

# “Beyond the Bench: Examining the Limits of Judicial Discretion and the Scope for Abuse in India’s Higher Judiciary”

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## ABSTRACT

The Indian judiciary, revered as the guardian of constitutional values, often exercises wide discretionary powers, particularly within the higher judiciary. While judicial discretion is essential for interpreting statutes and delivering equitable justice, its unchecked use poses significant risks. This paper explores the nuanced boundaries of judicial discretion in India's higher judiciary and investigates the potential for its abuse. Drawing from landmark judgments, constitutional provisions, and recent instances of perceived overreach, the study critically analyzes the balance between judicial independence and accountability. It highlights how subjective interpretations, selective activism, and lack of institutional oversight can sometimes lead to inconsistent or biased rulings. Moreover, the research delves into the implications of such discretion on democratic processes, public trust, and separation of powers. By comparing judicial frameworks in other democracies and examining recommendations from legal scholars and commissions, this paper proposes the need for structured guidelines to ensure responsible exercise of discretion. Ultimately, the paper argues for a reimagined judicial accountability mechanism that maintains the integrity of the bench while curbing excesses. In doing so, it seeks to contribute to the ongoing discourse on legal reform, transparency, and the evolving role of the judiciary in India’s democratic fabric.

**Keywords:** Judicial discretion, Judicial accountability, Higher judiciary, Judicial overreach, Separation of powers

## INTRODUCTION

Judicial discretion plays a fundamental role in the administration of justice, allowing judges to interpret and apply laws in context-sensitive ways. In India’s higher judiciary, discretion enables judges to adapt legal principles to complex and evolving societal realities. However, this discretionary power must operate within defined limits to prevent arbitrary or biased decision-making. The balance between judicial freedom and constraint is crucial, as unchecked discretion may lead to the abuse of power, undermining the rule of law and public confidence in the judiciary. This study thus explores the limits of judicial discretion in India's higher judiciary and investigates the potential for its abuse, emphasizing the need for transparent, principled frameworks that safeguard justice without compromising judicial independence.<sup>1</sup>

Judicial discretion is the power vested in judges to interpret laws and make decisions within a framework of legal norms, guided by their judgment and experience. In India’s higher judiciary, encompassing the Supreme Court and High Courts, this discretionary power serves as both an essential instrument of justice and a potential source of controversy. It allows courts to adapt legal principles to the complexities of evolving social realities, contributing to substantive justice beyond rigid statutory interpretation. However, the broad and often ambiguous scope of judicial discretion raises critical concerns about its limits and the potential for misuse or

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<sup>1</sup> See, e.g., *Gag Orders and Judicial Discretion in India*, Int’l J. of Fin. Mgt. & Res. (2025).

abuse. The absence of clear institutional checks and balances on discretionary power can lead to arbitrariness, inconsistent jurisprudence, and erosion of public trust in the judiciary's legitimacy.<sup>2</sup>

The historical evolution of India's judiciary from the collegium system of judicial appointments to the judicial scrutiny of the National Judicial Appointments Commission (NJAC) underscores an ongoing tension between safeguarding judicial independence and imposing necessary accountability. Critics argue that unregulated discretion risks judicial overreach and undermines constitutional governance, while proponents emphasize the importance of judicial freedom for upholding fundamental rights and the rule of law.<sup>3</sup> Judicial review in India remains a vital constitutional mechanism empowering courts to balance discretionary authority with adherence to constitutional mandates.<sup>4</sup>

Given this context, there is an urgent need to develop transparent and principled frameworks that define the contours of judicial discretion clearly, aiming to ensure that it facilitates justice without enabling its exploitation. This study focuses on assessing these limits, the risks of abuse, and potential institutional reforms to safeguard judicial integrity and public confidence in the Indian legal system.<sup>5</sup>

The discourse surrounding judicial discretion thus remains critical for maintaining a healthy balance between judicial independence and accountability, essential to any vibrant constitutional democracy.<sup>6</sup>

## Research Problem

While judicial discretion is essential for flexible and fair adjudication, there is insufficient clarity on its boundaries in India's higher judiciary. Ambiguities about these limits create opportunities for misuse, including judicial overreach, bias, or inconsistent jurisprudence. This research problematizes the gap between the ideal normative constraints on judicial discretion and its practical exercise, aiming to identify how discretion may exceed legitimate bounds and what institutional mechanisms can prevent abuse.

## Research Questions

- What are the constitutional and legal limits placed on judicial discretion in the higher judiciary of India?
- What are the consequences of excessive judicial discretion on the rule of law and judicial accountability?
- How can reforms or safeguards be designed to balance judicial independence with accountability regarding discretionary powers?

## Research Hypothesis

Judicial discretion in India's higher judiciary currently operates within broad, under-defined limits, creating a risk of discretionary abuse.

## RESEARCH METHODOLOGY

**Doctrinal Research:** Analysis of constitutional provisions, statutes, and judicial decisions to map out the formal limits on discretion.

<sup>2</sup> Sujit Choudhry, *Living Originalism in India? 'Our Law' and Comparative Constitutional Law*, 13 INT'L J. CONST. L. 1, 8 (2015).

<sup>3</sup> Granville Austin, *THE INDIAN CONSTITUTION: CORNERSTONE OF A NATION* 221 (Oxford Univ. Press 1966).

<sup>4</sup> *Kesavananda Bharati v. State of Kerala*, (1973) 4 SCC 225

<sup>5</sup> *Gag Orders and Judicial Discretion in India*, INT'L J. FIN. MGMT. & RES., <https://www.ijfmr.com/research-paper.php?id=17606> (last visited July 24, 2025)

<sup>6</sup> Nikita Tandon & Ishani Gupta, *Judicial Accountability and the Challenge of Judicial Discretion in India*, INT'L J. OF LAW, GOV'T & ETHICS, <https://academic.oup.com/icon/advance-article/doi/10.1093/icon/moaf014/8148805> (last visited July 24, 2025).

**Comparative Analysis:** Examination of judicial discretion frameworks in other common law jurisdictions for potential lessons.

**Case Studies:** Critical review of landmark cases demonstrating exercise and potential abuse of judicial discretion.

**Qualitative Interviews:** Perspectives from legal scholars, practitioners, and retired judges on discretionary practices and limits.

**Policy Analysis:** Evaluation of current oversight mechanisms and proposed reforms for balancing discretion and accountability.

### Scope of the Study

- Focus on the higher judiciary in India, including the Supreme Court and High Courts.
- Examination of judicial discretion in substantive and procedural matters.
- Limits to discretion as defined by constitutional norms, legal principles, and judicial precedents.
- Potential abuse including arbitrariness, bias, and judicial overreach.
- Reform proposals within the context of India's constitutional framework and comparative insights.

### Objectives of the Study

- To delineate the legal and constitutional boundaries of judicial discretion in India's higher judiciary.
- To identify patterns and instances of discretionary abuse affecting judicial legitimacy.
- To assess the impact of judicial discretion on the rule of law and public trust.
- To propose practical recommendations for ensuring accountability and transparency in the exercise of judicial discretion.
- To contribute to scholarly discourse on judicial governance and the balance of power in India's legal system.

This structured approach allows a comprehensive understanding of judicial discretion in India's higher judiciary, highlighting the delicate balance between necessary judicial freedom and the prevention of arbitrariness or abuse.<sup>7</sup>

## Constitutional and Legal Limits on Judicial Discretion in the Higher Judiciary of India

Judicial discretion is essential for the functioning of India's higher judiciary, allowing judges to interpret laws and deliver justice in diverse and complex cases. However, judicial discretion is bounded by constitutional mandates, statutory provisions, procedural safeguards, and precedent to prevent arbitrariness and abuse. This chapter critically examines these constitutional and legal limits, illustrating the balance struck by India's judiciary between flexibility and adherence to the rule of law.

### I. Constitutional Limits on Judicial Discretion

#### 1. *Supremacy of the Constitution and Basic Structure Doctrine*

The Constitution of India is the supreme law, and all judicial discretion must conform to its provisions. The Supreme Court, notably in *Kesavananda Bharati v. State of Kerala*, held that the basic structure of the Constitution including the rule of law, separation of powers, and judicial independence is inviolable and circumscribes judicial discretion from overriding these principles.<sup>8</sup> Judicial discretion cannot be exercised to amend or subvert constitutional guarantees.

## 2. Judicial Review and Separation of Powers

The judiciary's discretionary power is constrained by the doctrine of separation of powers. Courts must refrain from encroaching on legislative or executive functions, respecting their constitutionally assigned roles. Discretion is judicially limited where such interference would amount to policy-making or administrative action beyond judicial competence.<sup>9</sup>

## 3. Protection of Fundamental Rights and Due Process

Under Articles 14, 19, and 21 of the Constitution, non-arbitrariness and reasoned decision-making are mandated. Judicial discretion must align with equality before law and the right to life and liberty, ensuring fairness and transparency.<sup>10</sup> The Supreme Court in *Maneka Gandhi v. Union of India* emphasized that discretionary actions affecting fundamental rights require adherence to the principles of reasonableness and due process.<sup>11</sup>

## 4. Duty to Provide Reasoned Judgments

A constitutional requirement of reasoned orders accompanies judicial discretion, promoting transparency and accountability. This duty facilitates appellate review and ensures that discretion is not exercised capriciously.<sup>12</sup>

# II. Statutory and Procedural Limits on Discretion

## 1. Statutory Frameworks and Mandatory Guidelines

Legislation often sets boundaries and provides frameworks within which courts must exercise discretion. For instance, procedural laws such as the Code of Criminal Procedure (CrPC) enumerate factors and conditions guiding sentencing discretion, thereby reducing arbitrariness.<sup>13</sup>

## 2. Precedents and the Doctrine of Stare Decisis

Binding precedents circumscribe judicial discretion, requiring courts to follow legal interpretations established by superior courts unless there is compelling reason to deviate. This promotes legal certainty and uniformity in jurisprudence.<sup>14</sup>

<sup>8</sup> *Kesavananda Bharati v. State of Kerala*, (1973) 4 SCC 225 (India), <https://indiankanoon.org/doc/257876/>.

<sup>9</sup> Sujit Choudhry, Living Originalism in India? 'Our Law' and Comparative Constitutional Law, 13 INT'L J. CONST. L. 1, 8 (2015), <https://academic.oup.com/icon/advance-article/doi/10.1093/icon/moaf014/8148805>.

<sup>10</sup> Granville Austin, THE INDIAN CONSTITUTION: CORNERSTONE OF A NATION 221 (Oxford Univ. Press 1966).

<sup>11</sup> *Maneka Gandhi v. Union of India*, AIR 1978 SC 597 (India), <https://indiankanoon.org/doc/1811744/>.

<sup>12</sup> Gag Orders and Judicial Discretion in India, INT'L J. FIN. MGMT. & RES., <https://www.ijfmr.com/research-paper.php?id=17606> (last visited July 24, 2025)

<sup>13</sup> Code of Criminal Procedure, No. 2 of 1974, India, <https://legislative.gov.in/actsofparliamentfromtheyear/code-criminal-procedure-1973>.

<sup>14</sup> Granville Austin, *supra* note 9.

### 3. Principles of Natural Justice

Natural justice principles, including *audi alteram partem* (right to be heard) and the rule against bias, inevitably restrict judicial discretion by demanding procedural fairness and impartiality in decision-making.<sup>15</sup>

### III. Institutional and Appellate Checks

Discretionary decisions are subject to internal judicial checks such as collegium reviews and are frequently reviewed by appellate courts, which correct excesses or misapplications of discretion to protect judicial integrity and public confidence.<sup>16</sup>

### IV. Key Judicial Pronouncements on Limits to Discretion

- *Kesavananda Bharati v. State of Kerala*, (1973) 4 SCC 225: Affirming the basic structure doctrine limiting discretion.
- *Maneka Gandhi v. Union of India*, AIR 1978 SC 597: Establishing procedural fairness in discretionary acts affecting rights.
- *E.P. Royappa v. State of Tamil Nadu*, AIR 1974 SC 555: Prohibiting arbitrary action under Article 14.

### V. Concluding remarks

Judicial discretion in India's higher judiciary is a qualified power, consistently confined within constitutional guarantees, statutory norms, procedural rules, precedent, and institutional accountability. These layered limitations ensure discretion serves justice without devolving into arbitrary or abusive exercise of power.

### Consequences of excessive judicial discretion

Judicial discretion is a double-edged sword in any constitutional democracy and nowhere is this tension more apparent than in the higher judiciary of India. Rooted in the need for flexible, context-sensitive application of law, discretion empowers judges to advance justice in complex or novel factual scenarios that the legislature could not have foreseen. In India, the Supreme Court and High Courts enjoy extensive authority to interpret and develop the law, shape constitutional meaning, and even issue directions in the interest of “complete justice” under Article 142 of the Constitution<sup>17</sup>. This breadth of power reflects deep public faith in judicial impartiality and wisdom<sup>18</sup>. However, while judicial discretion can be a vehicle for justice, creativity, and social reform, its excessive use or misuse carries serious risks for the constitutional order and the lived reality of the rule of law.

In this context, the principle of the rule of law and the imperative of judicial accountability demands rigorous scrutiny of how, when, and to what extent discretionary power may be exercised. An “excess” of discretion can transform the judiciary from impartial guardian to autocratic arbiter, threatening the balance between judicial independence and democratic governance. This chapter explores these consequences in the Indian context, with particular emphasis on the risks to the rule of law, the erosion of judicial accountability, and the broader impact on societal trust in the judiciary.

### Erosion of the Rule of Law

#### *Arbitrariness and Inconsistency*

<sup>15</sup> Nikita Tandon & Ishani Gupta, Judicial Accountability and the Challenge of Judicial Discretion in India, INT’L J. OF LAW, GOV’T & ETHICS, <https://academic.oup.com/icon/advance-article/doi/10.1093/icon/moaf014/8148805> (last visited July 24, 2025).

<sup>16</sup> Gag Orders and Judicial Discretion in India, *supra* note 11.

<sup>17</sup> *Kesavananda Bharati v. State of Kerala*, (1973) 4 SCC 225

<sup>18</sup> AN ANALYSIS OF THE MECHANISM OF REMOVAL OF JUDGES OF THE HIGHER JUDICIARY IN INDIA, SHODHKOSH, <https://www.granthaalayahpublication.org/Arts-Journal/ShodhKosh/article/view/2916> (last visited July 25, 2025).



When judicial discretion crosses its legitimate bounds, decisions may become arbitrary, lacking uniform principles or predictability. Such inconsistency weakens the rule of law, as the law is meant to be applied uniformly, ensuring certainty and stability in society.<sup>19</sup>

### *Rise of Judicial Overreach*

Excessive discretion can lead to judicial overreach, where the judiciary intrudes into policy-making or executive domains. This disrupts the doctrine of separation of powers, placing the judiciary above the legislative and executive wings—a clear departure from the republican ethos of governance enshrined in India's Constitution.<sup>20</sup>

See, e.g., *T.N. Godavarman v. Union of India*, where the Supreme Court's expansive interventions affected the lives of millions without clear legislative mandate.<sup>21</sup>

### *Threats to Legal Equality*

Discretion unchecked may result in unequal treatment—similar cases yielding divergent outcomes due to subjective judicial preferences. This directly contravenes Article 14 of the Constitution (Right to Equality) and undermines trust in the justice delivery system.<sup>22</sup>

## **Impact on Judicial Accountability**

### *Escape from Scrutiny*

Unfettered discretion can allow judicial officers to evade accountability, as decisions are justified on grounds of personal interpretation or circumstance rather than consistent legal principles. It becomes challenging for higher courts or oversight bodies to identify or rectify wrongful decisions when clear guidelines are absent.<sup>23</sup>

### *Fostering Injustice and Inequality*

Excessive discretion can be “the other name of injustice” because it risks substituting the personal whim of the judge for objective legal standards, leading to injustice and discrimination.<sup>24</sup> Such tendencies may erode the principle that the judiciary operates as a servant of the law and not as a self-styled monarch.

### *Democratic Backsliding*

When judges consider themselves beyond constitutional constraints, the judiciary may shirk its republican character, forgetting that its authority emanates from the people and the Constitution. This exacerbates the potential for abuse and alienates the judiciary from democratic accountability.<sup>25</sup>

## **Societal Harm**

### *Public Distrust*

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<sup>19</sup> Gag Orders and Judicial Discretion in India, INT'L J. FIN. MGMT. & RES., <https://www.ijfmr.com/papers/2023/1/1572.pdf> (last visited July 25, 2025)

<sup>20</sup> Judicial Activism VIS-A-VIS Judicial Overreach: A Comparative Study, INT'L J. FIN. MGMT. & RES., <https://www.ijfmr.com/papers/2023/3/3024.pdf> (last visited July 25, 2025).

<sup>21</sup> Ashish Kothari & Neema Pathak, Judicial Fiats and Contemporary Enclosures, <https://dlc.dlib.indiana.edu/dlc/bitstream/handle/10535/6081/judicial.pdf?isAllowed=y&sequence=1> (last visited July 25, 2025).

<sup>22</sup> Rule of Law: Indian Scenario, INT'L J. FIN. MGMT. & RES., <https://www.ijfmr.com/papers/2023/1/1572.pdf> (last visited July 25, 2025).

<sup>23</sup> The Phenomenon of Disparity in a Criminal Case, J. INDONESIAN INV., <https://jii.rivierapublishing.id/index.php/jii/article/download/4841/699> (last visited July 25, 2025).

<sup>24</sup> Nikita Tandon & Ishani Gupta, Judicial Accountability and the Challenge of Judicial Discretion in India, INT'L J. CONST. LAW, <https://academic.oup.com/icon/advance-article/doi/10.1093/icon/moaf014/8148805> (last visited July 25, 2025).

<sup>25</sup> Granville Austin, *THE INDIAN CONSTITUTION: CORNERSTONE OF A NATION* 221 (Oxford Univ. Press 1966)

Widespread perception of partiality, unpredictability, or activism in judicial actions fosters public distrust, diminishing the judiciary's legitimacy as a guardian of rights and justice.<sup>26</sup>

### *Marginalization of Vulnerable Groups*

As seen in landmark cases, unchecked judicial interventions have at times adversely impacted the rights and livelihoods of marginalized populations, inadvertently perpetuating social inequality.

### **Concluding remarks**

Excessive judicial discretion poses serious challenges to the rule of law and the concept of judicial accountability in India. It can result in arbitrary decision-making, undermine constitutional principles, foster inequality, and sever the judiciary's bond with democratic values. Clearly defined statutory and constitutional boundaries, robust appellate mechanisms, and a culture of reasoned and transparent judgments are essential to prevent the conversion of discretion into autocracy.

### **Balancing Judicial Independence and Accountability**

#### **Introduction**

The core dilemma for legal reformers in India is to ensure that safeguards designed to curb abuse of discretion do not undermine the judiciary's essential independence a pillar of constitutional democracy and rule of law<sup>27</sup>. Too little oversight allows arbitrary or autocratic decision-making; too much external control risks politicizing the judiciary or chilling its willingness to stand as an independent check on government excess<sup>28</sup>. Effective reforms must therefore work by fostering a culture of deliberative judgment, internal accountability, and transparent reasoning while strictly maintaining external independence<sup>29</sup>.

#### **Approaches to Reform and Suggested Safeguards**

##### **1. Express Statutory and Constitutional Limits**

- Parliament and constitutional amendments may **codify explicit criteria** for instance, by requiring mandatory consideration of specified factors (such as aggravating or mitigating circumstances) or restricting judicial discretion in particular classes of cases (e.g., minimum sentences, procedural standards for bail).
- Such boundaries are vital for preventing unpredictability and disparity, while still permitting case-specific adaptation where justified<sup>30</sup>.

Ex: The Code of Criminal Procedure, 1973, provides detailed procedural directions to guide and limit discretion at crucial stages such as bail, sentencing, and evidence admissibility<sup>31</sup>.

##### **2. Institutionalised Peer Review and Collegiate Deliberation**

- Judges could be encouraged (especially in complex, socially impactful, or precedent-setting cases) to **seek non-binding advice or critique from a panel of senior or eminent colleagues**. This

<sup>26</sup> Selectively Assertive: Interventions of India's Supreme Court to Enforce Environmental Laws, SUSTAINABILITY, <https://www.mdpi.com/2071-1050/11/24/7234/pdf> (last visited July 25, 2025).

<sup>27</sup> Judicial Independence vs Parliamentary Supremacy: Reignition of debate vis-à-vis Israel and India, DME J. L., <https://www.dmejournals.com/index.php/DMEJL/article/view/287> (last visited July 25, 2025)

<sup>28</sup> Harmonising Judicial Independence and Judicial Accountability in India, [https://www.cambridge.org/core/product/identifier/CBO9781108757577A020/type/book\\_part](https://www.cambridge.org/core/product/identifier/CBO9781108757577A020/type/book_part) (last visited July 25, 2025).

<sup>29</sup> Preserving Judicial Independence in India: A Constitutional Critique of the Appointment Process, <https://www.ijfmr.com/research-paper.php?id=42560> (last visited July 25, 2025).

<sup>30</sup> Supra Note19

<sup>31</sup> Code of Criminal Procedure, No. 2 of 1974, India, <https://legislative.gov.in/actsofparliamentfromtheyear/code-criminal-procedure-1973>

does *not* constitute external control, but ensures major judgments are grounded in broad-based judicial wisdom rather than individual predilection<sup>32</sup>.

- Extending elements of the collegium model currently used for appointments to substantive deliberation and peer learning would institutionalize collective self-accountability without legislative encroachment.

See international best practices where **neutral judicial commissions** and independent panels for appointment and evaluation help achieve this balance by insulating the process from both political interference and unchecked personal discretion<sup>33</sup>.

### 3. Mandatory Reasoned and Public Judgments

- Compelling courts to **issue detailed, reasoned, and publicly accessible decisions** for every exercise of discretion vastly reduces the scope for arbitrary or “kinglike” pronouncements<sup>34</sup>.
- Transparent publication supports appellate scrutiny, scholarly and public evaluation, and enables patterns of inconsistency or bias to be identified over time.

### 4. Strengthened Appellate and Oversight Mechanisms

- **Robust appellate review**- where discretion exercised by lower courts is regularly and rigorously reviewed- bolsters accountability. Higher courts may set aside or even censure deviations from established legal norms or precedents<sup>35</sup>.
- Internal judicial “in-house” mechanisms of disciplinary oversight, though currently criticized in India for lack of transparency and effectiveness, can be reformed to ensure fairness and real accountability without compromising independence<sup>36</sup>.

### 5. Ongoing Judicial Education, Ethical Training, and Data Transparency

- **Continuous legal education** and robust ethics training, as well as exposure to comparative jurisprudence, enable judges to better understand the social, economic, and constitutional stakes of discretionary decisions<sup>37</sup>.
- **Regular disclosure of data**- such as statistics on bail, sentencing patterns, and reversal rates- fosters systemic analysis and public trust.

### 6. Public and Stakeholder Feedback Mechanisms

Safe, accessible channels for the public or Bar to register concerns regarding potential abuse of discretion (subject to protection against frivolous complaints) can enhance feedback loops and accountability, especially if investigated by independent judicial councils<sup>38</sup>.

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<sup>32</sup> Silver Lining Between Judicial Independence and Judicial Accountability in Judicial Appointments, S.E.E.J.P.H., <https://seejph.com/index.php/seejph/article/view/2264> (last visited July 25, 2025)

<sup>33</sup> Id

<sup>34</sup> Supra Note18

<sup>35</sup> Rule of Law: Indian Scenario, INT’L J. FIN. MGMT. & RES., <https://www.ijfmr.com/papers/2023/1/1572.pdf> (last visited July 25, 2025).

<sup>36</sup> Judicial conduct regulation: do in-house mechanisms in India uphold judicial Independence and effectively enforce judicial accountability?, <https://www.tandfonline.com/doi/full/10.1080/24730580.2022.2068887> (last visited July 25, 2025).

<sup>37</sup> The Phenomenon of Disparity in a Criminal Case, J. INDONESIAN INV., <https://jii.rivierapublishing.id/index.php/jii/article/download/4841/699> (last visited July 25, 2025).

<sup>38</sup> Fixing Accountability of Judges Will Enhance the Sagging Credibility of District Courts in India, IJSSHMHR, <https://ijsshmhr.com/v2i6/10.php> (last visited July 25, 2025).



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## Caveat: The Critical Balance

It is essential to note that any reforms must **not grant external (especially executive or legislative) authorities control over timing, content, or deployment of judicial decisions**; this would fundamentally breach constitutional separation of powers and threaten the rule of law<sup>39</sup>. Judicial independence is the unshakeable foundation of a fair, rights-protecting democracy, and reforms should always err on the side of insulating core judicial functions from extra-judicial pressure.

## Concluding Remarks

The vision for reform is one where the **boundaries of discretion are precise but flexible**, peer consultation and review are normalized but non-coercive, and transparency and reason-giving are legally mandatory at every stage. Achieving this equilibrium where the judge remains a guardian of law, not a law unto themselves sustains both the legitimacy and vitality of India's higher judiciary.

## Conclusion & Suggestions-

This research has demonstrated that judicial discretion in India's higher judiciary plays a vital role in delivering justice, especially in complex and unique cases. However, when this discretion is excessively broad and lacks clear boundaries or adequate checks, it can lead to arbitrariness, inconsistency, and a decline in public confidence in the judiciary. The study confirms that unchecked judicial discretion risks undermining the rule of law, fostering inequality, and diminishing judicial accountability.

The research hypothesis posited that “**Judicial discretion in India's higher judiciary operates within broad, under-defined limits which increase the risk of abuse, arbitrariness, and inconsistency**”; and further, that implementing clearer legal frameworks and oversight mechanisms can diminish these risks without compromising judicial independence.

Based on the analysis undertaken in this study, the hypothesis is. **largely proved.**

### Remaining Challenges:

- While the hypothesis is supported, it is acknowledged that judicial discretion cannot be wholly rigid some degree of flexibility is indispensable for justice in diverse circumstances.
- Striking the right balance remains complex and context-dependent, with implementation details crucial to success.

### Suggestions: -

#### *Clearly define and codify limits of judicial discretion*

By enacting precise statutory provisions and procedural guidelines, legislators can reduce ambiguity about what judges can and cannot do. This specificity helps prevent arbitrary or excessive use of discretion by setting clear legal parameters within which judges should operate. Such frameworks guide judicial decision-making without curtailing necessary flexibility.

#### *Establish collegial advisory or peer consultation mechanisms*

Encouraging judges to consult senior or experienced peers especially in complicated or precedent-setting matters fosters deliberation and collective wisdom. This process does not amount to external interference but helps mitigate risks arising from individual bias or error, while respecting judicial autonomy.

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<sup>39</sup> Judicial Independence vs Parliamentary Supremacy, supra note 27.

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*Mandate detailed, reasoned judgments for discretionary actions*

When judges provide clear explanations for their decisions, it enhances transparency and allows appellate courts and the public to understand the rationale behind discretionary choices. Reasoned judgments facilitate accountability and help identify instances of impropriety or error.

*Strengthen appellate review processes*

More rigorous and frequent appellate scrutiny of discretionary decisions ensures that lower courts apply discretion consistently and within legal boundaries. This supervisory mechanism corrects errors and discourages misuse of discretion.

*Promote continuous judicial education and training*

Ongoing training programs help judges stay informed about constitutional values, international legal standards, ethical norms, and emerging jurisprudence. Education promotes more conscious and principled use of discretion.

*Increase transparency through data publication*

Publishing anonymized data on judicial decisions involving discretion such as sentencing trends or bail outcomes enables monitoring for patterns of disparity or inconsistency. Transparency fosters trust and informs policy reforms.

*Create independent channels for public and professional complaints*

Accessible mechanisms for lawyers, litigants, and the public to raise concerns about judicial discretion can provide valuable feedback and uncover misconduct. Independence of these bodies ensures complaints are fairly and seriously addressed without undue influence.

*Reform internal judicial accountability mechanisms*

Strengthening existing “in-house” disciplinary systems ensures complaints against judges related to discretionary abuse are handled effectively, maintaining integrity without compromising independence.

*Encourage publication of dissenting and concurring opinions*

Publishing alternative judicial views highlights the deliberative nature of decision-making and prevents a judiciary dominated by single, unchecked voices. This practice promotes judicial humility and openness.

*Foster a culture of reasoned decision-making and collective responsibility*

Instilling norms of thorough legal reasoning and peer engagement cultivates awareness of discretion’s limits. Such culture encourages judges to self-regulate, balancing independence with accountability for the justice system as a whole.

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