender, queer, and intersex ("LGBTQIA+") community have a right to marriage?"*", (2). "*Whether non-inclusion of LGBTQIA+ marriages under the Special Marriage Act, 1954, amount to unconstitutional discrimination under Article 14 of Constitution of India?"*" and (3). "*Whether members of the LGBTQIA+ community have a right to form civil unions, and do the State have a corresponding duty to legally recognise such civil unions?"*"

The Hon'ble Supreme Court with full majority held that there is no fundamental right to marriage under the constitution of India and special marriage Act, 1954 allows marriage only between a male and female and the same cannot be interpreted to include non-

¹⁰⁷ Ibid

¹⁰⁸ Association for Democratic Reforms v Union of India, 2024 INSC 113, Para 89, Page 69

¹⁰⁹ Supriyo @ Supriya Chakraborty v Union of India 2023 INSC 920.

heterosexual (same-sex) marriage as this would amount to an extensive rewriting of the law which is beyond the power of Court. And none of the judges struck down the Special Marriage Act, as it would make it challenging for interfaith couples to get married. Justice Shripathi Bhat, in Para 49, held that. *“As the right to marry is a personal preference which confers social status, it is not an enforceable right which courts can compel the government to provide.”*

This judgment reinforces the principle of judicial restraint and deviates from the concept of judicial activism. By keeping a close eye on this judgment, one can find that the judiciary has not tried to go beyond the literal interpretation of the provisions, reluctantly deviated from accepting the social change concerning same-sex marriage, and left it to the legislature to decide.

With respect to the right to form a civil union, the Hon’ble court, by a 3:2 majority, held that. *“Non-heterosexual couples do not have the right to enter into a civil union unless the legislature changes the laws. This 3:2 majority further held that unmarried couples (including queer/non-heterosexual couples) do not have the right to jointly adopt a child under the Juvenile Justice (Care and Protection of Children) Act, 2015.”*

The majority said that recognizing civil unions would involve creating a separate legal framework, including registration, eligibility, age restrictions, and other related matters, which would be treated as entering the legislative domain. However, the minority recognized that non-heterosexual couples have a right to enter into a civil union, and failure to acknowledge the same would be violative of Article 15 of the Constitution. Hence, it could be said that the Hon’ble Supreme Court tried not to enter into the legislative domain and adopted a balanced approach. This judgment was distinctly vital in the context of judicial review and separation of powers.

Another very important judgment with respect to understanding of judicial activism through the exercise of Article 142 of Constitution is *Shilpa Sailesh vs. Varun Sreenivasan*

2023.¹¹⁰ The Judgment was delivered by a five-judge constitution bench of the Hon'ble Supreme Court. In this landmark judgment, the Hon'ble Supreme Court had to decide on two major questions: (1). *"Whether the Supreme Court can, under Article 142 of the Constitution, grant divorce based on the mutual consent of the parties, bypassing the waiting period under Section 13B of the Hindu Marriage Act, 1955?"* (1). *"Whether the Supreme Court grant divorce under Article 142 despite one spouse's objection, in cases of irretrievable breakdown of marriage?"*

The Constitution bench held that the Supreme Court possesses a vast power under Article 142¹¹¹ of the Constitution to do complete justice, though it cannot legislate; however, it can do so in the areas where there is an apparent lacuna or legal vacuum. It can grant divorce by mutual consent on the grounds of irretrievable breakdown, even if one party opposes. However, this ground is not expressly recognized by the present statute. It can dissolve the marriage by passing a decree of divorce by mutual consent under the Hindu Marriage Act, and while exercising discretionary powers under Article 142 of the Constitution, the court can set aside other proceedings between the parties, including criminal proceedings.¹¹²

The judgment is very progressive as it widely discussed the ambit of Article 142 of the Constitution, which gives the Supreme Court a vast power to do "complete Justice" and is often considered the best legal backing for judicial activism. The Hon'ble court emphasized that although the scope of 142 is broad enough, it is restricted by the principle of federalism, secularism, public policy, and fundamental features of the Constitution of India. The Hon'ble court is not empowered to create a new law or disregard any express provision of statute; it can very well intervene in areas where there is no law, or the law is unclear. As far as the decisions of the Hon'ble court uphold the

¹¹⁰ Shilpa Sailesh v Varun Sreenivasan (2023) 14 SCC 231

¹¹¹ Constitution of India 1950, art. 142

¹¹² Association for Democratic Reforms v Union of India, 2024 INSC 113, Para 33 page 48

fundamental principles enshrined in the constitution, the court may deviate from procedural and substantive laws to do complete justice.¹¹³

Another one of the important judgments having significant social impact is *Kaushal kishor vs the State of Uttar Pradesh govt. of U.P. Home Secretary 2023*.¹¹⁴ The judgment was delivered by a five-judge constitution bench; it involved several key issues. However, one of the critical issues that directly connect to citizens is the Enforceability of fundamental rights against non-state actors, such as private individuals or companies.

The Hon'ble Supreme Court held that some fundamental rights are enforceable against private individuals or companies. The rights which were exhaustively enforced against states were gradually enforced against non-state actors with respect to public duties or functions they perform, their approach as evolved with the passing of time.¹¹⁵ Thus, the court held that Articles 19 and 21 could be enforced against parties other than states and their instrumentalities. It was the presumption before that only the state can violate Article 21 or only the state was capable of depriving a person's right to life and liberty; however, with the passing of time, it has been realized that even non-state actors can violate Article 21, as many governmental functions are outsourced to private actors and public-private partnerships.¹¹⁶

Hence, the role played by the Hon'ble court in enforcing right to life and liberty, right to freedom of speech and expression even against non-state actors are commendable, and through this the Hon'ble court has uphold the constitutional ideals in true sense.

In the line of understanding judicial activism, we have one of the most important judgments that is, *M.K. Ranjitsinh vs Union of India 2024*.¹¹⁷ This case three-judge bench of Supreme Court while keeping the climate change in mind held that there is need of balanced approach to protect biological diversity. The Supreme Court was dealing with

¹¹³ Association for Democratic Reforms v Union of India, 2024 INSC 113, Para 13 page 18-20

¹¹⁴ Kaushal Kishor v State of Uttar Pradesh (2023) 4 SCC 1

¹¹⁵ Kaushal Kishor v State of Uttar Pradesh (2023) 4 SCC 1, Para 75 page 96

¹¹⁶ Kaushal Kishor v State of Uttar Pradesh (2023) 4 SCC 1, Para 84 page 115

¹¹⁷ M.K. Ranjitsinh v Union of India 2024 INSC 280.

issue of protection of great Indian bustard. The Hon'ble court while referring to its previous decisions such as *MC Mehta v. Kamal Nath*¹¹⁸ In which the Hon'ble court stepped beyond the statutes and invented the public trust doctrine and held that the right to life under Article 21 includes the right to live in a clean and healthy environment.

In the present case, the Hon'ble court has played a very crucial role and propounded a new right (Right to be free from the adverse effects of climate change) in the realm of the right to a clean and healthy environment The Hon'ble Supreme Court held that the right to life under Article 21 has been threatened due to climate change, and it would disproportionately affect some individuals over others. Thus, the Supreme Court recognized the right to a healthy environment and the right to be free from the adverse effects of climate change as a constitutional right.¹¹⁹

VIII. SOME OTHER IMPORTANT CASES THROUGH WHICH THE JUDICIARY HAS PLAYED A SIGNIFICANT ROLE IN SHAPING JUDICIAL ACTIVISM IN INDIA.

The most important and famous case that shaped judicial activism in India is *Hussainara Khatoon & Ors vs Home Secretary, State of Bihar 1979*.¹²⁰ This case set the benchmark for Public Interest Litigation (PIL) in India. The Hon'ble court issued a judicial directive to release the prisoners who were in deplorable condition due to a prolonged pending trial. They were languishing in judicial custody for a prolonged period despite no trial being conducted, thereby violating their fundamental right to a fair trial under Article 21. The Supreme Court broadly interpreted Art. 21 of the Constitution to include the right to life as encompassing the right to a fair trial, which is also a basic tenet of the principles of natural justice.

¹¹⁸ MC Mehta v Kamal Nath (2000) INSC 329.

¹¹⁹ M.K. Ranjitsinh v Union of India 2024 INSC 280, Para 27 page 21

¹²⁰ Hussainara Khatoon and Others v Home Secretary, State of Bihar (1980) 1 SCC 98.

Another historical judicial pronouncement is *Sunil Batra vs Delhi Administration, 1979*¹²¹. This judgment is considered a landmark decision wherein the Hon'ble Supreme Court issued extensive judicial directions to prevent custodial torture. The Hon'ble Court recognized the fundamental rights of prisoners and held that they should be treated with human dignity. This judgment led to formulation of guidelines and directives aimed at safeguarding the rights of prisoners and ensuring protection from inhumane treatment and custodial violence in prisons.¹²²

Another classic case of judicial activism is *D.K. Basu vs State of West Bengal 1996*¹²³, In this landmark judgment, the Hon'ble Supreme Court issued comprehensive guidelines to safeguard the rights of individuals during arrest and to prevent custodial violence. These judicial directives subsequently led to the incorporation of several procedural safeguards through an amendment to the Criminal Procedure Code 1973.

Another very important judgment that remains crucial even today in matters relating to section 498A IPC, now section 85, Bharatiya Nyaya Sanhita (BNS), is, *Armesh Kumar vs State of Bihar & Anr, 2014*.¹²⁴ In this case, the Hon'ble Supreme Court issued detailed judicial directives to safeguard the rights of a person arrested under 498A. The Hon'ble court directed that a preliminary investigation must be conducted before registering a case under section 498A IPC, and before arresting any person in connection with such allegations. Furthermore, the court held that no arrest should be made in offences punishable by imprisonment for up to seven years unless deemed necessary, and that such necessity must be established through pre-investigation.

Through the discourse of the most recent and important landmark judgments, it is clear that the constitutional Courts, specifically the Supreme Court, have stood by the needs of evolving and dynamic changes of society. It is pertinent to note that the Hon'ble Supreme Court has always strived to uphold the vision of our founding fathers of the Constitution.

¹²¹ Sunil Batra v Delhi Administration (1980) 3 SCC 488.

¹²² Ibid

¹²³ D.K. Basu v State of West Bengal (1997) 1 SCC 416.

¹²⁴ Armesh Kumar v State of Bihar (2014) 8 SCC 273.

It has persistently evolved and widened the ambit of interpretation of constitutional provisions, with the need for society to establish good governance. Over the last 75 years, the Hon'ble court has recognized new rights, such as the right to education,¹²⁵ right to privacy¹²⁶, and right against adverse impact of climate change¹²⁷ etc. All these rights were not explicitly mentioned in original text of the constitution.¹²⁸ And, all these have been achieved through the exercise of activist approach by the Hon'ble court; hence, judicial activism, though criticized very often, yet it's effective to stand for the growing needs of society and to protect the sanctity of the Constitution of India.¹²⁹

IX. SUGGESTIONS AND RECOMMENDATIONS

The interpretation of the Constitution is not static. It has evolved with time to give recognition to a broader spectrum of rights to the citizens, as well as to impose additional safeguards against excesses of the State or even private entities, as the case may be.¹³⁰ A balanced approach must be adopted by the constitutional court. For the subsistence of federalism, each organ must respect its constitutional boundaries. Any transgression may lead to the disruption of the harmonious functioning of the constitutional framework.

Hence, considering the above discussion, the possible suggestion and the recommendations are as follows:

A. Avoidance of Judicial Overreach:

Judicial overreach remains in hot talks, and to avoid this, the constitutional court must respect constitutional boundaries. Although the Constitutional courts are vested with the duty to safeguard the constitutional values and rules of law, it should not result in rewriting the law, which should be left to the legislature. And the recent decisions of the Supreme Court indicate instances where the judiciary has overstepped its constitutional

¹²⁵ Unni Krishnan v. State of Andhra Pradesh, (1993) 1 SCC 645

¹²⁶ Justice (Retd.) K.S. Puttaswamy v. Union of India, (2017) 10 SCC 1

¹²⁷ K Ranjitsinh v. Union of India, 2024 INSC 280

¹²⁸ Sukanya Shantha vs. union of India 2024 INSC 753, Para 7 page 6

¹²⁹ Ibid

¹³⁰ Sukanya Shantha vs. union of India 2024 INSC 753, Para 7 page

boundaries in its zeal to do complete justice. A notable example is the Tamil Nadu Governor (*Supra*), where the court's intervention can be termed judicial overreach. Excessive judicial activism does not align with the true spirit of a constitutional democracy.

B. Clear set of rules or guidelines for maintaining separation of powers:

The Hon'ble Supreme Court and the Respective High Courts should formulate rules or guidelines that broadly deal with the circumstances when the constitutional court can intervene in government administrative and legislative decisions. Although the Power of Judicial review is a basic feature of the Constitution, the Constitutional Court should avoid stepping into legislative and executive domains. This can be achieved by having specific rules indicating when to entertain a Public Interest Litigation on policy matters and by prioritizing constitutional interpretation over policy and administrative issues unless there is an element of manifest arbitrariness.

C. Balanced use of Article 142:

One of the most crucial articles of Indian constitution that gives immense discretionary power in the hands of Supreme Court to even bypass an existing legislation to do "Complete Justice", there shall be a standard mechanism to ensure that the power under this article is used sparingly and not in routine matter to rewrite the law or form policies which is vested with other organs of the Government.

D. Parliamentary Vigilance:

The parliament should constitute a vigilance committee entrusted with analyzing legislative gaps and lacunas in existing laws to mitigate judicial intervention. The Committee must discuss Judgments on policy matters and those where the court formulated guidelines highlighting legislative gaps or lacunas in existing laws and then implement such judgments by recommending the enactment of a law or amendment, giving effect to such gaps without undermining judicial independence.

Judicial Activism often arises from the ambiguity in laws enacted or the mala fide exercise of executive actions. There must be a harmonious exercise of powers to maintain the separation of powers, and this could be achieved through judicial restraint and abstinence from excessive judicial intervention, unequivocal legislation and policies, and efficient executive actions without having an element of arbitrariness.

X. CONCLUSION

Through the study of constitutional provisions and recent and landmark judgments, it is respectfully asserted that the constitutional courts, especially the Supreme Court of India, have played a pivotal role in shaping the Indian legal regime and fostering good governance through exercising the power of judicial review. And one of the most striking manifestations of judicial activism and good governance has been the progressive interpretation of the right to life and personal liberty guaranteed under Article 21 of the Constitution of India. Over the period, the court has significantly expounded the scope of Article 21. To a great extent, the judiciary has justified the faith and trust reposed by the Constitution's farmers.

Although, there is no express provisions under the India Constitution dealing with the idea of Judicial Activism, however, it is derived from the various provisions such as Article 13(2), 32, 226, 227, 131, 136, 137 and Art. 142. These important provisions contain an element that paves the way for judicial activism through which the Constitutional court has persistently tried to uphold the constitutional spirits. Concerning the doctrine of Separation of powers, it is well established that it has not been adopted in absolute rigidity. Hence, the overlapping functions of the organs exist. However, excessive encroachment is detrimental to constitutional spirits, violates the doctrine of separation of powers, and adversely affects democracy.

Through the discourse and analysis of recent decisions, we can conclude that it is an effective instrument of governmental accountability. And, the recent example could be the case of *M.K. Ranjitsinh (Supra)*, wherein the Hon'ble court had interpreted Art. 21 to include the right to be free from the adverse effect of climate change as a fundamental

right under Article 21. Another crucial example of judicial activism is the case of the State of Tamil Nadu vs. the Governor of Tamil Nadu 2025, in which the court went beyond its powers by prescribing a time limit for the Governor and the President to act upon the bills presented under Articles 200 and 201 of the Indian Constitution. Although the judgment was heavily criticized, it is a prominent judicial intervention in constitutional democracy.

The instance of invocation of Article 142 to make orders which have the effect of law by virtue of article 141 of the constitution, and the mandate provided under article 144 to all the authorities to act in aid of the orders of the Hon'ble Supreme Court, is very vital in the context of law declared by supreme court to fill legislative gaps until the time legislature steps in to address them. However, this should not result in over-exercise of judicial activism. While it serves as a tool to protect the constitutional principles, excessive use of the same can be detrimental to constitutional democracy.¹³¹

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