

Human Rights and Judicial Activism in India

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ABSTRACT

Since the dawn of constitutional civilization, the judiciary has stood as the eternal sentinel, guarding the sanctum of human rights and the dignity of the individual. The first seeds of this sacred ideal were sown in 1215 with the Magna Carta, when the timeless truth was proclaimed that even the sovereign must kneel before the majesty of law. Today, the voice of the judiciary reverberates in every sphere where justice seeks expression — from the whispering forests and flowing rivers to the calloused hands of labour and the silenced cries of the marginalized. Through the evolution of Judicial Review and the awakening of Judicial Activism, the courts have transformed from passive arbiters into the vigilant guardians of liberty. The birth of Public Interest Litigation (PIL) became a turning point — when justice, once confined behind procedural fortresses, stepped out to meet the weary and the voiceless. Even a humble letter or a simple postcard could pierce the veil of authority and summon the grandeur of the law in defence of the oppressed. On 9 November 2025, the Kerala High Court rekindled the embers of free expression, declaring that dissent is not sedition but the lifeblood of democracy itself. The court's pronouncement stood as a luminous testament to the sanctity of thought and speech — the essence of democratic liberty. Historic milestones such as *Hussainara Khatoon vs State of Bihar* (1979) heralded a new epoch in Indian jurisprudence, liberating countless undertrial prisoners and birthing the age of Public Interest Litigation. Visionaries like Justice P.N. Bhagwati and Justice V.R. Krishna Iyer transformed the judiciary into an instrument of social awakening, breathing life into the Constitution to serve not the powerful but the powerless. The judiciary's moral compass has since guided landmark verdicts — from *NALSA vs Union of India* (2014), which illuminated the identity and dignity of the transgender community, to *Faheema Shirin vs State of Kerala* (2019), which enshrined the right to internet access as a facet of education and privacy. The *Puttaswamy vs Union of India* (2017) ruling, meanwhile, carved into constitutional stone the inalienable right to privacy — the sanctuary of the human spirit. In *Shayara Bano v. Union of India* (2017), the Supreme Court, by a 3:2 majority, struck down the age-old practice of triple talaq (*talaq-e-biddat*) as a betrayal of constitutional conscience, holding it violative of the sacred guarantees enshrined in Articles 14, 15, and 21. The Court, in its profound wisdom, declared that a practice so arbitrary and irreverent to human dignity, having no sanction in the Quran, could find no refuge beneath the canopy of Article 25, for faith can never sanctify injustice. Thus, judicial activism stands as the luminous flame of justice — breathing divine life into the Constitution's soul, dispelling the darkness of tyranny, and ensuring that the promise of liberty endures in every corner of the Republic.

Keywords: Judicial Activism, Constitutional Morality, Article 13, Fundamental Rights, Democratic Accountability, Human Dignity in India.

Introduction

The Indian Constitution conceptualises separation of powers not as rigid institutional isolation, but as a dynamic system of checks and balances along with mutual accountability. The Legislature articulates collective will through law making, the Executive operationalises governance, and the Judiciary upholds constitutional compliance. Judicial activism arises when this equilibrium is disrupted—when executive inertia, legislative silence, or majoritarian excess threatens constitutional commitments and principles.

The Indian Constitution shapes separation of powers not as a division of walls, but as a carefully tuned balance. The Legislature creates, the Executive acts, and the Judiciary watches—each distinct, yet bound together by constitutional purpose. Judicial activism in India has emerged as a structured constitutional response to persistent institutional, political, and social deficiencies within the democratic framework. Rather than being an episodic phenomenon, it reflects an evolving judicial philosophy shaped by historical experience, governance failures, and the normative goals of the Constitution.

Article 13 stands at the heart of judicial activism, embodying the Constitution's commitment to liberty and restraint. It turns fundamental rights from distant ideals into enforceable boundaries, authorising the judiciary to act whenever State power crosses constitutional lines. Through this article, the Constitution equips the courts with the means to respond, not in defiance of democracy, but in defence of it.

A principal factor contributing to the rise of judicial activism has been the recurring incapability of the legislature and the executive to fulfil their constitutional obligations. Legislative inertia, administrative inefficiency, systemic corruption, and weak implementation of welfare and progressive legislation created regulatory and rights-enforcement vacuums. In such contexts, judicial intervention became a corrective mechanism to ensure that constitutional promises were not rendered illusory.

The expansion of Fundamental Rights jurisprudence, particularly through a purposive interpretation of Article 21, significantly expanded the judicial domain. The Supreme Court reconceptualised the right to life as encompassing substantive conditions necessary for human dignity, including livelihood, education, health, environmental protection, and humane living standards. This interpretive shift transformed the judiciary into an active agent of socio-economic rights enforcement.

Foundations of Judicial Power and Constitutional Guardianship

Judicial activism in India draws its breath from the independence of the judiciary and from a vision of the Constitution not as a static text, but as a dynamic living, breathing charter of conscience. Woven into the fabric of Article 13, the judiciary stands as the sentinel of constitutional promise—striking down laws that hollow out rights, tempering excesses of authority, and restoring harmony among the organs of the Government. In this role, judicial activism does not rise as an act of dominance but unfolds as a solemn duty entrusted by the Constitution itself, devoted to preserving constitutional morality, accountability, and the enduring reign of law.

As the Constitution's quiet conscience, the judiciary weighs power on the scales of law through the instrument of judicial review. It restrains without stifling, protects without commanding, and sustains democracy through balance rather than force. Neither supreme nor submissive, it ensures that authority remains answerable, and that freedom—once promised—continues to breathe.

Foundational Jurisprudence: Limiting Power to Preserve Democracy

- **973: Kesavananda Bharati v. State of Kerala**

The modern story of judicial activism begins decisively with *Kesavananda Bharati v. State of Kerala* (1973). Arising from Kerala's land reform laws affecting religious institutions, the case transformed into a profound inquiry into the limits of constitutional amendment.

Before the largest Bench ever assembled, the Supreme Court confronted whether Parliament's amending power was absolute and ultimate. By a narrow 7:6 majority, the Court held that while Parliament may amend the Constitution, it cannot destroy its basic structure. From this emerged the Basic Structure Doctrine, identifying core principles—judicial review, democracy, federalism, separation of powers, and fundamental rights—as inviolable.

The doctrine did not halt the tide of reform; it channelled power with discipline. Parliament could pursue transformation, but not at the cost of constitutional identity. *Kesavananda Bharati* ensured that the Constitution remains resilient yet guarded, capable of growth without surrendering its soul.

- **Indira Nehru Gandhi v. Raj Narain (1975)**

During a period of democratic instability, the Court reaffirmed constitutional supremacy by invalidating provisions that sought to immunise electoral disputes from judicial scrutiny. The judgment underscored that electoral integrity is not merely a political concern but a constitutional imperative. Judicial intervention in this phase protected democratic legitimacy against authoritarian consolidation.

- **Post-Emergency Renewal: From Formalism to Substantive Justice**

The Emergency period (1975–77) marked a moment of constitutional reckoning. The judiciary's failure to protect civil liberties, most notably in ADM Jabalpur, triggered deep introspection. In the post-Emergency era, courts adopted a more vigilant and assertive role, reasserting their responsibility to safeguard fundamental rights and constitutional supremacy. This period reshaped judicial self-perception, transforming restraint into responsibility.

- **Maneka Gandhi v. Union of India (1978)**

Maneka Gandhi case marked a paradigmatic shift in constitutional interpretation. The Court rejected the view that any "procedure established by law" suffices for depriving liberty. Instead, it infused Article 21 with substantive due process, requiring that State action be just, fair, and reasonable.

By integrating Articles 14, 19, and 21, the Court constructed a rights continuum grounded in dignity. Judicial activism here restored moral credibility to constitutional adjudication following the Emergency's erosion of civil liberties.

- **Hussainara Khatoon v. State of Bihar (1979)**

This case exposed the constitutional invisibility of the poor within the criminal justice system. Declaring speedy trial an intrinsic component of personal liberty, the Court acknowledged that structural inequality renders formal equality illusory. Judicial activism transformed systemic neglect into constitutional violation, compelling the State to recognise the humanity of undertrial prisoners.

- **Public Interest Litigation: Democratising Constitutional Justice**

Justice V. R. Krishna Iyer and Justice P. N. Bhagwati stand as luminous sentinels in the constitutional history of India, transforming the cold text of law into a living instrument of compassion and justice. Where Justice Krishna Iyer infused jurisprudence with humanism, mercy, and an unwavering concern for the marginalized—softening the harsh edges of criminal law and affirming the dignity of prisoners and the poor—Justice Bhagwati reimagined the very doorway to justice, flinging open the gates of the Supreme Court through Public Interest Litigation and epistolary jurisdiction. Together, they breathed moral purpose into Article 21, enlarging "life" from mere existence to a life of dignity, equality, and hope. Their judicial philosophy did not merely interpret the Constitution; it listened to the unheard, spoke for the unseen, and transformed the judiciary into an active conscience of democracy, where law became not an abstraction, but a promise made real to the weakest citizen. Harish Salve in his article 'Justice V R Krishna Iyer: Man who rescued Supreme Court from supreme shame' has quoted eminent Professor Upendra Baxi and pithily put it that "the Supreme Court of India was Krishnaiyerised to become the Supreme Court for Indians".

- **S.P. Gupta v. Union of India (1981)**

Through Public Interest Litigation, the Court reimagined access to justice as a collective constitutional entitlement rather than an individual procedural privilege. S.P. Gupta dismantled restrictive locus standi requirements, recognising that marginalised communities often lack the capacity to approach courts.

Judicial activism here did not expand judicial power arbitrarily; it recalibrated procedure to serve substantive justice. PIL became an institutional mechanism for addressing bonded labour, environmental degradation, custodial violence, and administrative arbitrariness.

Around this time, the institutionalisation of Public Interest Litigation (PIL) revolutionised access to justice. By relaxing the doctrine of *locus standi*, courts opened their doors to the marginalised, transforming adjudication from adversarial litigation to rights-based governance and enabling judicial intervention in systemic injustices.

Humanising State Power: Liberty Beyond Formal Freedom

- **D.K. Basu v. State of West Bengal (1997)**

The Court confronted the routine normalisation of custodial violence by prescribing mandatory arrest safeguards. The judgment reaffirmed that constitutional protections do not diminish during detention. Judicial activism transformed abstract rights into enforceable procedural guarantees, reinforcing the principle that State power is always subject to constitutional discipline.

- **Selvi v. State of Karnataka (2010)**

By prohibiting involuntary scientific interrogation techniques, the Court expanded personal liberty to include mental privacy and cognitive autonomy. Truth-seeking, the Court held, cannot be achieved by violating human dignity. This judgment elevated constitutional ethics above instrumental efficiency in criminal investigation.

The Supreme Court spoke in defence of the silent mind, drawing a constitutional boundary between the power of the State and the sanctity of human thought. It held that compelling an individual to submit to narco-analysis, polygraph, or brain-mapping tests is not a neutral act of investigation, but an intrusion into the inner citadel of consciousness. Such forced revelations, the Court declared, wound the spirit of Article 20(3) by extracting testimony without the voice of consent, and fracture Article 21 by trespassing upon mental privacy, dignity, and autonomy. The judgment headed by Justice K. G. Balakrishnan affirmed that the Constitution guards not only the body from chains, but the mind from coercion, insisting that truth in a democracy must be discovered through lawful persuasion, not distilled through chemical or technological compulsion.

Identity, Equality, and Constitutional Personhood

- **Suchita Srivastava v. Chandigarh Administration (2009)**

The Court affirmed reproductive autonomy as a dimension of personal liberty, rejecting paternalistic assumptions about vulnerability. Consent and agency were recognised as non-negotiable elements of constitutional personhood.

- **NALSA v. Union of India (2014)**

By recognising transgender persons as equal citizens, the Court infused substantive meaning into Article 14. Gender identity was acknowledged as intrinsic to individual dignity, expanding equality beyond biological determinism and social conformity.

The Supreme Court allowed the Constitution to finally recognize those long made invisible, affirming that gender is not a gift bestowed by the State, but a truth lived and felt by the individual. The Court held that transgender persons possess the fundamental right to self-identify their gender, and that their dignity flows directly from Articles 14, 15, 16, 19, and 21. It declared that equality cannot be selective, nor liberty conditional upon conformity, and that the promise of the Constitution must shelter every identity it once overlooked. By directing the State to ensure legal recognition, social inclusion, and affirmative measures, the judgment transformed constitutional text into empathy, asserting that justice is incomplete until it embraces those standing at its margins.

- **Shreya Singhal v. Union of India (2015)**

The invalidation of Section 66A protected democratic discourse from vague and disproportionate censorship. Judicial activism preserved dissent as a constitutional necessity rather than a tolerated deviation. The Supreme Court rose as a sentinel of free expression in the digital age, declaring that the Constitution's promise of speech and expression flows through the veins of the internet as much as it does in print or voice. Striking down Section 66A of the IT Act, it pronounced that ideas cannot be shackled by vague fear, and opinions, however uncomfortable, cannot be silenced by the hand of the State. The Court breathed life into Article 19(1)(a), reminding that liberty is not a privilege but a birth right, and that democracy thrives not in whispered compliance, but in the vibrant chorus of dissent, dialogue, and debate.

Privacy as the Foundation of Freedom

- **Justice K.S. Puttaswamy v. Union of India (2017)**

The unanimous recognition of privacy located autonomy at the heart of constitutional liberty. Privacy was conceptualised as control over personal choices, beliefs, and identity—essential for dignity

and democratic participation. The judgment established a constitutional framework for evaluating State surveillance, data protection, and bodily autonomy.

Constitutional Morality versus Social Control

- **Shayara Bano v. Union of India (2017)**

The Supreme Court stressed that faith cannot be a veil for injustice, and tradition cannot shield arbitrariness from the gaze of the Constitution. It declared that personal laws, though born of religious practice, must yield to constitutional morality when they wound equality and dignity. The test of justice, the Court held, is not ritual or sanction, but reason, fairness, and human rights. By striking down the practice of triple talaq, it affirmed that liberty and equality are the true commandments of a democratic society, and that no law, however ancient, may claim immunity from the light of justice.

- **Joseph Shine v. Union of India (2018)**

In *Joseph Shine v. Union of India* (2018), the Supreme Court shattered the chains of legal patriarchy, striking down the law that made adultery a crime and reclaiming the sanctity of individual choice in intimate relationships. It declared that the Constitution's morality is higher than social morality, and that personal autonomy, dignity, and equality cannot be imprisoned in the name of outdated moral codes. By decriminalising adultery, the Court affirmed that love, desire, and human relationships are matters of consent, conscience, and freedom—domains where the law must safeguard liberty, not enforce judgment.

Accountability and Statutory Implementation

- **Centre for Public Interest Litigation v. Union of India (Lokpal Case) (2017)**

Judicial intervention ensured that anti-corruption legislation did not remain merely symbolic for the name's sake. The Court reaffirmed that enacted laws impose enforceable obligations, not discretionary guarantees.

- **Life, Livelihood, and Dignified Existence**

In *Olga Tellis v. Bombay Municipal Corporation*, pavement dwellers challenged their eviction from Mumbai streets, claiming it violated their fundamental rights. The Supreme Court held that the right to livelihood is part of the right to life under Article 21 of the Constitution. However, the Court upheld the eviction, emphasizing that the state can regulate public spaces lawfully and reasonably. This case expanded Article 21 to include the right to live with dignity while balancing individual rights with public interest.

- **Common Cause v. Union of India (2018)**

The recognition of passive euthanasia and living wills affirmed that dignity extends to decisions at life's end. Autonomy was upheld as continuous, not extinguished by illness. The Supreme Court embraced the solemn dignity of choice even in death, affirming that every individual holds the right to die with dignity under the canopy of Articles 21 and 14. By recognising the validity of advance medical directives and living wills, it entrusted citizens with the power to chart the final voyage of life according to their conscience, free from coercion or fear. The Court wove law with empathy, declaring that the end of life, like its journey, must honour liberty, autonomy, and human dignity, transforming the State's duty into a guardian of both life and choice.

- **Environment, Technology, and Emerging Rights**

Environmental jurisprudence in *M.C. Mehta and Arjun Gopal* embedded ecological protection within Article 21, recognising intergenerational equity. Indian environmental jurisprudence, shaped by the pioneering *M.C. Mehta* cases and the landmark *Arjun Gopal v. Union of India*, has transformed the Constitution into a guardian of nature. From rivers and skies to urban spaces, the courts have affirmed that clean air, safe water, and a healthy environment are not privileges but intrinsic to Article 21's right to life. Principles like absolute liability, polluter pays, and precautionary measures make industries accountable, while *Arjun Gopal* expanded this vision to climate action and pollution control, reminding the State that development cannot come at the cost of ecological justice. Together, these judgments weave law with conscience, declaring that the health of the planet and the dignity of its people are inseparable.

- **Faheema Shirin v. State of Kerala (2019)**

In *Faheema Shirin v. State of Kerala* (2019), the Kerala High Court, in a shining affirmation of individual dignity and the right to knowledge, declared that access to the internet is inseparable from the

right to education and the right to privacy under Article 21 of the Constitution. When Faheema Shirin, a young BA student of Sree Narayana Guru College, was expelled from her women's hostel for refusing to surrender her mobile phone and abide by arbitrary restrictions on phone and internet use, she approached the High Court in a writ petition challenging those rules as discriminatory and unconstitutional. Justice P. V. Asha, sitting singly on 19 September 2019, held that students—being adults—could not be stripped of their freedom to access mobile phones and the internet, essential tools in modern education. The court directed her re-admission to the hostel and struck down the unreasonable restrictions, observing that discipline must not be enforced by cutting off avenues of knowledge. In doing so, the judgment wove constitutional liberty with the realities of a digital age, lighting a beacon for students' rights and reaffirming that no institution can curtail fundamental freedoms under the guise of discipline.

Internet access was acknowledged as integral to education, privacy, and expression, confirming that constitutional rights adapt to technological realities.

- **Reproductive Justice**

In *X v. Principal Secretary, Health and Family Welfare Department, Government of NCT of Delhi* (2022), the Supreme Court upheld reproductive autonomy and equality, ruling that unmarried women have the same right as married women to terminate a pregnancy under Articles 14 and 21. The Court struck down discriminatory restrictions in the Medical Termination of Pregnancy Rules, emphasizing that dignity, choice, and bodily autonomy cannot be constrained by marital status. By reading the law purposively, the Court ensured that justice embraces all women, weaving law with compassion in the modern age.

The Court affirmed reproductive autonomy irrespective of marital status, reinforcing equality, decisional privacy, and bodily integrity.

- **Democratic Transparency**

In *Association for Democratic Reforms & Another v. Union of India and Others* (2024), the Supreme Court stood as a guardian of democratic light, striking down the Electoral Bond Scheme of 2018 as unconstitutional and a veil over the people's right to know. The Constitution Bench led by Chief Justice D. Y. Chandrachud held that anonymous political funding obscures the voters' right to information under Article 19(1)(a) and corrodes the transparency essential for free and fair elections, while the removal of corporate contribution limits violated Article 14 by enabling disproportionate influence in politics. The Court's verdict ordered the cessation of electoral bond issuance and affirmed that the integrity of democracy demands openness, not shadows, in the financing that drives public choice and public trust.

Recent Observations in High Courts

- **Akhil Marar v. State of Kerala (Kerala High Court, 2025)**

The case arose from criminal proceedings against filmmaker and public commentator Akhil Marar for words spoken in the public realm, branded by the State as provocative and seditious. At its constitutional heart lay a vital question: can dissenting or uncomfortable speech, unaccompanied by any spark of violence or imminent disorder, be punished by the criminal law?

The Kerala High Court answered in the language of constitutional freedom. It affirmed that Article 19(1)(a) shelters not only agreeable speech but also dissent, criticism, and voices that unsettle authority. The Court cautioned that penal law cannot be wielded as an instrument of silence, and held that speech offences demand a clear, proximate link to incitement of violence or public disorder, not mere sharpness of expression. In granting anticipatory bail, the Court preserved the sanctity of personal liberty under Article 21, restrained the heavy hand of executive power, and reaffirmed the judiciary's role as the sentinel of civil liberties, reflecting a quiet yet resolute act of judicial activism in the service of human rights.

Conclusion: Judicial Activism as Constitutional Stewardship.

Judicial activism in India is not a claim to governance, but an assertion of constitutional responsibility. Rooted in Article 13 and animated by constitutional morality, judicial intervention becomes necessary when silence hollows rights and weakens democracy. By preserving institutional balance while insisting on accountability, the judiciary ensures that power remains restrained, rights remain

substantive, and the Constitution remains a living moral force. The Indian judiciary does not rule—it reminds. And through that reminder, it sustains a democracy faithful to its constitutional promise.

In the vast corridors of justice, the Indian judiciary stands as both guardian and guide, A sentinel where the rights of the voiceless find their echo, and the shadows of oppression meet the light. As Justice P.N. Bhagwati once said, “The judiciary cannot remain deaf to the sufferings of the people.” Through activism that bends not to tyranny, but to conscience, it shapes the law into a living promise, A promise that liberty, equality, and dignity are not mere words on parchment, But the heartbeat of a nation that dares to dream of justice for all.

Since 1973, judicial activism in India has unfurled new horizons for human rights, beginning with the Kesavananda Bharati case and the firm assertion of the Constitution’s basic structure. In the 1980s and 1990s, the courts became a beacon for the marginalized, using Public Interest Litigations to challenge social injustices and protect the environment. The turn of the century brought a broader embrace of rights—gender equality, privacy, and the welfare of children—reflecting a society in transformation. Today, the judiciary walks the delicate line between state authority and individual freedom, a steadfast guardian of human dignity and justice.

Here, the gavel is not just a symbol of power—it is the voice of hope, A beacon that illuminates the dark alleys of despair, Where human rights bloom even against the fiercest storm. As Mahatma Gandhi reminds us, “Freedom is not worth having if it does not include the freedom to make mistakes.” And as India marches forward, it is this vigilant, compassionate judiciary that reminds us: the soul of democracy thrives only when justice embraces every citizen, and rights are not privileges, but the sacred inheritance of humanity itself.

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