
JUDICIAL ACTIVISM VS JUDICIAL RESTRAINT: A CRITICAL STUDY OF CONSTITUTIONAL INTERPRETATION IN INDIA

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ABSTRACT

*The doctrine of judicial activism and judicial restraint plays a crucial role in shaping constitutional interpretation in India. This study examines the dynamic relationship between these two approaches and their impact on the functioning of the judiciary within a democratic framework. Judicial activism refers to the proactive role played by courts in expanding the scope of rights and addressing legislative or executive inaction, while judicial restraint emphasizes judicial discipline and respect for the separation of powers. The research analyzes how the Indian judiciary, particularly the Supreme Court, has navigated between these doctrines through landmark judgments such as *Kesavananda Bharati v. State of Kerala*, *Maneka Gandhi v. Union of India*, and *Vishaka v. State of Rajasthan*, which reflect an activist approach, as well as *ADM Jabalpur v. Shivkant Shukla*, which illustrates judicial restraint. By examining these cases, the study highlights the evolving nature of constitutional interpretation and the judiciary's role in safeguarding fundamental rights. The paper further evaluates the implications of judicial behavior on democratic governance, accountability, and institutional balance. While judicial activism has contributed significantly to the protection of rights and social justice, excessive intervention may lead to judicial overreach. Conversely, strict judicial restraint may undermine the protection of constitutional values. The study concludes that a balanced approach, combining judicial innovation with institutional discipline, is essential for maintaining the rule of law and preserving the spirit of the Constitution in India.*

KEYWORDS: *Judicial activism, Judicial Restraint, Constitutional Interpretation, Democratic Framework, Legislative, Executive, Separation Of Power, Governance, Accountability, Significantly, Fundamental Rights and etc.*

INTRODUCTION

Judicial activism and judicial restraint, in them, are neither inherently good nor bad; their value depends largely on the context in which they are applied. In recent years, few developments

within India's higher judiciary have generated as much enthusiasm, attention, and also criticism as the rise of judicial activism.

The authority of judicial review is carried out through the courts. While a court is an institution, it is ultimately made up of individuals whose differing perspectives, abilities, and experiences shape its direction. Judges today may appear more bound by law than rulers of the past, largely because the appellate system ensures oversight and correction. However, this raises an important concern regarding those at the highest level of the judiciary, whose decisions are not open to appeal. In this context, Justice Jackson's well-known remark remains significant: *"We are not final because we are infallible, but we are infallible because we are final."*

The Indian Constitution establishes a delicate balance of power among the legislature, executive, and judiciary. Within this framework, the judiciary plays a pivotal role as the interpreter and guardian of the Constitution. Over time, two competing doctrines—judicial activism and judicial restraint—have shaped the approach of courts in constitutional interpretation. Judicial activism refers to the proactive role of the judiciary in protecting rights and addressing gaps in law, while judicial restraint emphasizes limited judicial intervention and respect for the domain of other branches. The tension between these approaches raises critical questions about the limits of judicial power in a democratic society

JUDICIAL ACTIVISM

Judicial activism refers to a judicial method in which judges actively shape social and legal policies. The term refers to how the judge chooses to perform a greater part in the interpretation of the law, often resulting from the making of new legal principles. Judicial Activists have the power to cancel laws that they, through their personal judgment, think unconstitutional, despite them being representative of a majority opinion or reflection of the present political climate of that time. Critics of judicial activism suggest that it undermines the democratic process through the very measure of allowing the unelected judges to give their personal interpretations of what the people should believe. The leading judgment of *Maneka Gandhi vs Union of India*¹ is an excellent example of judicial activism wherein the Supreme Court recited 'the procedure established by law' into Article 21 of the Constitution which is repositioned as '**Due process of law**' or the procedure that ensures justice, equity, and good conscience.

*Vishaka v. State of Rajasthan*², the Court laid down guidelines to prevent sexual harassment at the workplace in the absence of legislation.

¹ AIR 1978 SC 597

² *Vishaka v. State of Rajasthan*, (1997) 6 SCC 241

JUDICIAL RESTRAIN

Judicial Restrain calls for the judiciary to take a more passive role, with little involvement in the responsibilities of the legislative and executive departments. Proponents of judicial restraint argue that judges should use prudence and avoid exceeding their constitutional authority by delving into policymaking topics. Judicial restraint, by contrast, is an ideology that supports the adoption of a very passive role for judges. Judges who are exercising the quality of restraint are highly inclined to accept the decisions of the appointing bodies of government, conceiving the law to be narrow and not creating fresh legal principles.

In the case of *State of Rajasthan vs Union of India (1977)*³ is a landmark judgment where the Court decided not to indulge into this matter as it involved political inquiry, thereby adhering to the principle of judicial restraint.

Judicial restraint is the principle that courts should limit their powers and avoid interfering with the functions of the legislature and executive unless absolutely necessary. This doctrine is rooted in the theory of separation of powers and emphasizes judicial discipline. Courts practicing restraint defer to legislative wisdom and avoid policy-making roles (Bickel, 1962). An example often cited is *ADM Jabalpur v. Shivkant Shukla*⁴, where the Supreme Court upheld the suspension of fundamental rights during the Emergency. This decision has been widely criticized for excessive restraint and failure to protect civil liberties.

JUDICIAL RESTRAINT IN INDIA

Judicial restraint, in contrast, advocates for the judiciary to limit its role to interpreting laws as they stand, respecting the separation of powers and deferring to the legislature and executive in policy matters. Restraint serves as a counterbalance to activism, ensuring the judiciary does not undermine democratic processes.

Article 142 also emphasizes restraint, arguing that while the provision allows flexibility, unchecked use could destabilize the constitutional framework. Judicial restraint is necessary to prevent the Supreme Court from overstepping into areas like policymaking, which are the prerogative of elected bodies. They propose guidelines to sketch the limits of Article 142, advocating for a cautious approach to maintain legitimacy⁵.

³ *State of Rajasthan v. Union of India*, AIR 1977 SC 1361

⁴ *ADM Jabalpur v. Shivkant Shukla*, (1976) 2 SCC 521

⁵ Salman Khurshid, Sidharth Luthra, Lokendra Malik & Shruti Bedi (eds.); *Judicial Review : Process, Powers, and Problems*; Chapter 19

CONSTITUTIONAL FRAMEWORK OF JUDICIAL ACTIVISM AND JUDICIAL RESTRAINT IN INDIA

The Indian Constitution does not explicitly define judicial activism or judicial restraint, but it provides the legal and institutional basis for courts to interpret, expand, or limit their role in governance. The exercise of judicial power in India is deeply rooted in constitutional provisions, doctrines, and landmark judgments, which together shape the framework for judicial decision-making.

JUDICIAL REVIEW UNDER THE CONSTITUTION

Judicial review is the backbone of both activism and restraint in India. Articles 13, 32, 136, 226, and 227 empower the Supreme Court and High Courts to scrutinize the constitutionality of laws and executive actions:

- **Article 13:** Declares any law inconsistent with fundamental rights as void.
- **Article 32:** Empowers the Supreme Court to enforce fundamental rights through writs.
- **Articles 226 & 227:** Empower High Courts to issue writs for enforcement of rights and superintend lower courts.
- **Article 136:** Grants special leave to appeal to the Supreme Court, enabling review of judicial decisions.

Judicial review allows courts to adopt activist measures when legislative or executive branches fail to protect rights, or exercise restraint by deferring to policy-making bodies when appropriate⁶.

BASIC STRUCTURE DOCTRINE

The Basic Structure Doctrine, established in *Kesavananda Bharati v. State of Kerala*⁷, ensures that constitutional amendments cannot destroy the fundamental framework of the Constitution, including democracy, separation of powers, and fundamental rights.

- **Judicial Activism:** Courts actively interpret the Constitution to protect basic structure elements, even striking down parliamentary amendments if they violate these principles.
- **Judicial Restraint:** Courts exercise caution and respect legislative authority in cases where the amendment does not threaten the basic structure.

⁶ Basu, D. D. (2015). *Introduction to the Constitution of India* (21st ed.). LexisNexis.

⁷ *Kesavananda Bharati v. State of Kerala*, (1973) 4 SCC 225 (India).

This doctrine forms the constitutional foundation for balancing judicial activism and restraint in India⁸.

FUNDAMENTAL RIGHTS AND DIRECTIVE PRINCIPLES

The Constitution guarantees Fundamental Rights (FRs) under Articles 12–35 and Directive Principles of State Policy (DPSPs) under Articles 36–51:

- **Judicial Activism:** Courts have interpreted FRs expansively, incorporating right to privacy, right to livelihood, environmental rights, and social justice through PILs (e.g., *Maneka Gandhi v. Union of India*⁹, *Vishaka v. State of Rajasthan*¹⁰).
- **Judicial Restraint:** Courts avoid interfering with policy decisions of the legislature or executive unless a clear violation of rights occurs.

Thus, judicial power is context-dependent, oscillating between activism and restraint depending on the need to protect constitutional values¹¹.

SEPARATION OF POWERS AND CHECKS & BALANCES

The Indian Constitution envisions a separation of powers, with the judiciary acting as a check on legislative and executive excesses.

- Judicial Activism occurs when courts intervene to enforce rights, fill legislative gaps, or prevent abuse of power.
- Judicial Restraint is observed when courts defer to elected bodies, respecting democratic decision-making and institutional limits.

JUDICIAL ACTIVISM IN INDIA

Judicial activism refers to the judiciary's proactive role in interpreting and shaping laws to address social injustices, protect rights, and uphold constitutional values, often stepping beyond a strict interpretation of legal texts. So we must be "taking suffering seriously" and expanding the judiciary's role in social transformation. Article 142, which empowers the Supreme Court to pass orders necessary for "complete justice," has been a cornerstone of judicial activism, enabling landmark decisions like those mentioned in earlier chapters. However, it also raises concerns about whether such activism risks encroaching into legislative and executive domains, blurring the separation of powers. Many cases where Article 142 has been invoked, may be viewed as permitting "judicial legislation" and exploring its limits to maintain constitutional balance.³ In an instance of judicial activism, the Supreme Court attempted to regulate surrogacy through Social

⁸ Sathe, S. P. (2002). *Judicial Activism in India*. Oxford University Press

⁹ *Maneka Gandhi v. Union of India*, (1978) 1 SCC 248 (India)

¹⁰ *Vishaka v. State of Rajasthan*, (1997) 6 SCC 241

¹¹ Seervai, H. M. (1991). *Constitutional Law of India* (4th ed.). Universal Law Publishing

Action Litigation (SAL). Such instances warn us of overreach when judicial interventions lack legislative backing, potentially leading to inconsistent or unenforceable outcomes¹².

ARTICLE 21 AND JUDICIAL ACTIVISM

Article 21 of the Indian Constitution protects life and personal liberty: "No person shall be deprived of his life or personal liberty except according to procedure established by law." Judicial activism in India expanded this fundamental right, interpreting it. In fact, it has been one of the main factors which envisioned the legal scenario of India.

Expanding Scope of Rights:

Right to Privacy: The scope of Article 21 was expanded by way of judicial activism in India, particularly in cases like *K.S. Puttaswamy v. Union of India*¹³, wherein interpretation evolved so that any invasion of a person's right to privacy thus became a fundamental right. Further in *Shayara Bano v. Union of India*¹⁴, Supreme Court overturned a practice that had been followed for centuries, using its judicial authority to protect fundamental rights and promote gender equality. The Supreme Court has interpreted Articles 21 as including within their ambit not only protection of individuals' physical life and liberty but also protection from denial of dignity and personal autonomy and liberty against arbitrary state action.

Prisoners' Rights: Activist judgments have brought reforms in prison conditions, access to legal aid for underprivileged, and rights of prisoners, all falling under the umbrella of Article 21.

Environmental Protection: In the scheme of Article 21, the Judiciary has used it very effectively to enforce laws relating to the environment, thereby ensuring the right to a clean environment and ecology and sustainable development.

SEPARATION OF POWERS AND JUDICIAL RESTRAINT

One of the cardinal principles of democratic systems is the separation of powers. It is the division of different powers and responsibilities among the legislative, executive, and judicial to avoid a situation where any one limb or organ of government gets too powerful in its operation. Dividing governmental authority between three distinct branches: legislative, executive, and judiciary. Judicial restraint is related to this principle as a judicial philosophy in a very direct way.

¹² Salman Khurshid, Sidharth Luthra, Lokendra Malik & Shruti Bedi (eds.); *Judicial Review : Process, Powers, and Problems*; Chapter 5

¹³ *K.S. Puttaswamy v. Union of India*, (2017) 10 SCC 1

¹⁴ *Shayara Bano v. Union of India*, (2017) 9 SCC 1

JUDICIAL RESTRAINT WITHIN SEPARATION OF POWERS

Judicial restraint refers to the philosophy whereby judges actually constrain themselves from exercises of their own power by sticking closer to the textual meaning of laws, and deferring as much as possible to legislative and executive decisions. It respects the will of the legislature as laid down in legislation. The exercising restraint keeps them out of invading the roles and functions of the other two branches of government. This preserves the balance of powers envisioned by the separation of powers doctrine.

Essentially, judicial restraint works within the separation of powers to ensure respect by the judiciary for legislative intent and not to overreach in areas reserved for policy-making by the elective branches. It helps safeguard the integrity of courts as a neutral interpreter of laws while maintaining checks and balances that are characteristics of democratic governance¹⁵.

JUDICIAL ACTIVISM vs. JUDICIAL RESTRAINT

The difference between judicial activism and judicial restraint or strict constructionism refers to techniques of constitutional interpretation. A judge who looks more to the original Constitution, and less to larger contemporary norms in most instances of making decisions on a case, is called a strict constructionist. On the other hand, the activist judge broadly interprets the Constitution.

The main differences between these two approaches are as follows:

1. Judicial activism is when the Constitution is interpreted according to the prevailing values and circumstances. Judicial restraint refers to the constraining of judicial powers to declare a law null and void.
2. A court operating within judicial restraint usually accepts the decisions of the legislative except in clear violations of the constitutional provisions. On its part, judicial activism may allow for independent interpretation of the Constitution and sometimes the courts' decision may deviate from how the legislature has interpreted it.

The goals of judicial activism are different from judicial restraint. While judicial restraint desires to strike a balance among the judiciary, executive, and legislative branches through promotion of review other than change on the existing laws, on the other end, judicial activism gives courts the power to annul certain laws or decisions.

¹⁵ <https://www.pahujalawacademy.com/judicial-activism-vs-judicial-restraint>

CONTEMPORARY CHALLENGES

Modern governance presents new balancing challenges. Socio-economic rights adjudication requires courts to enforce positive obligations without dictating budgetary priorities

In Justice *K.S. Puttaswamy v. Union of India (Privacy Judgment)*¹⁶, the Court expanded fundamental rights but left data protection to legislative action. Similarly, in *Shayara Bano v. Union of India*¹⁷, it struck down instant triple talaq but deferred comprehensive reform to Parliament. The COVID-19 pandemic saw courts reviewing health policies in *Re: Distribution of Essential Supplies*¹⁸, highlighting the fine line between judicial oversight and executive overreach.

Globalization adds complexity. Judicial enforcement of international agreements (climate accords, trade treaties) may conflict with domestic policymaking. Similarly, digital governance issues—data privacy, algorithmic transparency—test judicial capacity.

The Supreme Court's role in Indian *Young Lawyers Association v. State of Kerala (Sabarimala Case)*¹⁹ and *Navtej Singh Johar v. Union of India*²⁰ demonstrates principled activism in rights enforcement. However, cases like *Kalpana Mehta v. Union of India*²¹ caution against excessive judicial interference in policy. The balance lies in *State of W.B. v. Committee for Protection of Democratic Rights*²², where the Court upheld judicial review while respecting federalism. As observed in *Government of NCT of Delhi v. Union of India*²³, judicial restraint ensures democratic governance, while activism safeguards constitutionalism. Institutional credibility remains paramount. Courts earn reverence "through the test of truth," maintained by "self-imposed discipline of enlightened judicial restraint."

The balance between judicial activism and restraint ultimately serves constitutional democracy's health. As Lord Bingham observed, "Constitutional dangers exist no less in too little judicial activism as in too much." Courts must neither abdicate their rights-protecting role nor overstep their institutional bounds. This equilibrium requires constant recalibration. Judicial humility—recognizing that constitutional interpretation differs from constitutional amendment—proves essential.

¹⁶ AIR 2018 SC (SUPP) 1841

¹⁷ AIR 2017 SC 4609

¹⁸ 2021 INSC 280

¹⁹ (2018) 9 SCR 561

²⁰ (2018) 10 SCC 1

²¹ AIR 2018 SC 2493

²² (2010) 3 SCC 571

²³ (2018) 8 SCC 501

The people's faith in judicial legitimacy remains the ultimate safeguard. Courts must remember, that "fear of consequences is one reason why citizens obey judicial decisions, but there are far stronger reasons." Those reason—institutional integrity, principled restraint, and constitutional fidelity—form the bedrock of balanced judicial review. In maintaining this balance, courts fulfill their role as neither obstruction nor savior, but as essential participants in democracy's unending adventure. To conclude, the solution lies in a professional consensus about proper judicial conduct, a "moral force" that disciplines judicial power²⁴.

CONCLUSION

The discussion on judicial activism and judicial restraint highlights the dynamic role of the judiciary within India's constitutional framework. Judicial activism has played a crucial role in **safeguarding fundamental rights, promoting social justice, and ensuring accountability of the legislature and executive**, as reflected in landmark cases such as *Maneka Gandhi v. Union of India*, *Vishaka v. State of Rajasthan*, *K.S. Puttaswamy v. Union of India*, and *Shayara Bano v. Union of India*. These judgments illustrate the courts' proactive stance in protecting individual liberties and addressing gaps in legislation or policy.

On the other hand, judicial restraint stresses **adherence to judicial discipline, respect for separation of powers, and deference to elected branches of government**. While restraint prevents overreach, excessive passivity, as seen in *ADM Jabalpur v. Shivkant Shukla*, can undermine fundamental rights and democratic principles. A balanced approach is therefore essential. The judiciary should intervene when constitutional values or fundamental rights are threatened but must avoid encroaching on policy-making.

In essence, judicial wisdom lies not in rigidly choosing activism or restraint, but in **striking the right balance** to uphold justice, democracy, and the rule of law.

²⁴ <https://ijlmh.com/wp-content/uploads/Comparative-Analysis-of-Judicial-Activism-and-Judicial-Restraint-in-India>.