

FROM BENCH TO BILL: HOW JUDICIAL INDUCTION AND LEGISLATIVE DEDUCTION CO-PRODUCE JUSTICE IN INDIA

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Abstract

The judiciary and legislature are indispensable pillars in the administration of justice, with the judiciary engaging in adjudication in alignment with legislative intent, while the legislature discharges its constitutional mandate by crafting laws that respond to the evolving needs of society. This article studies the judiciary's application of deductive and inductive reasoning frameworks to push forward the ideals of justice. It highlights that courts apply deductive reasoning to maintain legislative intent within an adversarial legal framework, adhering to established legal principles and precedents. In contrast, inductive reasoning is employed within a progressive inquisitorial framework to attain comprehensive justice and to address gaps in legislation. The research emphasizes the broadened responsibilities of the Indian judiciary, which extend beyond mere adjudication to include a proactive, truth-seeking role, particularly through its limited inquisitorial powers that ensure procedural limitations do not impede substantive justice. Moreover, it illustrates that judicial activism is not a challenge to parliamentary law-making but rather serves as an adjunct to it, often acting as a stimulus for the codification of legislation. Judicial determinations, which are grounded in inductive reasoning, frequently inform the legislature, which then codifies these insights through deductive reasoning, thereby reflecting a dynamic interaction that preserves Constitutional integrity. It contests the traditional perspective that judicial activism inherently undermines the separation of powers, suggesting instead that when exercised with a proper balance of inductive and deductive reasoning, it serves as an essential corrective mechanism for both legislative and executive accountability.

Keywords: Deductive reasoning; inductive reasoning; inquisitorial power; legislative codification; legislative intent.

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I. Introduction

‘ACTIVIST JUDGES’ are ‘overstepping their bounds’.¹ Such criticism arises from a rigid adversarial model of governance that maintains a strict functional division across its three constitutional organs. Adopting such an approach may overlook the broader nature of Constitutionalism, where the judiciary is not merely an adjudicatory body but also guardian of fundamental rights. A proper understanding of the judiciary’s role within a constitutional democracy such as India is essential, particularly in examining how courts balance the delicate boundary between judicial intervention and judicial restraint. Although the framers of the Indian Constitution envisaged a system of governance based on the principle of separation of powers, they simultaneously allowed scope for an evolving judicial role capable of responding to constitutional imperatives whenever necessary.

The Supreme Court’s role as the custodian of the Constitution extends beyond merely protecting fundamental rights; it also entails adopting a proactive stance in addressing and remedying social injustices. Recent landmark rulings have evidenced this dynamic, wherein the judiciary has intervened to uphold the rights of marginalized groups, indicative of a transition towards a more activist paradigm that contests conventional interpretations of judicial restraint. Nonetheless, this prompts critical inquiries regarding the boundaries of judicial authority and the potential infringement upon legislative responsibilities, underscoring the necessity for a judicious approach that honours parliamentary supremacy while ensuring administration of justice. (Sharma 2023)

This paper challenges the assumption that judicial activism necessarily undermines the separation of powers. Instead, judicial activism whenever exercised within Constitutional limits serves as a corrective mechanism that maintains legislative and executive accountability.

This paper will also delve into the judiciary’s reasoning methodologies, particularly inductive and deductive reasoning, and demonstrate that judicial activism is not an arbitrary

¹ Mike Davis, “Activist’ judges are ‘overstepping their bounds,’ ” *Fox Business* (11 February 2025) <https://www.foxbusiness.com/video/6368673138112> (last visited on February 15, 2025).

overreach but a structured response to legislative inaction. While exercising judicial restraint for adhering to legislative intent, the judiciary seems to be adopting deductive reasoning whereas while exercising judicial activism for promoting social justice, the judiciary can be seen adopting inductive method of reasoning as highlighted in the analysis of judgements discussed in the paper. Deductive reasoning enables the judiciary to apply established principles to specific cases, ensuring consistency in legal interpretation. In contrast, inductive reasoning allows the courts to derive broader Constitutional principles from case-specific adjudication, thereby adapting legal doctrines to evolving socio-political realities. This dual reasoning approach showcases the judiciary's role in shaping Constitutional jurisprudence without violating the principles of democratic governance or the 'doctrine of separation of powers'.

The paper further illustrates the way judicial activism and parliamentary law making are not adversarial but complementary processes, with courts using both inductive and deductive reasoning for adjudication and vice versa. Through this analysis, it will be established that the shift towards a more engaged judiciary that employs an inquisitorial approach is both justified and essential for preserving the integrity of Constitutional democracy.

II. Deductive Reasoning and Judicial Restraint: Adhering to Legislative Intent

As defined by the Merriam-Webster Dictionary, "judicial restraint" refers to a practice in which the judiciary refrains from departing from established precedent and avoids the creation of broad legal doctrines.² Judicial restraint requires judges to ground their decisions primarily in the principle of *stare decisis*, which obligates courts to respect and adhere to established precedents. Traditionally, the judiciary's role is concerned with interpreting the existing statutes and precedents, not law-making. It suggests that courts should primarily rely on deductive reasoning, deriving their decisions from legislated statutes and binding judicial precedents.

Many leading constitutional assembly leaders propounded this separation of powers including Jawaharlal Nehru, who said that the legislature is the final authority which represents the will of the whole community, unlike the judiciary. Therefore, no judiciary can stand against this supreme will of the people.

²'Judicial Restraint' Merriam-Webster.com Legal Dictionary <https://www.merriam-webster.com/legal/judicial/restraint> (last visited on November 12, 2020).

In the *Pramati Educational & Cultural case*³, the challenge contended that Article 15(5), Article 21A of the Constitution of India and the Right of Children to Free and Compulsory Education Act, 2009 violated the basic structure of the Constitution as well as the right to equality by creating an unreasonable distinction between aided and unaided minority educational institutions. The Court exercised judicial restraint and upheld the constitutionality of the RTE Act, holding that since the objectives of Articles 15(5) and 21A were to provide equal opportunities for students from weaker sections of society, the Act did not infringe the private schools' rights under Article 19(1)(g).

In *Rajesh Sharma case*⁴, the Hon'ble Supreme Court examined whether, by the method of interpretation, it could issue directions to curb the misuse of Section 498A of the IPC. The Court noted that some directions had the potential to encroach upon the legislative field and further opined that the judiciary cannot decide whether a particular policy is wise; it may only intervene if a policy is completely at odds with Article 14. This analysis shows that the judges employed deductive reasoning and affirmed that the Court cannot "whittle down" a legislative provision.

In *Dheeraj Mor case*⁵, the issue concerned the interpretation of Article 233 of the Constitution of India regarding appointment of District Judges through direct recruitment. Petitioners argued that a candidate who, before joining judicial service, had completed seven years of practice as an advocate, or had completed seven years solely in judicial service, or had a combined seven years' experience as both a judicial officer and an advocate, should be eligible to stake a claim for a direct recruitment quota from the Bar. Exercising judicial restraint, the Hon'ble Court held that a judicial officer even with seven years of prior advocacy experience cannot apply directly for a vacancy in the post of District Judge. Their only route to that position is through promotion, following the rules framed under Article 234 and the provision of Article 309 of the Constitution of India.

In *Aravali Golf Club case*⁶, the Court observed that, under the banner of judicial activism, the judiciary cannot usurp functions of another branch of the State. In this case, plaintiffs initially hired as gardeners were later assigned tractor-driving duties without proper reclassification or pay. When they sought redress, they were denied because no official post

³*Pramati Educational & Cultural vs. Union of India & Ors* (2014) 8 SCC 1.

⁴*Rajesh Sharma v. State of Uttar Pradesh* (2018) 10 SCC 472.

⁵*Dheeraj Mor v. Hon'ble High Court of Delhi* (2020) 7 SCC 401.

⁶*Aravali Golf Club v. Chander Hass* (2008) 1 SCC 683.

existed for a tractor driver. The Court exercised judicial restraint by stating that it could not direct the creation of posts, as the power to create and sanction posts lies exclusively with the executive or legislative authorities.

In *Independent Thought case*,⁷ a writ petition was filed by Independent Thought, a registered society working in child rights. The petitioner argued that Exception 2 of Section 375 of the IPC⁸ which decriminalizes marital rape creates an arbitrary, artificial distinction between married and unmarried girls aged fifteen to eighteen, thus being discriminatory. Although the Apex Court nullified the portion of Section 375 that legitimized the marital rape of girls in that age group, the broader issue of marital rape involving adult women was categorically excluded by the two-judge bench. Here, the Court exercised judicial restraint by refraining from addressing the question of marital rape explicitly.

Finally, in *Kachchh Jal Sankat Nivaran Samiti* ⁹, the petitioners challenged the State's decision to allocate an allegedly inadequate share of water to the Kachchh region. They contended that the allocation was insufficient and sought judicial directions for a reconsideration of the State's water distribution policy. The Supreme Court manifested judicial restraint by upholding the doctrine of separation of powers, refraining from issuing any directions to the State Government because it determined that the matter fell exclusively within the executive's domain rather than that of the judiciary.

III. Inquisitorial Powers promoting Legislative Intent

The Indian legal system is predominantly adversarial, with judges expected to remain impartial as parties present their cases, the accused is presumed to be innocent, and the burden of proving guilt rests entirely on the prosecution. However, strict adherence to this adversarial model does not always secure complete justice, as procedural limitations can create gaps in evidence. The constitution provides for more flexibility to courts in order to do complete justice. For instance, the constitution provides for Writ jurisdiction to the Supreme Court and High Courts via Articles 32 and 226 respectively. Here, the words "for any other purpose" are given a broad meaning to encompass vast issues including statutory and common law rights.(Sathe 2001) Furthermore, Article 142¹⁰ provides the Supreme Court the

⁷*Independent Thought v. Union of India* (2017) 10 SCC 800.

⁸The Bharatiya Nyaya Sanhita, 2023, s.63.

⁹*Kachchh Jal Sankat Nivaran Samiti v. State of Gujarat* (2013) 12 SCC 226.

¹⁰The Constitution of India 1950, art. 142.

authority to pass any decree necessary for doing complete justice. Also, the legal framework grants limited inquisitorial powers to the judiciary through Section 168 of the Bharatiya Sakshya Adhinyam,¹¹ and Sections 348 and 351 of the Bharatiya Nagarik Suraksha Sanhita (BNSS).¹² These provisions enable judges to intervene in specific circumstances so that substantive justice is not hindered by procedural constraints.

According to Section 168 of the BSA,¹³ a judge may question any witness or party about any fact, at any time, in any form, and without a party's or agent's permission, in order to learn about or obtain proper proof of the relevant facts. The judge may also order the production of a document or other item, and neither party nor the agent is allowed to object to any question or order. The section confers broad discretionary powers to judges as it enables a judge to question any witness or party about any fact, relevant or irrelevant, at any stage of the trial, demonstrating that by using these powers, the judge transcends the prescribed method in order to provide full justice. In such cases, the judge plays a supplemental role by posing extra questions to the parties and witnesses as well as by subpoenaing a document or object.

According to Section 348 BNSS¹⁴, the court may call witnesses at any point during an investigation or trial, question anyone present, or call a witness they have already questioned back in for a second interview. It also states that the court must conduct an investigation if it determines that doing so is necessary for a fair verdict. The Court has the authority to call any witness for questioning by a party or by itself in the first part, either on its own initiative or in response to a request from the parties. Even though he hasn't been examined by the Court, the individual in attendance can still be questioned by the court. The section's final paragraph essentially lays out the rules for summoning witnesses, saying that the court must call or recall a witness if it appears that their testimony is necessary for a fair resolution of the case (i.e., the court must be convinced that the witness is a material witness based on the facts of the case). This provision shows a more engaged form of judicial functioning so as to play a more proactive role in uncovering the truth.

¹¹The Bharatiya Sakshya Adhinyam, 2023, s.168. (Indian Evidence Act 1872, s. 165).

¹²The Bharatiya Nagarik Suraksha Sanhita, 2023, s. 348 and s. 351.(The Criminal Procedure Code 1973, s. 311 and s. 313)

¹³The Bharatiya Sakshya Adhinyam, 2023, s. 168. (The Indian Evidence Act, 1872, s. 165).

¹⁴The Bharatiya Nagarik Suraksha Sanhita, 2023, s 348. (The Criminal Procedure Code 1973, s. 311)

The Supreme Court, in *Mannan SK case*¹⁵, emphasized that the exercise of this power must not be arbitrary. The key criterion is whether the testimony is “essential to the just decision of the case”. While courts must ensure that no crucial evidence is overlooked, they must also guard against misuse of this provision to fill gaps in the prosecution’s case. Thus, section 311¹⁶ reinforces the judiciary’s role as a proactive facilitator of truth-seeking, enabling courts to intervene when necessary to prevent miscarriage of justice.

In this regard, the Hon’ble Supreme Court in *Trimuk Maroti Kirkan Case*¹⁷, clarified that the statements made by the accused under section 313¹⁸ are for filling in the vacuum in the prosecution’s case rather than serving as substantive evidence. Since the accused is not under oath when making these statements, they cannot be treated as conclusive proof but may assist in assessing missing links in the prosecution’s narrative.

Section 351 BNSS¹⁹ makes no as such mention of how the accused will be examined. However, the Apex Court has consistently held that the courts must take care to provide the accused with all the pertinent material circumstances that are presented as evidence. This will allow him to respond in his own defense to the prosecution’s case and to any circumstances that are presented as evidence against him. Thus, Section 351²⁰ facilitates a direct line of communication between the court and the accused, circumventing the filter of legal representation in order to allow the accused to explain himself that may aid in determining the truth.

The limited inquisitorial powers conferred on the judiciary under Sections 351, 348²¹, and 168²² of the BNSS and the BSA serve as a corrective mechanism in an adversarial system to ensure that substantive justice is not hindered by procedural limitations. The provisions allow courts to act beyond the role of passive arbiters, allowing courts to intervene in specific circumstances thereby ensuring that justice is not compromised by procedural gaps.

¹⁵*Mannan SK v. State of West Bengal* 2014 (13) SCC 59.

¹⁶The Bharatiya Nagarik Suraksha Sanhita, 2023, s. 348. (The Criminal Procedure Code, 1973, s. 311)

¹⁷*Trimuk Maroti Kirkan v. State of Maharashtra* (2006) 10 SCC 681.

¹⁸The Bharatiya Nagarik Suraksha Sanhita, 2023, s. 351. (The Criminal Procedure Code, 1973, s. 313).

¹⁹*Ibid.*

²⁰*Ibid.*

²¹The Bharatiya Nagarik Suraksha Sanhita, 2023, s. 348 and s. 351. (The Criminal Procedure Code, 1973, s. 311 and s. 313)

²²The Bharatiya Sakshya Adhinyam, 2023, s. 168. (The Indian Evidence Act 1872, s. 165).

In *Ram Chandra case*²³, the court criticized the view that a judge should act solely as an umpire between the prosecution and the defense.²⁴ In *Mohanlal case*²⁵, the court stressed that the judiciary must deliver its functions discretionary or obligatory not only to do justice but to ensure that justice is actually being done.²⁶ Former President Dr. R. Venkataraman further noted that traditional Indian panchayats were based on truth-seeking, in contrast to the adversarial model, which tends to give importance to procedure over truth.²⁷ In addition to these historical practices, the Constitution and various legislations provide specific provisions that allow for judicial intervention in the name of justice.

The Supreme Court in *Ani @ Hanif & Ors. case*²⁸, clarified that Judicial discretion under Section 165 is enacted with the intent to address the evidentiary gaps wherever parties fail to present a complete case. The court recognizes that judges possess the authority to actively intervene in proceedings as facilitators of justice. However, this discretion is not unfettered; it is circumscribed by procedural safeguards designed to prevent excessive judicial interference and to ensure that no party is placed at an unfair advantage. Also, the court in *R v. Hari Lakshman*²⁹ noted that a judge may ask even an irrelevant question if doing so would assist in the ascertainment of the concerned facts. However, in *Bal Krishna v. Ram Krishna*³⁰ the court clarified that this power must be exercised judiciously so as to ensure that the order contributes to facts finding rather than merely extending the inquiry

In *Jamatraj Kewalji Govani case*³¹ the Supreme Court has held that Section 165 of the Indian Evidence Act, 1872 gives wide powers upon judges to act in furtherance of justice. Further in case of *Himanshu Singh Sabharwal case*³², the Supreme Court observed that where the requirements of a fair trial are not being adequately met, and the court has reason so to believe that the prosecutor is not acting appropriately, it may exercise its powers under

²³*Ram Chandra v. State of Haryana* (1981) 19 SCC 191.

²⁴ Committee on Reforms of Criminal Justice System, Government of India, *Ministry of Home Affairs*, Report, Volume I (March 2003) 28 https://mha.gov.in/sites/upload_files/mha/files/Reforms_of_Criminal_Justice_System_VolI_2003.pdf (last visited on February 17, 2025).

²⁵*Mohanlal v. Union of India* (2016) 3 SCC 379.

²⁶*Id.*, at 29.

²⁷*Ibid.*

²⁸*State of Rajasthan v. Ani @ Hanif & Ors.* (1997) 6 SCC 162.

²⁹*R v. Hari Lakshman* (1876) ILR 10 Bom 185.

³⁰*Bal Krishna v. Ram Krishna* (1931) 33 Bom LR 1280.

³¹*Jamatraj Kewalji Govani v. State of Maharashtra* 1967 (3) SCC 415.

³²*Himanshu Singh Sabharwal v. State of Madhya Pradesh* (2008) 3 SCC 602.

Section 311 of the Code of Criminal Procedure, 1973 and section 165 of the Indian Evidence Act to call the evidences for the sake of justice.³³

In *Zahira Habibulla H. Sheikh case*³⁴, the Supreme Court highlighted that the core objective of the criminal justice system is the “discovery, vindication and establishment of truth.” It stressed that criminal trials are ultimately meant to deliver justice by convicting the guilty while protecting the innocent, and therefore must function as a genuine “search for truth” rather than being overly constrained by technicalities. In case of *Meera Devi case*³⁵, the Court referred to the Malimath Committee’s recommendations on judicial reform and reiterated its concern that, in an effort to maintain neutrality, judges often become overly passive, resulting in truth becoming a casualty in the process.

In the case of *Shivani Sharma case*,³⁶ the court observed that a judge is not merely a neutral umpire in a contest between opposing lawyers, whose role is limited to applying procedural rules and declaring a winner at the end of the trial. Rather, a judge has an active responsibility to seek the truth by exploring all available avenues. In doing so, the judge may question witnesses on matters that counsel may have overlooked, left unclear, or deliberately avoided. The court further emphasized that a judge who passively records evidence without ensuring that all relevant facts are properly brought out during witness examination fails to discharge his judicial duty.

In the case of *Sakiri Vasu case*,³⁷ Section 156(3) of the Code of Criminal Procedure, 1973³⁸ encompasses all powers necessary to ensure a proper investigation and secure a fair trial. This means that the judicial magistrate can supervise the investigation done by the police. Further under section 169³⁹ the Magistrate is not bound by the closure report submitted by the police and may proceed with the matter if deemed appropriate. Also, under section 173(8)⁴⁰ empowers the court to direct further investigation even after the charge sheet has been filed where it appears that the investigation was not conducted adequately.

Though India follows an adversarial system one cannot conclude that Judges are a mere spectator within the justice delivery system. The role of judges is far beyond the walls of the

³³*Dheeraj Mor v. Hon'ble High Court of Delhi* (2020) 7 SCC 401.

³⁴*Zahira Habibulla H. Sheikh v. State of Gujarat* (2004) 4 SCC 158.

³⁵*Meera Devi v. Jitender* (2006) 1 SCC 274.

³⁶*Shivani Sharma v. Ram Chander* (2013) 3 SCC 164

³⁷*Sakiri Vasu v State of Uttar Pradesh* (2008) 2 SCC 409.

³⁸The Bharatiya Nagarik Suraksha Sanhita, 2023, s. 175. (The Criminal Procedure Code, 1973, s. 156)

³⁹The Bharatiya Nagarik Suraksha Sanhita, 2023, s. 189. (The Criminal Procedure Code, 1973, s. 169)

⁴⁰The Bharatiya Nagarik Suraksha Sanhita, 2023, s. 193. (The Criminal Procedure Code, 1973, s. 173)

courtroom. Therefore, it's incorrect to imply that judges are mere spectators in the criminal justice system in India. From the few cases aforementioned it is evident that though India follows or advocates the Adversarial system there have been an increasing number of cases which have advocated for and encouraged a more active role for the judges so to meet the ends of justice in the criminal justice system.

IV. Inductive Reasoning and Judicial Activism: From Restraint to Proactive Interpretation

As judicial reasoning continues to evolve, the implications of this shift toward proactive interpretation extend beyond mere legal frameworks, influencing broader societal norms and expectations from the judiciary. This transformation reflects an increasing perception that courts are not merely institutions tasked with interpreting the law, but are also active participants in shaping legal norms in response to contemporary concerns such as civil liberties, equality, and social justice. While earlier discussed judicial pronouncements emphasized restraint, recent trends suggest a willingness to embrace judicial activism as a tool for progressive change. This evolution underscores judiciary's role in addressing social demands and advancing constitutional goals, particularly through mechanisms such as public interest litigation, as observed by Sindhu, Sharma, and Sharma (2024).

The doctrine of judicial activism in India emerged during the mid-1970s. This doctrine signifies the judiciary's proactive role in upholding and safeguarding citizens' rights and ensuring constitutional governance. It departs from the principle of judicial restraint, wherein courts limit their intervention to strict interpretations of the law. Instead, judicial activism encourages a progressive, socially responsive application of legal principles, sometimes compelling the legislature and executive to fulfill their constitutional obligations.

A crucial development within this evolution of judicial reasoning has been the shift from deductive to inductive approaches, enabling courts to address broader social injustices rather than adhering strictly to precedent. Deductive reasoning requires applying general legal principles to specific cases, whereas inductive reasoning derives broader legal doctrines from specific instances, allowing for a more flexible and context-sensitive interpretation of the law.

One of the clearest illustrations of this inductive shift is *Shayara Bano case*⁴¹, which represents a paradigm shift in judicial reasoning. The case challenged practices such as talaq-e-biddat (instant triple talaq), polygamy, and nikah-halala. In its majority decision (3:2), the Supreme Court adopted a fact-oriented and inductive approach, holding that even in the absence of an express constitutional prohibition, the practice of instant triple talaq violated Articles 14, 15, 21, and 25 of the Constitution. The Court reasoned that such practice was arbitrary and lacked a rational nexus with any legitimate objective.⁴² This inductive shift enabled the judiciary to address a larger social injustice, advancing women's rights and gender equality while reinforcing the essential constitutional values of equality, dignity, and secularism.

Another significant case in gender rights is *Indian Young Lawyers Association case*,⁴³ in which the Hon'ble Supreme Court employed inductive reasoning to expand constitutional principles beyond a narrow reading of Article 25 (freedom of religion). The Court lifted the ban on the entry of women between the age group of 10–50 years into the Sabarimala temple, emphasizing gender equality and dignity.⁴⁴

Following this ruling, several review petitions were filed, leading to *Kantaru Rajeevaru case*.⁴⁵ where the court recognized the need to develop a judicial policy to resolve conflicts between religious freedom and fundamental rights.⁴⁶ A nine-judge bench was constituted to address broader Constitutional issues, demonstrating the role of inductive reasoning in shaping long-term legal frameworks rather than relying solely on precedent.

Similarly, in *Joseph Shine case*,⁴⁷ The court nullified the effect of Section 497 IPC (criminalization of adultery), reflecting a clear departure from formalistic, deductive jurisprudence. The Court analyzed contemporary gender dynamics, international legal principles, and empirical data, recognizing that criminalizing adultery disproportionately targeted women, violating Articles 14, 15, and 21 of the Indian Constitution.

⁴¹*Shayara Bano v. Union of India* (2017) 9 SCC 1.

⁴²*Ibid.*

⁴³*Indian Young Lawyers Association v. State of Kerala* (2018) 11 SCC 1.

⁴⁴*Ibid.*

⁴⁵*Kantaru Rajeevaru v. Indian Young Lawyers Association* (2020) 2 SCC 1.

⁴⁶*Ibid.*

⁴⁷*Joseph Shine v. Union of India* (2019) 3 SCC 39.

In *Hussainara Khatoon & Ors. case*,⁴⁸ A writ petition was lodged seeking the release of under-trial prisoners in Bihar. The Court inductively interpreted Article 21 (Right to Life and Personal Liberty), recognizing the right to a speedy trial as an implicit fundamental right. Rather than adhering to narrow deductive logic, the Court engaged in a fact-based approach, concluding that continued detention violated fundamental rights.

A similar inductive approach was observed in *Delhi Jal Board case*⁴⁹ where the Supreme Court of India held that courts have a Constitutional obligation to address issues affecting marginalized workers. Recognizing legislative failures, the Court affirmed that the right to dignity under Article 21 requires judicial intervention when the executive fails to act.

In *Common Cause case*⁵⁰, constitutional bench unanimously upheld the right to die with dignity as a fundamental right as per Article 21 of Indian Constitution, recognizing passive euthanasia and advance medical directives as Constitutional rights. Instead of relying on existing legal frameworks, the Court expanded the interpretation of bodily autonomy and self-determination, reinforcing the judiciary's constitutional role in shaping progressive constitutional jurisprudence.

Another example is *Selvi case*⁵¹, where the Court ruled on the legality of the Narco Analysis Test. The Court engaged in an empirical and rights-based approach, recognizing that forced administration of such tests violates mental privacy and personal autonomy. It held that mental privacy is integral to personal liberty, reinforcing the judiciary's commitment to evolving constitutional protections.⁵²

Similarly, in *Subramanian Swamy case*⁵³, the Hon'ble court upheld the constitutionality of S. 499 and 500 IPC (criminal defamation). Instead of relying solely on textual interpretation, the Court examined Constituent Assembly debates and societal concerns, concluding that criminal defamation is a reasonable restriction on free speech.

From the above analysis, it is clear that although judicial activism has played a transformative role, concerns arise regarding judicial overreach. A major concern stems from the expansive interpretation of the 'Basic Structure' Doctrine, which grants courts broad

⁴⁸*Hussainara Khatoon & Ors. v. Home Secretary, State of Bihar* (1980) 1 SCC 115.

⁴⁹*Delhi Jal Board v. National Campaign for Dignity and Rights of Sewerage and Allied Workers* (2011) 8 SCC 568.

⁵⁰*Common Cause v. Union of India* 2014 (6) SCC 552.

⁵¹*Selvi v. State of Karnataka* (2010) 7 SCC 263.

⁵²*Ibid.*

⁵³*Subramanian Swamy v. Union of India* (2016) 7 SCC 221

authority to review laws based on Constitutional principles. As Dr. Sethna observed, “The human mind is not infallible and the judge is no exception. The wisdom of the legislature can, therefore, be regarded as a more reliable means of protection than the fancy of an individual judge.”

However, despite such concerns, judicial activism, when exercised through inductive reasoning, has led to protection of fundamental rights by recognizing implicit Constitutional guarantees, addressing legislative and executive inaction through judicial directives, and developing Constitutional jurisprudence that adapts to contemporary challenges.

The Indian judiciary has progressively extended its function from mere dispute resolution, embracing a corrective power that prioritizes equity over rigid legal formalism. (Sikri 2007) In *Supreme Court Bar Association case*⁵⁴, reaffirmed its expansive constitutional role by emphasizing that its duty extends beyond mere adjudication to ensuring “complete justice.” By analyzing real-life implications and social progress, the judiciary has upheld justice, safeguarded marginalized communities, and reinforced democratic values within India’s Constitutional framework.

V. Judicial Activism Leading to Legislative Codification: An Evolving Nature of Legal Reasoning

As per conventional understanding, the legislature is expected to exercise inductive reasoning, given that law-making is its primary function, whereas the judiciary adjudicates using deductive reasoning based on existing laws and statutory frameworks. The conventional understanding that only inductive reasoning should be employed for law-making has undergone substantial transformation in recent years. Legislatures are now increasingly adopting this approach, particularly when codifying judicial decisions into statutory law.

In cases like *Shayara Bano*, the shift in institutional roles is clearly evident, as the judiciary exercised a quasi-legislative function by establishing legal principles. Subsequently, the legislature codified these principles, ensuring statutory enforceability via enactment of *Muslim Women (Protection of Rights on Marriage) Act, 2019*. This case is a classic example of the legislature’s utilization of deductive reasoning by incorporating the judiciary’s

⁵⁴*Supreme Court Bar Association v. Union of India* (2015) 6 SCC 408.

reasoning into legal provisions a method previously predominantly used by the judiciary but increasingly adopted by legislative bodies.

The *Nirbhaya judgment*⁵⁵, which ultimately contributed to amendments in the Juvenile Justice Act, illustrates the manner in which judicial pronouncements can shape legislative policy. Likewise, broader transformations arising from changing social and political conditions have prompted the enactment of new laws and constitutional amendments. These include measures such as the introduction of reservation policies, changes in India's taxation system, and modifications to emergency provisions in response to the overreach witnessed during the Emergency period.⁵⁶

The enactment of various farm laws reflected the perceived need for changes in the procurement system, while reforms such as the new income tax policy and amendments to the Foreign Contribution (Regulation) Act were introduced to address emerging economic and regulatory concerns. In all these cases, the legislature has employed deductive reasoning, formulating laws in light of pre-existing judicial and socio-political developments.

Another significant instance is the legislation of the Transgender Persons (Protection of Rights) Act, 2019,⁵⁷ showcasing the legislature's shift towards incorporating judicial guidelines into legislative frameworks. In *NALSA case*⁵⁸, the Supreme Court gave recognition to transgender persons as a "third gender", acknowledging that they fall within the constitutional framework, thereby entitled to fundamental rights. The Court also recognized the right to self-identification, allowing individuals to determine their own gender identity free from external compulsion.⁵⁹ After almost five years, Parliament legislated the *Transgender Persons (Protection of Rights) Act, 2019*, incorporating judicial mandate into statutory provisions. The Act prohibits discrimination against transgender persons and gives recognition to the right to self-perceived gender identity, thereby reflecting the reasoning

⁵⁵*Mukesh & Anr v. State (NCT of Delhi) & Ors* (2017) 6 SCC 1.

⁵⁶'From Adding "Secular" and "Socialist" to the Women's Reservation Act: Ten Crucial Constitutional Amendments Every Student Should Know' (The Times of India, 1 December 2024) <https://timesofindia.indiatimes.com/education/news/from-adding-secular-and-socialist-to-womens-reservation-act-ten-crucial-constitutional-amendments-every-student-should-know/articleshow/115863654.cms> (last visited on February 15, 2025).

⁵⁷*The Transgender Persons (Protection of Rights) Act, 2019*, No. 40 of 2019, India Code (2019) <https://socialjustice.gov.in/writereaddata/UploadFile/TG%20bill%20gazette.pdf> (last visited on February 15, 2025).

⁵⁸AIR 2014 SC 1863

⁵⁹*NALSA v. Union of India* (2014) 5 SCC 438

adopted by the Supreme Court.⁶⁰ Here again, the legislature applied deductive reasoning, clearly reflecting a broader pattern wherein judicial activism operates as a driving force behind legislative reform.

In *Vishaka and Ors. case*⁶¹, concerning sexual harassment of women at workplaces, here the issue relates to systemic vulnerabilities faced by working women and the absence of legislative measures to address this issue. Recognizing that such incidents constitutes a violation of fundamental rights, the Supreme Court made an observation that sexual harassment infringes upon gender equality (Article 14), the right to life and personal liberty (Article 21), and the freedom to practice any profession (Article 19(1)(g)). The Court noted that such violations are recurring phenomena, necessitating an urgent legal framework.⁶² Eventually, the *Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013* was enacted.⁶³ The legislature employed deductive reasoning by incorporating the Supreme Court's definition of sexual harassment and few other crucial provisions into statutory law. However, Parliament also utilized inductive reasoning, making modifications beyond the Vishaka Guidelines, such as introducing interim relief provisions for victims, confidentiality clauses, consequences of noncompliance, and other provisions reflecting societal norms and emerging concerns.⁶⁴ This ensured a more comprehensive legal mechanism for both protection and redressal.

VI. Conclusion

Rather than constituting an impermissible encroachment upon the legislative domain, judicial activism in India operates as a constitutionally sanctioned corrective mechanism, indispensable to the realisation of complete justice. The judiciary discharges a pivotal constitutional function that becomes particularly pronounced when the legislative or executive branches fall short of their constitutional obligations. Through a judicious application of both inductive and deductive reasoning, courts interpret laws in contexts where

⁶⁰*The Transgender Persons (Protection of Rights) Act, 2019*, No. 40 of 2019, India Code (2019) <https://socialjustice.gov.in/writereaddata/UploadFile/TG%20bill%20gazette.pdf> (last visited on February 15, 2025).

⁶¹(1997) 6 SCC 241

⁶²*Vishaka and Ors. v. State of Rajasthan* (1997) 6 SCC 241.

⁶³*The Protection of Women Against Sexual Harassment at Workplace Act, 2013*, No. 14 of 2013, India Code (2013) <https://www.indiacode.nic.in/handle/123456789/2104> (last visited on February 15, 2025).

⁶⁴*Ibid.*

statutory provisions are silent or ambiguous, bridging legal gaps and addressing contemporary challenges while maintaining judicial consistency.

The Constitutional framework, particularly Articles 32, 226, and 142, confers the authority upon the judiciary to safeguard fundamental rights and provide appropriate remedies when remaining segments of government fall short of their constitutional duties. This framework reinforces the principle of checks and balances, thereby ensuring that no single organ of the state operates in isolation. When governance fails to uphold the trust vested in it by the people, judicial intervention becomes a necessary safeguard to maintain democratic integrity.

While judicial decision-making is expected to remain impartial, individual opinions and biases of judges can sometimes influence rulings, leading to both rightful activism and occasional abuse of power. However, the broader trend demonstrates that it has, by and large, fulfilled its legitimate constitutional purpose as the guardian of Constitutional values. As technological change, globalisation, and shifting normative frameworks continue to reshape the social landscape, the judiciary's willingness to engage proactively in adapting laws to contemporary needs. This proactive approach remains essential to ensuring that legal frameworks evolve in alignment with current ideologies and societal trends.

The foregoing analysis makes it quite clear that the judiciary and the legislature do not occupy adversarial positions but function as constitutionally complementary institutions that are bound together in an ongoing and mutually reinforcing cycle of legal reasoning. As new legal issues arise, the judiciary adopts a proactive role, employing inductive reasoning to interpret evolving social conditions and bridge legislative gaps. In response, the legislature subsequently engages in deductive reasoning, codifying judicially established principles into statutory provisions, ensuring structured implementation and legal consistency. Then, the judiciary resumed its adjudicatory role, applying the relevant statutory framework. If a legal lacuna arises, the judiciary may once again adopt an inductive approach, identifying gaps and influencing subsequent legislative frameworks. Ultimately, this reciprocal engagement between the judiciary and legislature showcases the dynamic nature of legal evolution, with the ultimate aim of upholding the Constitution's integrity.