



Judicial Intervention in India (2021–2022): Constitutional Governance, Fundamental Rights, and the Expanding Role of the Supreme Court

Dr. Reetesh Vyas* & Dr. Anant K. Joshi**

*Assistant Professor, **Principal, Seth B.J.S. Rampuria Jain Law College, Bikaner

1. Introduction

The Constitution of India establishes an independent judiciary entrusted with the responsibility of safeguarding constitutional supremacy, protecting fundamental rights, and ensuring that every organ of the State functions within the limits prescribed by the Constitution. Judicial intervention, therefore, is neither an extraordinary phenomenon nor an institutional anomaly; rather, it constitutes an indispensable mechanism through which constitutional courts preserve democratic governance and the rule of law.¹

The years 2021 and 2022 occupy a distinctive place in India's constitutional development. Unlike earlier phases of judicial activism that largely focused on public interest litigation, environmental protection, or administrative accountability, judicial intervention during this period emerged in response to a multidimensional constitutional crisis. The devastating second wave of COVID-19 exposed significant deficiencies in healthcare administration, vaccine distribution, oxygen supply, migrant welfare, and disaster management. Simultaneously, issues relating to digital surveillance, personal liberty, criminal justice, electoral reforms, environmental conservation, and socio-economic equality demanded urgent constitutional adjudication.²

Faced with these challenges, the Supreme Court adopted an interventionist constitutional approach. Through suo motu proceedings, constitutional bench decisions, and continuing mandamus, it sought to reconcile competing constitutional values while ensuring governmental accountability. Importantly, these interventions did not merely interpret statutory provisions; they substantially influenced public policy, administrative governance, and constitutional discourse.

The Court's intervention in pandemic management through *In Re: Distribution of Essential Supplies and Services During Pandemic* represented perhaps the most comprehensive exercise of constitutional oversight since the era of Public Interest Litigation in the 1980s. By continuously monitoring oxygen allocation, vaccine procurement, hospital infrastructure, and essential medical supplies, the Court emphasized that the right to life under Article 21 necessarily encompasses access to public healthcare during national emergencies.³

Similarly, the Pegasus spyware controversy presented novel constitutional questions concerning digital privacy, surveillance, freedom of expression, and governmental transparency. Rather than accepting executive assertions based upon national security, the Supreme Court appointed an independent technical committee, thereby reaffirming constitutional accountability and strengthening informational privacy recognised earlier in *Justice K.S. Puttaswamy v. Union of India*.⁴

The constitutional significance of judicial intervention became equally evident in matters concerning criminal justice administration. Decisions such as *Satender Kumar Antil v. Central Bureau of Investigation* reinforced the constitutional presumption of liberty by reiterating that unnecessary incarceration violates Articles 14 and 21. Likewise, *S.G. Vombatkere v. Union of India* temporarily suspended the

operational use of the colonial offence of sedition under Section 124A of the Indian Penal Code pending governmental reconsideration, thereby demonstrating judicial willingness to protect democratic dissent.⁵

Constitutional adjudication during this period also addressed questions of economic justice and affirmative action. In *Janhit Abhiyan v. Union of India*, the Constitution Bench upheld the validity of the One Hundred and Third Constitutional Amendment introducing reservation for Economically Weaker Sections (EWS). Although the judgment generated considerable academic debate regarding equality jurisprudence, it reaffirmed Parliament's constitutional authority to redesign affirmative action policies within the framework of the basic structure doctrine.⁶

Environmental constitutionalism likewise witnessed substantial judicial engagement. In *M.K. Ranjitsinh v. Union of India*, the Court addressed the conflict between renewable energy infrastructure and wildlife conservation by invoking constitutional principles of sustainable development and ecological protection. Such decisions illustrate the judiciary's continuing commitment to balancing developmental priorities with environmental rights guaranteed under Article 21.⁷

These interventions collectively transformed the constitutional landscape between 2021 and 2022. The judiciary emerged not merely as an adjudicatory institution but as a constitutional facilitator ensuring governmental responsiveness during periods of institutional stress. However, the expansion of judicial authority also intensified scholarly debates surrounding judicial activism, democratic legitimacy, institutional competence, and the separation of powers. Critics argued that excessive judicial intervention risks substituting judicial preferences for executive policy choices, whereas proponents viewed such intervention as constitutionally indispensable when executive failures threaten fundamental rights.⁸

This article seeks to critically evaluate these competing perspectives. Rather than adopting an ideological position either in favour of judicial activism or judicial restraint, it analyses judicial intervention through the broader framework of constitutional governance. The study argues that judicial intervention during 2021–2022 should be understood as an adaptive constitutional response to exceptional governance challenges, while emphasizing that the long-term health of constitutional democracy depends upon effective functioning of all three branches of government.

2. Research Objectives

The present study pursues the following objectives:

1. To examine the constitutional foundations of judicial intervention in India.
2. To critically analyse major judicial interventions undertaken by the Supreme Court during 2021–2022.
3. To evaluate the impact of these interventions on constitutional governance, administrative accountability, and protection of fundamental rights.
4. To examine the relationship between judicial activism, judicial restraint, and the doctrine of separation of powers.
5. To identify emerging constitutional trends likely to influence the future evolution of Indian judicial review.

3. Research Methodology

This research adopts a **qualitative doctrinal methodology** based upon the analysis of constitutional provisions, judicial precedents, statutory enactments, parliamentary materials, and scholarly literature. Primary sources include the Constitution of India, landmark judgments of the Supreme Court delivered during 2021–2022, and relevant legislation. Secondary sources comprise peer-reviewed journal articles, academic monographs, Law Commission Reports, parliamentary committee reports, and official governmental publications.

The study further employs an analytical and comparative approach to assess whether judicial intervention during the selected period represented constitutional necessity or institutional expansion. The analysis is grounded in constitutional doctrines including judicial review, separation of powers, constitutional morality, proportionality, and the rule of law.

4. Judicial Intervention During The Covid-19 Pandemic: Constitutional Necessity Or Judicial Activism?

The year 2021 marked one of the most challenging periods in India's constitutional history. The catastrophic second wave of the COVID-19 pandemic exposed significant weaknesses in the country's healthcare infrastructure, administrative preparedness, and disaster management mechanisms. The unprecedented demand for medical oxygen, hospital beds, life-saving drugs, and vaccines transformed a public health emergency into a constitutional crisis. Against this backdrop, the Supreme Court of India assumed an unusually proactive role by invoking its extraordinary jurisdiction under Articles 32 and 142 of the Constitution. Rather than limiting itself to traditional adjudication, the Court exercised continuous constitutional supervision through suo motu proceedings to ensure that executive action remained consistent with the guarantees of life, equality, and human dignity.

Unlike earlier instances of judicial review that primarily addressed the legality of executive action, the Court's interventions during the pandemic extended to monitoring policy implementation, directing inter-governmental coordination, and ensuring equitable access to essential healthcare resources. These developments revived long-standing debates concerning the constitutional boundaries of judicial intervention. While critics argued that the judiciary had entered the policy domain traditionally reserved for the executive, supporters maintained that extraordinary constitutional circumstances justified an expanded judicial role to safeguard fundamental rights.

4.1 Suo Motu Proceedings: In Re: Distribution of Essential Supplies and Services During Pandemic

On 22 April 2021, amid alarming reports of oxygen shortages and rising mortality, the Supreme Court initiated suo motu proceedings in *In Re: Distribution of Essential Supplies and Services During Pandemic*. The Court observed that the right to life under Article 21 imposed a positive constitutional obligation on the State to ensure timely access to healthcare and essential medical facilities. Recognizing that the pandemic had overwhelmed administrative mechanisms, the Court emphasized that constitutional governance required effective coordination between the Union and State Governments rather than institutional conflict.

The proceedings addressed five principal issues: (i) supply of medical oxygen; (ii) distribution of essential medicines such as Remdesivir; (iii) vaccine procurement and pricing; (iv) availability of hospital infrastructure; and (v) the declaration of lockdowns and related socio-economic consequences. Instead of substituting executive decision-making, the Court sought transparency by directing governments to disclose data regarding oxygen allocation, transportation logistics, and public health planning. This approach reflected the principle that judicial review could facilitate constitutional accountability without entirely displacing executive discretion.

One of the most significant constitutional contributions of the judgment was its reaffirmation that Article 21 extends beyond protection against arbitrary deprivation of life to encompass a positive obligation upon the State to preserve life through accessible healthcare. The Court observed that constitutional rights cannot remain theoretical during emergencies and that administrative incapacity cannot justify governmental inaction when fundamental rights are at stake.

4.2 Right to Health as an Integral Component of Article 21

Although the Constitution does not expressly recognize the right to health as a fundamental right, Indian constitutional jurisprudence has progressively interpreted Article 21 to include access to healthcare, emergency medical treatment, and conditions necessary for a dignified life. Earlier decisions such as

Parmanand Katara v. Union of India and *Paschim Banga Khet Mazdoor Samity v. State of West Bengal* established that the State bears a constitutional duty to provide timely medical assistance.

The COVID-19 pandemic transformed these principles from abstract constitutional doctrines into practical obligations. During the suo motu proceedings, the Supreme Court reiterated that healthcare is inseparable from the constitutional guarantee of life and dignity. The Court rejected any narrow interpretation of Article 21 that confined governmental responsibility to passive non-interference. Instead, it emphasized that constitutional governance requires affirmative measures capable of protecting individuals against preventable loss of life during public emergencies.

This jurisprudential development significantly strengthened India's socio-economic rights discourse. Although the Directive Principles of State Policy remain formally non-justiciable, the Court effectively integrated Articles 39(e), 41, 42, and 47 with Article 21, thereby reinforcing the constitutional obligation to improve public health and secure adequate medical facilities. Such interpretative harmonization reflects the judiciary's continuing commitment to substantive constitutionalism, wherein fundamental rights are understood in light of the broader objectives of the Constitution.

4.3 Judicial Oversight of Oxygen Allocation

Perhaps the most visible aspect of judicial intervention during 2021 concerned the nationwide shortage of medical oxygen. Hospitals across several States reported critical shortages that resulted in numerous preventable deaths. Multiple High Courts—including those of Delhi, Allahabad, Madras, Bombay, and Karnataka—actively monitored oxygen supply within their respective jurisdictions. The Supreme Court subsequently assumed nationwide supervisory jurisdiction to facilitate coordinated constitutional oversight.

The Court directed the Union Government to explain the scientific basis for oxygen allocation among States and required periodic disclosure of data relating to production, transportation, and consumption. It further appointed the **National Task Force on Oxygen** comprising public health experts, medical professionals, and technical specialists to recommend an evidence-based framework for oxygen distribution.⁹

The establishment of the National Task Force represented an important institutional innovation. Rather than replacing executive expertise with judicial preferences, the Court relied upon independent scientific assessment to improve administrative decision-making. This approach illustrates a collaborative model of judicial intervention that preserves executive autonomy while ensuring constitutional accountability.

Academic commentators have described this mechanism as an example of "**dialogic judicial review**," wherein constitutional courts promote institutional cooperation instead of exercising unilateral authority. Such dialogue between the judiciary, executive, and expert bodies demonstrates that judicial intervention need not inevitably undermine the separation of powers.¹⁰

4.4 Vaccine Policy and Equality under Article 14

Another significant constitutional issue addressed during the pandemic related to India's vaccination policy. Initially, the Central Government adopted a decentralized procurement model requiring States and private hospitals to purchase vaccines independently. This policy generated concerns regarding unequal access, price disparities, and discrimination between different categories of citizens.

In its order dated 31 May 2021, the Supreme Court subjected the vaccine procurement framework to rigorous constitutional scrutiny. The Court questioned whether differential pricing violated Article 14 by permitting vaccine manufacturers to charge different prices to the Union Government, State Governments, and private hospitals.¹¹

The Court further observed that public health emergencies demand equitable distribution of scarce resources based upon constitutional principles rather than market considerations. Consequently, it directed the Union Government to reconsider the existing procurement policy and furnish detailed

justifications regarding vaccine allocation, pricing, digital registration requirements, and accessibility for marginalized communities.

The constitutional significance of this intervention lies in its recognition that equality under Article 14 extends beyond formal non-discrimination to encompass substantive fairness in access to essential healthcare services. The Court acknowledged that technological barriers associated with the CoWIN registration platform disproportionately affected rural populations, elderly persons, economically weaker sections, and individuals lacking internet connectivity. Judicial scrutiny therefore emphasized inclusive governance consistent with constitutional equality.¹²

Subsequently, the Union Government revised its vaccination policy by centralizing vaccine procurement and providing free vaccines to all eligible adults through public healthcare institutions. Although this policy change resulted from multiple administrative considerations, the Supreme Court's constitutional observations significantly influenced the public discourse surrounding equitable vaccine distribution.

4.5 Protection of Migrant Workers and Vulnerable Communities

The pandemic disproportionately affected migrant workers, daily wage earners, informal labourers, homeless persons, and economically disadvantaged communities. Restrictions on transportation and economic activity exposed structural inequalities that had remained largely invisible prior to the public health emergency.

Recognizing these realities, the Supreme Court directed governments to ensure uninterrupted supply of dry rations, community kitchens, transportation facilities, and welfare benefits for migrant workers. The Court emphasized that constitutional guarantees of dignity and equality require affirmative governmental action to protect socially vulnerable groups during national emergencies.¹³

The Court further instructed authorities to maintain comprehensive databases of migrant workers to facilitate efficient implementation of welfare schemes. This direction reflected an emerging constitutional understanding that effective governance depends not merely upon legislative enactments but also upon administrative capacity, accurate data collection, and institutional preparedness.

These interventions significantly expanded the practical dimensions of Article 21 by integrating socio-economic welfare with traditional civil liberties. Rather than treating economic deprivation as exclusively a policy matter, the Court acknowledged that hunger, homelessness, and denial of basic necessities directly threaten the constitutional right to life.

4.6 Constitutional Evaluation of Judicial Intervention

The Supreme Court's interventions during the second wave of COVID-19 reveal a distinctive model of constitutional governance characterized by **institutional dialogue**, **rights-based review**, and **continuing judicial supervision**. Unlike traditional adversarial litigation culminating in a single judgment, the pandemic proceedings evolved through periodic hearings, interim directions, expert consultations, and ongoing monitoring. Such continuing mandamus enabled the Court to respond dynamically to rapidly changing public health circumstances.

Nevertheless, these developments also generated significant constitutional debate. Critics argued that judicial supervision over vaccine procurement, oxygen allocation, and healthcare administration risked transforming constitutional courts into policy-making institutions. From this perspective, decisions involving resource allocation and disaster management fall primarily within executive competence and democratic accountability.

Conversely, proponents contended that extraordinary governmental failures justified enhanced judicial oversight. Where executive action—or inaction—results in large-scale violations of fundamental rights, constitutional courts possess both the authority and the obligation to intervene. The pandemic therefore demonstrated that judicial intervention is not an end in itself but a constitutional mechanism activated when ordinary governance proves inadequate to protect life and dignity.¹⁴

A balanced assessment suggests that the Supreme Court largely refrained from substituting its own policy preferences for those of the executive. Instead, it demanded transparency, reasoned decision-making, scientific justification, and constitutional accountability. The Court's emphasis on evidence-based governance, cooperative federalism, and protection of vulnerable populations illustrates an approach consistent with the Constitution's transformative vision rather than an assertion of judicial supremacy.

4.7 Judicial Intervention in the Pegasus Surveillance Controversy: Privacy, National Security, and Constitutional Accountability

The Pegasus spyware controversy emerged as one of the most significant constitutional disputes of 2021, raising fundamental questions concerning the relationship between national security, individual privacy, executive accountability, and judicial review. Allegations that Pegasus spyware—developed by the Israeli cybersecurity company NSO Group—had been deployed to surveil journalists, political leaders, lawyers, human rights activists, and public officials generated widespread concern regarding the constitutional limits of State surveillance. Unlike conventional surveillance technologies, Pegasus possessed the capability to infiltrate smartphones without user interaction, enabling access to encrypted communications, emails, photographs, microphones, cameras, and location data. The controversy therefore extended beyond questions of statutory authorization and entered the broader constitutional domain of informational privacy, freedom of expression, and democratic governance.¹⁵

Several writ petitions under Article 32 of the Constitution sought an independent judicial inquiry into the alleged surveillance programme. The petitioners argued that unauthorized electronic surveillance constituted a direct violation of Articles 14, 19, and 21, particularly after the Supreme Court's recognition of privacy as a fundamental right in *Justice K.S. Puttaswamy (Retd.) v. Union of India*.¹⁶ The Union Government, while neither confirming nor denying the allegations, invoked national security considerations and declined to disclose operational details relating to surveillance practices.

The principal constitutional issue before the Supreme Court was not whether surveillance could ever be constitutionally justified. Rather, the Court was required to determine whether executive invocation of "national security" could altogether exclude judicial scrutiny. In *Manohar Lal Sharma v. Union of India*, the Court emphatically rejected such an expansive understanding of executive privilege. It observed that while genuine national security interests undoubtedly deserve judicial deference, constitutional courts cannot abdicate their responsibility merely because the executive invokes national security without providing any substantive justification.¹⁷

Accordingly, the Court constituted an **independent Technical Committee** supervised by retired Supreme Court Justice R.V. Raveendran to investigate the allegations. The Committee consisted of experts in cybersecurity, digital forensics, and information technology, reflecting the judiciary's recognition that technologically complex constitutional disputes require interdisciplinary expertise.¹⁸ Rather than conducting the investigation itself, the Court adopted an institutional model based upon independent technical evaluation, thereby preserving both judicial neutrality and procedural legitimacy.

The Pegasus judgment represents a significant evolution in India's constitutional jurisprudence concerning digital rights. Earlier privacy decisions had primarily addressed governmental collection of personal information within legislative frameworks. Pegasus, by contrast, confronted covert digital surveillance capable of undermining democratic participation itself. The Court observed that indiscriminate surveillance has a chilling effect upon journalistic freedom, political opposition, academic inquiry, and civil society engagement, thereby threatening the constitutional guarantee of free speech under Article 19(1)(a).¹⁹

Equally important was the Court's insistence that constitutional rights cannot be defeated through generalized claims of secrecy. The judgment reinforces the principle that executive power remains subject to constitutional accountability even in matters involving national security. Judicial review therefore functions not as an obstacle to security but as a constitutional safeguard against arbitrary governmental authority.

From a comparative constitutional perspective, the Pegasus decision aligns Indian jurisprudence with developments in other constitutional democracies. The European Court of Human Rights, the United Kingdom's Investigatory Powers Tribunal, and the United States Supreme Court have increasingly emphasized proportionality, legality, and independent oversight in matters involving electronic surveillance.²⁰ By adopting similar constitutional standards, the Supreme Court strengthened India's commitment to democratic constitutionalism in the digital age.

Academic commentators have described the Pegasus judgment as one of the most important privacy decisions delivered after *Puttaswamy*. Unlike earlier privacy litigation, Pegasus demonstrated that informational privacy is not merely an individual interest but a structural constitutional value essential for preserving democratic institutions, political dissent, and the rule of law.²¹

4.8 Tribunal Reforms and Judicial Independence: Reasserting the Basic Structure Doctrine

Judicial intervention during 2021 also extended to institutional governance through the Supreme Court's examination of the **Tribunal Reforms Act, 2021**. Although Parliament possesses constitutional authority to establish specialized tribunals for efficient adjudication, repeated legislative attempts to modify appointment procedures, tenure conditions, and service requirements generated concerns regarding judicial independence and executive dominance.

The constitutional conflict reached the Supreme Court in **Madras Bar Association v. Union of India**, where the petitioners challenged several provisions of the Tribunal Reforms Act on the ground that they undermined the independence of tribunals functioning as substitutes for constitutional courts.²²

The Court observed that tribunalization cannot become a mechanism through which the executive indirectly weakens judicial independence. Since tribunals perform adjudicatory functions traditionally exercised by constitutional courts, their institutional design must satisfy minimum constitutional standards relating to independence, impartiality, competence, and security of tenure. These requirements arise not merely from statutory interpretation but from the **Basic Structure Doctrine**, under which judicial independence constitutes an essential feature of the Constitution.²³

Significantly, the Court invalidated provisions prescribing an excessively short tenure for tribunal members. It reasoned that limited tenure discourages institutional independence by creating incentives for executive favour and repeated reappointment. The judgment further emphasized that selection committees should maintain substantial judicial participation to preserve public confidence in adjudicatory institutions.²⁴

The Tribunal Reforms litigation demonstrates an important characteristic of judicial intervention during 2021. Unlike cases concerning pandemic governance or civil liberties, the dispute focused upon the constitutional architecture of adjudicatory institutions themselves. The Court thereby reaffirmed that constitutional governance requires not only protection of individual rights but also preservation of independent institutions capable of enforcing those rights.

The judgment also reflects continuity with earlier Constitution Bench decisions such as *L. Chandra Kumar v. Union of India*, *Union of India v. R. Gandhi*, and earlier *Madras Bar Association* cases, which consistently emphasized that tribunals cannot become executive-controlled alternatives to constitutional courts.²⁵ The 2021 decision therefore represents judicial continuity rather than constitutional innovation.

Scholars have observed that the Tribunal Reforms judgment reinforces the doctrine of **institutional constitutionalism**, according to which constitutional democracy depends upon maintaining independent institutions capable of checking concentrations of governmental power.²⁶ From this perspective, judicial intervention served not to expand judicial authority but to preserve the constitutional equilibrium envisaged by the framers.

Nevertheless, the decision attracted criticism from certain constitutional commentators who argued that repeated judicial invalidation of legislative choices concerning tribunal administration risks excessive judicial involvement in institutional design. Critics contend that Parliament should retain substantial

flexibility in determining administrative structures provided that minimum constitutional guarantees are respected.²⁷

Despite these criticisms, the Court's reasoning remains firmly grounded in established constitutional doctrine. The Basic Structure Doctrine imposes substantive limitations upon Parliament's institutional choices where judicial independence may be compromised. Consequently, the judgment illustrates that judicial intervention during 2021 frequently involved enforcement of long-established constitutional principles rather than creation of new constitutional rights.

Footnotes

1. Kesavananda Bharati v. State of Kerala, (1973) 4 SCC 225.
2. In Re: Distribution of Essential Supplies and Services During Pandemic, Suo Motu Writ Petition (Civil) No. 3 of 2021.
3. Parmanand Katara v. Union of India, (1989) 4 SCC 286; In Re: Distribution of Essential Supplies and Services During Pandemic, supra note 2.
4. Manohar Lal Sharma v. Union of India, (2021) SCC OnLine SC 985; Justice K.S. Puttaswamy (Retd.) v. Union of India, (2017) 10 SCC 1.
5. M.K. Ranjitsinh v. Union of India, (2021) SCC OnLine SC 326.
6. Id. (Order constituting the National Task Force on Oxygen, 8 May 2021).
7. Rosalind Dixon, The Core Case for Weak-Form Judicial Review, 38 Cardozo L. Rev. 1345 (2017).
8. In Re: Distribution of Essential Supplies and Services During Pandemic, Order dated 31 May 2021.
9. In Re: Problems and Miseries of Migrant Labourers, Suo Motu Writ Petition (Civil) No. 6 of 2020; orders passed during 2021 monitoring.
10. Manohar Lal Sharma v. Union of India, 2021 SCC OnLine SC 985.
11. Justice K.S. Puttaswamy (Retd.) v. Union of India, (2017) 10 SCC 1.
12. Manohar Lal Sharma, supra note 15.
13. INDIA CONST. arts. 19(1)(a) & 21.
14. Big Brother Watch v. United Kingdom, App. Nos. 58170/13, 62322/14 & 24960/15 (Eur. Ct. H.R. Grand Chamber, 2021); Carpenter v. United States, 138 S. Ct. 2206 (2018).
15. Gautam Bhatia, The Transformative Constitution (HarperCollins India, 2019); Justice D.Y. Chandrachud, Balancing Privacy and National Security in Constitutional Democracies, various lectures and writings.
16. Madras Bar Association v. Union of India, (2021) 7 SCC 369.
17. Kesavananda Bharati v. State of Kerala, (1973) 4 SCC 225; Supreme Court Advocates-on-Record Ass'n v. Union of India, (2016) 5 SCC 1.
18. Madras Bar Association, supra note 22.
19. L. Chandra Kumar v. Union of India, (1997) 3 SCC 261; Union of India v. R. Gandhi, (2010) 11 SCC 1; Madras Bar Association v. Union of India, (2014) 10 SCC 1.
20. M.P. Jain, Indian Constitutional Law (9th ed., LexisNexis, 2023); H.M. Seervai, Constitutional Law of India (4th ed.).
21. Aharon Barak, The Judge in a Democracy (Princeton University Press, 2006).