



# INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS

Open Access, Refereed Journal Multi Disciplinary  
Peer Reviewed Edition :

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ISSN

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# **JUDICIAL CONTRIBUTIONS TO THE RECENT DEVELOPMENT OF HUMAN RIGHTS IN INDIA**

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## **Abstract**

Human rights can be described as fundamental entitlements that are universally applicable to all individuals, and are indispensable for our existence as human beings. When it comes to maintaining national peace and order and safeguarding human rights, judicial review is a crucial concept. The ability of judges to oversee and regulate the actions and rulings of various governmental entities, tribunals, and courts is at the heart of this matter. All individuals are inherently entitled to these rights, without any kind of discrimination based on factors like as race, gender, nationality, religion, language, and so on. This study examines the significant role played by the court in safeguarding human rights in India. This article aims to examine justice along with judicial action's part in safeguarding human rights. Following its independence, India assumed a highly significant role in safeguarding fundamental rights. The Indian judiciary serves as the guardian of democracy and diligently preserves the principles of Indian constitutionalism. Hence, the Court assumes the role of interpreting, safeguarding, and upholding the Indian Constitution. The judiciary's active and reliable activity establishes it as the sole institution in the country that enjoys a widespread national consensus in terms of its legitimacy. This study explores the concept that judicial activism is a component of judicial review and does not contravene the separation of powers principle. Rather, it safeguards and advances constitutionalism. Moreover, this research demonstrates that judicial activism has been crucial in safeguarding and advancing human rights in India.

**Keywords:** *Human rights, Judiciary, Indian Constitution, recent developments.*

## Introduction

Regardless of other factors, everyone should have the right to oppose the state, and this is a fundamental human right. It is an inherent human right that no one can be denied without seriously violating the principles of fairness. As a result, the conventional wisdom holds that disregarding human life as valuable constitutes a breach of human rights. It was in 1948, under the banner of the UDHR<sup>1</sup>, that this right was initially acknowledged worldwide by the General Assembly. Affirming the inherent worth of each person, irrespective of gender or colour, the proclamation laid forth the national and international benchmarks for success.

### Judiciary's Contribution in Upkeep of Human Rights (HRs)

Along with other nations, India acknowledges that all people, irrespective of their concerns or reservations, have the fundamental rights outlined in the Indian Constitution. Judicial initiative, engagement, inventiveness, and care for the acknowledgment of the basic Right are shown in the Human Rights that are safeguarded by India's Supreme Court. There is no rationale to limit the Supreme Court's ability to take any action or provide any instructions to the state, since it has the broadest powers to defend the fundamental and HRs of everyone, regardless of citizenship status. The Indian Supreme Court asserted in the A.K. Gopalan v. Madras State<sup>2</sup> case that judicial review is indeed a distinctive aspect of written constitutions. Judgmental review<sup>3</sup> is tacitly recognised under Article 13(1)<sup>4</sup> along with Article 13(2)<sup>5</sup> of the Indian Constitution (IC), which grants the ability to the Supreme Court to declare a statute to be in breach of limits. Within this framework, this document endeavours to define the function of the judiciary in ensuring the acknowledgement and safeguarding of HRs.

Judicial activism is not in conflict with the separation of powers, according to this paper's conceptualization. Judicial scrutiny and judicial independence are crucial to safeguarding democratic norms, as this doctrine is applied in the Indian Constitution. Additionally, the article argues that the Indian judiciary, as seen by the Constitution's framers, delivers justice and has

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<sup>1</sup> United Nations General Assembly. The Universal Declaration of Human Rights (UDHR). New York: United Nations General Assembly, 1948.

<sup>2</sup> AIR 1950 SC

<sup>3</sup> Article 13 of the Constitution of India states that the state shall make no law that takes away or abridges the fundamental rights

<sup>4</sup> Article 13(1) of the Constitution of India states that the state shall make no law that takes away or abridges the fundamental rights

<sup>5</sup> Article 13(2) of the Constitution of India states that the state shall make no law that takes away or abridges the fundamental rights

become the protector of basic rights through judicial activism.

The judiciary was instrumental in establishing free and compulsory public education as a basic human right. Also, the right to education has been established as a fundamental HR as a result of multiple legal pronouncements. For example, *Anand Vardhan Chandel v University of Delhi & Ors.*<sup>6</sup>

In *Vikash Kumar v. Union Public Service Commission and Ors*<sup>7</sup>, When it came to handicap rights, the Indian Supreme Court was a trailblazer both domestically and internationally. The petitioner, who suffers from a writing condition, was involved in a legal dispute because the Union Public Service Commission, which administers civil service exams, refused to provide him with a scribe. As a result of this denial, the court ruled that the RPwD Act of 2016 was violated.

## **Independence of Judiciary and International Perspective**

A country's Rule of Law supremacy may be influenced by the independence of its judiciary. The UN Charter places great emphasis on the Rule of Law. To ensure justice along with respect for duties resulting from treaties along with sources of international law, the Charter's Preamble declares, "We, the people of the United Nations are determined..." In addition, the UN's efforts were bolstered by a plethora of other substantial international instruments. This is illustrated by the following provision from the 1948 UDHR: "Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and any criminal charge against him."<sup>8</sup> In addition, the right to seek effective remedy before the competent adjudicative authority in the event of a violation of one's rights is warranted by Article 8<sup>9</sup> of the UDHR. It is crucial to have an impartial judiciary in order to effectively enforce such basic rights.

## **Latest legislation enacted through judicial activism**

**Justice K.S. Puttaswamy (Retd.) & Anr. v. Union of India & Ors.**<sup>10</sup>, For Indian "Right to Privacy" law, this case is foundational. In this case, the nine-judge bench firmly upheld the HR

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<sup>6</sup> AIR 1978 Del 308

<sup>7</sup> Special Leave Petition (C) No. 1882 of 2021.

<sup>8</sup> Art. 10 of the UDHR, 1948.

<sup>9</sup> United Nations, 1948, art. 8

<sup>10</sup> (2017) 10 SCC 1, AIR 2017 SC 4161

to privacy as a basic right warranted by the IC. As an essential component of respect, independence, and liberty, the right to privacy is, according to the Court, a cornerstone of the freedoms secured by the UDHR.

These rulings show that the judiciary has been quite active and has helped society a lot.

As stated in "**Independent thought v. Union of India**,"<sup>11</sup> Having sexual relations with a wife who is less than 18 years old is now illegal according to the Supreme Court. Afterwards, it will be considered a rape. Specifically, the protection afforded to the husband by Article 375<sup>12</sup>, IPC's paragraph 2, which permitted him to engage in sexual relations with his underage wife as long as she was younger than fifteen years old, was quashed by the judgement.

In **Shayara Bano v. Union of India**<sup>13</sup>, the SC ruled 3:2 that Muslims' barbaric Talaq-e-biddat or Tripal Talaq was unconstitutional. The Supreme Court ruled that Triple Talaq infringed Muslim women's rights by irreparably ending marriages and contradicting the Koran's intent, asking, "What's wrong with the Koran?" The law is bad".

**Union of India v. Common Cause (Reg. Society)**<sup>14</sup>, the Supreme Court declared passive euthanasia and the HR to die while having dignity a fundamental HR in a landmark ruling. The Supreme Court allows pre-death "wills" and passive euthanasia. Chief Justice Dipak Misra's five-judge Constitutional Court upholds the right to end life support if a person has a medically incurable terminal illness. Passive euthanasia was declared legal and effective nationwide.

**Shakti Vahini v. Union of India & Ors**<sup>15</sup>, was a significant Supreme Court decision. The Chief Justice of India, which is Mr. Dipak Misra, along with Justice AM Khanwilkar, along with Justice DY Chandrachud ruled and decided. It is prohibited for Khap Panchayats or anybody else to prevent two consenting adults from marrying. Finally, the Supreme Court clarified that Articles 19<sup>16</sup> and 21<sup>17</sup> of the IC grant people the HR to choose their life partners and marry.

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<sup>11</sup> (2017) 10 SCC 800

<sup>12</sup> Section 375 in The Indian Penal Code

<sup>13</sup> (2017) 9 scc 1

<sup>14</sup> (2018) 13 SCC 440

<sup>15</sup> (2018) 7 SCC 192

<sup>16</sup> Article 19 of the Indian Constitution

<sup>17</sup> Article 21 of the Indian Constitution

**Union of India v. Shreya Singhal**<sup>18</sup> The SC determined that Article 66A<sup>19</sup> of the ITA enables the arrest of objectionable Internet content since it violates the constitution, thus the harassed part would be punished.

In **Navtej Singh Johar v. Union Of India**<sup>20</sup>, Sec. 377<sup>21</sup> (rights for transgenders) of the IPC criminalised consensual sexual contact across same-sex partners as “against the order of nature”. The Naz Foundation (India) Trust (“Naz”) challenged Sec. 377's constitutionality in 2009 in the Delhi HC for violating Articles 14<sup>22</sup>, 15<sup>23</sup>, 19<sup>24</sup>, and 21<sup>25</sup>. Section 377's punishment of sexual behaviour between consenting adults breaches their right to equality, along with privacy, along with personal liberty, the court said. In 2013, the SC overturned the Naz verdict in *Suresh Kumar Koushal & Anr. v. Naz Foundation & Ors.*<sup>26</sup> (“Koushal”). It said only Parliament could decriminalise homosexuality. Five LGBTQ people—Navtej Singh Johar, along with Ritu Dalmia, along with Ayesha Kapur, along with Aman Nath, along with Sunil Mehra—filed a new writ suit disputing Sec. 377's constitutionality.

**Kundan Singh v The State Govt of NCT Delhi**<sup>27</sup> A fundamental right of a convict, protected per the IC's Article 21<sup>28</sup>, is the freedom to procreate and parenthood, according to the Delhi High Court. A fair and reasonable approach must be taken to maintain the precarious balance between individual rights and larger societal considerations, as Justice Swarana Kanta Sharma explained, taking into account aspects like the prisoner's age and parental status. This right is not absolute, but rather context dependent.

**D. Velusamy v. D. Patchaiammal**<sup>29</sup> (2010), This case established specific guidelines for the Indian Supreme Court to follow when deciding whether an adult couple's relationship falls under the definition of a "relationship in the nature of marriage" and hence falls under the purview of the PWDVA, 2005<sup>30</sup>.

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<sup>18</sup> AIR 2015 SC 1523

<sup>19</sup> Section 66A of the IT Act, 2000

<sup>20</sup> WRIT PETITION (CRIMINAL) NO. 76 OF 2016

<sup>21</sup> The Indian Penal Code, 1860 (Section 377)

<sup>22</sup> The Indian Penal Code, 1860 (Section 377), Article 14.

<sup>23</sup> The Indian Penal Code, 1860 (Section 377), Article 15.

<sup>24</sup> The Indian Penal Code, 1860 (Section 377), Article 19.

<sup>25</sup> The Indian Penal Code, 1860 (Section 377), Article 20.

<sup>26</sup> Civil Appeal No. 10972 of 2013

<sup>27</sup> *Kundan Singh vs State (Govt Of Nct Of Delhi)* on 16 November, 2021

<sup>28</sup> Article 21 in *The Constitution Of India* 1949

<sup>29</sup> *D. VELUSAMY v. D. PATCHAIAMMAL*, (2010)10 SCC 469

<sup>30</sup> Protection of Women from Domestic Violence Act, 2005

## Conclusion

The judiciary bears tremendous responsibility and the public have high expectations in a country that upholds the Rule of Law. In India, the judiciary is protecting people's basic human rights, particularly those of marginalised groups, when the executive and legislative branches fail to live up to public expectations. Both indirect and direct subversion by other parts of government have been met with resistance by the courts. It has safeguarded the fundamental human rights of the people by overturning arbitrary laws that violated Fundamental Rights. The Indian judiciary is also doing its part to safeguard citizens' rights by providing interpretations of sections III and IV of the country's constitution and, in situations where domestic laws are silent, by drawing on international treaties.

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