



# The Indian Journal for Research in Law and Management

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## **DYNAMIC DUALITY: INDIA'S LEGAL ODYSSEY THROUGH ACTIVISM AND RESTRAINT**

*~ Gunjan Attri*

In the recent past accompanied by the independence of the judiciary of the country India, the socio-political legal environment of the country has been forcibly framed by the judiciary of the nation. Judicial activism/restraint is another vital concept that has developed in this process to lead the judiciary to provide constitutional hereby and the delivery of justice. This dichotomy represents a larger discussion about the judiciary's place in a democracy: Should it be the aggressive defender of rights and the hunt for downfalls that the legislative and the executive branches are and the corrector of wrongs that; it did, or should it move slowly and allow the other two branches of government?

### Judicial Activism: The Proponent of Transformation

John Wood is a working journalist and author who has long been involved with transformation and he has defined this term – transformation – in the way I have described it. As a result, “judicial activism” means judicial activity concerning the principles of rights assurance, justice delivery, and active reaction to the legislative or the executive branch’s inactivity. To make justice not only juridical, but also moral and social, it may mean that the approach to Constitution and other legal acts interpretation can be more liberal. Being quick at the formulation and implementation level, it has indeed helped India in getting through several historic reform measures at the policy formulation and implementation level.

In the case of *Kesavananda Bharati v. State of Kerala* as reported in AIR 1973 SC 1461 this case is a classic illustration of a judicial activism. In this decision, the Supreme Court gave the Basic Structure Doctrine that, while the parliament is at large freedom to amend or even repeal the Constitution, it is not allowed to alter features of the Constitution. This ruling highlighted

the role of the Judiciary in the preservation of democratic values and the Constitution by acting as a watchdog for the Constitution.

The Supreme Court of India, in *Vishaka v. State of Rajasthan*, AIR 1997 SC 3011 saw it pertinent to formulate standard procedural guidelines to combat workplace sexual harassment where the law was silent. This is another worthy to mention. This case illustrates how judicial activism can be a force for good through discussing how the court can try to protect Constitutional rights where legislation is silent. One of the most effective strategies employed by the judiciary to assert its power has been through PIL. The fact that *M. C. Mehta v. Union of India*, AIR 1987 SC 1086 illustrates that the Supreme Court has transcended beyond the legal frontiers of jurisdiction by taking PILs to address even the loosely defined broader social wrongs.

**Judicial Restraint: The Keeper of Democratic Balance.**

On the other hand, judicial restraint brings more awareness to the importance of strict adherence to legal texts and the sanctity of the division of power between the branches of the government. This approach is based on the doctrine of the separation of powers and alerts against the encroachment of powers of other branches of government by the judicial branch.

In the case of *State of Rajasthan v. Union of India*, (AIR 1977 SC 1361) the principle of judicial restraint, for the case is observable. In relation with one of those concerns the Supreme Court stated that it has no jurisdiction to interfere in the particular political decision making regarding the appointment of President's Rule. This decision was also ideal in establishing that the court as one of the state arms cannot dictate politics and policies but has to bow to other arms of the government.

In the same manner, in *S.P. Gupta v. Union of India* AIR 1982 SC 149 also known as Judges' Transfer case the supreme court also-while exercising its judicial modesty and has clearly identified the distribution of the organ of judicial power between the judiciary, the executive and the legislative branch of the government. Taking away the powers of the Court to intervene on aspects concerning appointment and transfer of judges, The Court was averse to stripping the rights of the administration to exercise option.

**Judicial Activism vs. Judicial Restraint:**

In an attempt to describe the forces of chaos and organisation, bounciness and stiffness, the pleasures and the pains and how these forces structure themselves and blend, incorporates the Balance Act into the mix. I look at judicial activism and judicial self-restraint as not needing to fight for the supremacy of one over the other; what that is being sought is the sorry of both the extremes to serve democracy, to protect constitution, and to deliver justice. Each of the mentioned kinds of the argumentation has its benefits and drawbacks, as well as the conditions being the major factor that defines when they are employed also depends on the nature of the problem being the most crucial factor which determines how often they are used.

When there is no legislation in place or when legislation has been observed to be insufficient in some ways or else when the legislation and executives' branches have not acted as they are supposed to, then quality activism has been described to be accurate in practice. Actually, feminism has assumed a central responsibility of enhancing and achieving the goals of sexual equality, environmentalism, as well as social justice.

However, this activism can escalate to a level of judicial activism and this can be deemed a disadvantage in every single way to the government as well as the checks and balance system. However, the judicial activism also helps preserving the democracy, as well as taking into account the relation between the president and the congress as per the spirit. Thus, the judiciary cannot interfere with the operations field of activities of other departments, meanwhile the check and balance remain to be intact.

## In Conclusion

To establish the fact of the Indian court this paper strives to highlight the relationship between the courts and the enhancement of the legal and the socio-political situation in the Indian country. It is for this reason that the judiciary can remain relevant to the current conditions while at the same time the constitution and other principles continue to weaken more undermining democracy thus ensuring that the place of the constitution as the pillar of democracy remains strong. The roles of a judge demand from the holder that she or he be both involved and aloof in the process because both are in themselves rather tender and depend on the circumstances.

This paper acknowledges the law prospects of India claiming the legal journey of India with activism and judicial temperance pointing out that the judiciary is committed to the constitution as well as for the protection of rights of the citizens to seek justice. The actions performed also

can be potentially promising for more consequential transformations,as the judiciary is attempting to find the golden mean in the fight between justice and democracy