



The Indian Journal for Research in Law and Management

Open Access Law Journal – Copyright © 2025

Editor-in-Chief – Dr. Muktai Deb Chavan; Publisher – Alden Vas; ISSN: 2583-9896

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JUDICIAL ACTIVISM VS. JUDICIAL RESTRAINT: CONTRASTING PHILOSOPHIES OF POWER AND INTERPRETATION

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ABSTRACT

This research paper written on judicial activism vs. judicial activism is concerned with the oldest argument regarding judicial activism and restraint, the two main judicial philosophies that regulate the extent of judicial power vis-a-vis the functioning of the other organs of government with which it interacts. Judicial restraint, on the one hand, propounds a limited role for the judiciary, together with its deference to legislative and executive branches. On the other, judicial activism advocates a vastly expanded role, particularly in protecting fundamental rights and settling social imbalances. The proposed study will overwhelmingly present judicial activism in terms of definition, historical evolution, core principles, rationales, critiques, landmark cases, and separation of powers. It will also specifically study manifestations of judicial activism within the Indian legal system. Finally, it would do a cursory study of judicial restraint and a comparative study with the studied aspect so as to illuminate the tracks and the complexities and implications of both.

INTRODUCTION

The Indian Constitution gives the judiciary a essential role: to interpret laws and protect the core values of the constitution. But, how far this power should go has always been a topic of discussion. This has led to two main ideas—judicial activism and judicial restraint—that guide how courts make decisions. These different approaches have shaped the Indian legal system in big ways. In this article, we'll look at these two perspectives, how they developed over time, why they were adopted, and what effects they've had.

1. JUDICIAL ACTIVISM

The Indian Constitution gives the judiciary a essential role: to interpret laws and protect the core values of the constitution. But, how far this power should go has always been a topic of discussion. This has led to two main ideas—judicial activism and judicial restraint—that guide how courts make decisions. These different approaches have shaped the Indian legal system in big ways. In this article, we'll look at these two perspectives, how they developed over time, why they were adopted, and what effects they've had.

Judges tend to interpret the articles of the Constitution, especially the fundamental rights, in a flexible and broad way to better address today's social issues. The development of Public Interest Litigation (PIL) since the 1980s has played a big role in encouraging judges to take a more active role. PIL allows individuals or groups to bring up concerns that affect the public, even if they aren't personally affected, opening doors for courts to step into matters related to social justice, environmental protection, and good governance. When specific laws are missing, courts often step in by issuing detailed guidelines and instructions to the government and lawmakers to fill those gaps. The judiciary also keeps a close watch on how its orders are carried out, making sure the government follows through with its commitments

1.1 Benefits of activism

Judicial activism has played a big role in broadening the idea of our fundamental rights. It has helped include rights like the right to life and personal freedom (under Article 21), which now cover things like a clean environment, the right to earn a living, and access to free legal help. It is also an important check on how the government and lawmakers exercise their power, stopping them from acting unfairly or being inactive. Through important court decisions, the judiciary has pushed for social change, tackled deep-rooted inequalities, and protected those who are most vulnerable. In areas where lawmakers have been slow or hesitant to pass laws, the courts have often stepped in to fill the gap and create necessary legal rules.

1.2 The Foundations of Judicial Activism

While the term, "judicial activism" is new, the concept of courts actively engaging in policy making goes back to the times of emerging modern democracies. In the US, the idea received a lot more attention after a 1947 Fortune magazine article "The Supreme Court: 1947" written by historian Arthur M. Schlesinger Jr. Schlesinger focused on the Warren Court which was quite proactive in modifying public policies significant to civil rights, especially

its liberal surrenders. However, way before that, judges had already started to disregard and over law or interpret the Constitution in excessively liberal ways. Take for example:

-Marbury v Madison (1803): The 1803 landmark case set off referred as 'activist' proposed judicial review, gave authority to courts to nullify legislation. Chief Justice John Marshall's decision earned him lifelong criticism because although it didn't grant Marbury his commission, his ruling laid the foundation.

-Pre-Civil War Dred Scott v. Sandford (1857): This jurisdictional baseless verdict proclaimed black Americans to be noncitizens of the United States and also claimed Missouri Compromise as unconstitutional.

Throughout history the courts have often stepped into the spotlight to defend fundamental rights and constitutional principles. Sometimes, they've clashed directly with political leaders especially when society faces serious problems or injustices. Whether these actions are seen as healthy checks on power or overreach by the judiciary is still a hot topic of debate shaping how we understand the role of courts in democracy.

1.3 Proponents of judicial activism

Proponents of judicial activism view it not merely as a departure from established norms, but as a vital instrument to guarantee justice, uphold constitutional principles, and advance society. Here are several key reasons many argue it is advantageous: Checks and Balances: Judicial activism helps regulate the other branches of government. When legislators or the executive fail such as neglecting fundamental rights or not addressing key social matters the judiciary can intervene to uphold constitutional values.

Safeguarding Minority Rights: In democratic systems dominated by majority rule, minorities can occasionally be overlooked or even subjected to oppression. here the Active judges can represent marginalized groups can also protect their rights and can consider landmark cases such as Brown v. Board of Education in the U.S. which contributed to the abolition of segregation. Addressing Legislative Shortcomings or Inaction: When lawmakers fail to reach consensus, delay their responses, or sidestep specific matters for political motivations, judiciary systems can intervene to offer prompt resolutions and advance reforms efficiently. it is mainly crucial for intricate social or policy issues and other things.

Modifying the constitution (Dynamic Document):- The concept of a dynamic constitution suggests that it ought to be regarded not as fixed or immutable, but as something that can progress alongside society. Judicial activism allows judges to interpret the Constitution in a broad and purposeful manner, ensuring its relevance in today's society. Encouraging Equity and Social Justice: Judges prepared to take initiative can assist in addressing historical wrongs, foster equality and ensure rights are distributed more equitably.

For instance, in India, Public Interest Litigation (PIL) demonstrates how courts act to protect marginalized communities. Clarifying Legal Issues: Laws and constitutions cannot foresee every conceivable future situation. Judicial activism addresses these voids and clarifies perplexing legal issues, facilitating a more efficient and equitable justice system.

1.4 Main criticism and drawbacks

Judicial activism has the potential to be of immense significance and is more often than not the target of heavy criticism. Most concerns about judicial activism revolve around how it affects the democratic legitimacy, accountability, and limitations of judicial power. Critics argue that judges acting outside their traditional roles sometimes jeopardize democratic principles. Some, for instance, argue that judicial activism allows judges, who have not been elected, to undermine decisions made by elected representatives thus raising questions of legitimacy and sovereignty. There is also a familiar argument about judicial overreach whereby a judge is held to be 'legislating from the bench' both in theory and practice, specifically in having created new laws or policies and not just interpreting existing statutes. This can compromise the clear separation of powers leading to well-founded fear that the judiciary may invade the areas commonly reserved for the legislative and executive branches. A further problem has been that of direct accountability; judges are not accountable through elections to the people, as are those who make laws, and thus challenge or nullification of unpopular or incorrect decisions become involved in complex processes like impeachment or constitutional amendments. The involvement of courts in policy issues has politicized the judiciary and led to perceptions that judges operate on personal or ideological positions rather than by impartial legal standards. This can erode public trust and translate judicial appointments into partisan battles. What is more, judicial activism may create legal uncertainty. When overturning established precedents or creating new legal rights, courts can cause such instability that individuals, businesses and government agencies find it nearly impossible to plan. Finally, courts are primarily designed to resolve disputes, not make broad

public policy. Their limited capabilities in terms of resources, expertise and capacity may prevent them from adequately addressing complex societal issues. There is, of course, the even greater danger that individual judges will misuse their authority for unsubstantiated personal bias or preferences disguised as constitutional interpretation. The definitive separative powers doctrine forms the basis of his democratic governance, which distributes the authority of government into three branches: legislative, executive, and judicial to disperse concentration of power and ensure checks and balances. The judicial activism significantly occurs at this sensitive point.

1.5 Judicial activism and separation of powers

Judicially, it is supposed to be speaking against the interpretation of laws and subjecting them to the touchstone of constitutionality; but judicial activism transcends interpretation. When the courts actively strike down laws, issue orders of vast range pertaining to the executive, or create policies (as through indicatives), it tends to be thought that such forms of activity are tangentially related or incroaching upon legislative and executive affairs.

The fundamental questions arising from the incroaching are:

Is judicial activism maintaining the balance of power by curbing the possible abuses of the other branches, or is it by itself creating a base of power that disrupts that balance?

How can the judiciary, itself not politically accountable, justify the use of powers that are traditionally in the hands of elected representatives?

Proponents say advocacy for judicial activism is warranted by its striking example of dealing with legislative failures or anointing fundamental rights; after all, it is the rightful exercise of checks and balances necessary for democracy to thrive. According to them, "the judiciary serves as a corrective force wherever the political process fails to uphold constitutional values," though this can be contested.

However, it is seen as a violation of separation of powers, giving rise to much-exhanted "judicial overreach" by which the judiciary is to assume legislative and executive functions without comparable accountability and subject their directives to institutional friction by executive and legislature vying against them, thus causing governance problems. The conflicts regularly generated in this debate are between judges being too assertive and respecting the distinct roles of each branch.

1.6 Landmark cases

Kesavananda Bharati v. The State of Kerala (1973): Set forth the "Basic Structure Doctrine" restricting the amending power of Parliament so that the essential features of the Constitution do not become subject to erosion.

Maneka Gandhi v. Union of India (1978): Expanded the interpretation of "procedure established by law" in Article 21, insisting that it must be fair, just, and reasonable.

Hussainara Khatoon v. State of Bihar (1979): Contributed significantly to criminal justice reform by emphasizing the right to speedy trial and legal aid for undertrials.

Vishaka v. State of Rajasthan (1997): Laid down guidelines to protect women against sexual harassment at the workplace in the absence of specific legislation.

M.C. Mehta v. Union of India (in various cases): Landmark environment cases that set the tone for several pollution control and environmental protection directives.

2. JUDICIAL RESTRAINT

Judicial restraint is an approach to judicial activity in which judges are seen as having a circumscribed function in interpreting the law and Constitution. Emphasis is placed on this doctrine in relation to the legislative and executive branches of government, in recognition of their democratic legitimacy and primary responsibility in the process of policy-making. This doctrine, therefore, makes the judiciary something of an arbiter of existing law, rather than a proactive actor shaping societal norms or policy.

2.1 Definition and Core Principles

Judicial restraint may be defined as an approach with the presumption that judges should exercise care and self-restraint such that they interfere as little as possible with the policy-making of elected branches of government in matters with which their actions would only have a clear constitutional basis. The principle is, therefore, premised on the belief that the judiciary must not interfere with the decision-making and policy-making functions of the legislature. Some key characteristics and principles surrounding judicial restraint include:

Deference to Elected Branches: This is the most important principle of judicial restraint.

Those judges who believe in this philosophy focus on the idea that policy matters are best decided by the legislature and executive branches of the government, as they are directly

accountable to the people through elections. Courts would only interfere when there is an open-and-shut constitutional violation, and never on the grounds that the particular judges disagree with the policy choice or thinks that a better one could have been made. This would also include an extension to administrative functions, where, in general, courts respect the knowledge and discretion of administrative bodies unless some clear illegality or unconstitutionality is shown.

Strict Constructionism/Originalism/Textualism: Judges that follow a restraint philosophy usually adopt a strict constructionist position while interpreting the Constitution and statutes.

Originalism seeks to determine what the original intent of the framers of the Constitution was.

Textualism looks more at the ordinary meaning of the text at the time it was enacted. Both types of approaches seek to impose limits on judicial discretion so that judicial interpretation does not stray from what is expressly stated or is at least clearly implied by the basic legal documents. Furthermore, they tend to be suspicious of any potential "living constitution" argument which would allow for a more dynamic mode of reinterpretation.

Presumption of Constitutionality: One of the major principles is that any law passed by the legislature is presumed constitutional. If a law is challenged as unconstitutional, it is the challenger who will have to carry the burden of proof to demonstrate this violation, as opposed to the court justifying its reasons for striking it down. Judges are very reluctant to declare a legislative act unconstitutional and to strike it down unless this is "flagrantly clear" and puts "no reasonable doubt" in the mind of any person.

Strong adherence to precedent (Stare Decisis): The doctrine of judicial restraint values stare decisis (Latin: to stand by things = let the decision stand), or in basic terms, being bound by past decisions. This ensures stability, predictability, and consistency of the law. Restraint judges do not easily engage in the reconsideration and reversal of long-standing precedents even when personally disagreeing with the original decision, for doing so might unsettle the legal system and raise public distrust in the impartiality of judges. They are of the view that, if at all, a precedent should be changed only by the legislature through an act or constitutional amendment.

Avoidance of the Political Question and Judicial Minimalism: Restrained judges, when possible, avoid the consideration of the so-called "political questions" – those considered to

be more appropriately resolved by the political branches. This also encompasses matters for which no clear legal standards exist for judicial resolution, or wherein intervention would embroil the judiciary in partisan disputes. In addition, restrained judges engage in judicial minimalism whereby they issue narrowly drawn decisions resolving only the particular case in question while avoiding broad pronouncements or the formulation of wide new legal norms that would, in effect, constitute legislation.

Procedural Restraints: Judges practicing restraint resort to several procedural devices, which, they say, lessen their encroachment on the legislative space. These include:

Standing: Proving the plaintiff to have a concrete and demonstrable injury inflicted by the defendant himself and that the said injury is equal to be redressed by a decision given by the court. Courts shy away from generalized grievances or abstract legal guidance.

Ripeness: Courts refuse to hear cases in which the harm threatened is purely speculative and does not yet exist.

Mootness: It does not take upon itself a decision to resolve controversies that are determined and which the judicial resolution will have no material effect on that controversy.

Constitutional Avoidance: A canon of interpretation that directs courts to decide cases on non-constitutional ground if possible and read statutes so as to avoid constitutional questions if two interpretations are possible.

2.2 Arguments and Justifications for Judicial Restraint

Proponents of judicial restraint have marshaled several powerful arguments that underline its importance for preserving the proper functioning of a democracy:

Respect for Democratic Principles and Legitimacy: The most basic justification for applying judicial restraint is to respect the democratic process. In a democratic context, it is elected representatives who make laws, accountable to the public in their elections. The actions of unelected judges in voiding such laws may therefore be said to defeat popular will and subvert the concept of self-governance itself. Restraint thereby guarantees that policy-making would remain with the branches possessing democratic legitimacy.

Judicial restraint assists to separate the powers of the government branches: it limits the encroachment of the judiciary towards the legislature and the executive by restricting its

intervention to cases of genuine violation of the constitutional mandate. This allows for the operation of each such branch within its demarcated constitutional limits so that a concentration of power may not take place; rather, a system of checks and balances ensues where one branch does not become superior to others.

Adopting and Implementing Principles, Certainty, and Stability: Adherence to established precedents along with strict, textual interpretation of the law promotes certainty and stability in the legal environment. Individuals, businesses, and even government entities, therefore, can understand their rights and obligations according to law and plan their affairs better because of predictability and stability that may not result from the frequent shifts in legal interpretation due to judicial discretion.

Avoiding Politicization Of The Judiciary: Judges are, therefore, seen as less ideological or policy makers when they hold back from any assertion of their powers. It is such that continues under ordinary circumstances to hold these concepts of neutrality, impartiality, and independent action for the judiciary. A great many times, however, when there is intervention in policy advocacy with which there is high conflict, the politics of appointing judges and passing judgments becomes almost inevitable, hence taking a toll on the public perception of the judiciary as a neutral arbiter of law.

Lack of Institutional Expertise and Resources: Courts are designed to resolve specific disputes about competing legal arguments and evidence presented in a courtroom. Whereas, they have little specialized knowledge, resources, or fact-finding mechanisms, such as legislative hearings, consultations with experts, and public deliberation, to form comprehensive public policies. Thus, restraint advocates argue that such complex problems of society may be better addressed by the capabilities of the legislature and executive.

Accountability Mechanism: Members of Parliament or elected officials are accountable to the electorate for their decisions regarding the policy choice. If the policies are indeed unpopular or fail to achieve their intended objectives, they can be voted out of office, whereas judges are not directly accountable to popular mandate. Therefore, to prevent big policy shifts from occurring within a branch that can be held accountable to the populace, judicial restraint ensures that these shifts will arise from other branches.

2.3 Landmark Cases Exemplifying Judicial Restraint

Judicial activism often makes the news on account of its transformative impact, while judicial restraint is shown in cases where courts choose not to intervene, uphold legislative measures, or construe those in a narrow manner.

United States:

Plessy v. Ferguson (1896): This infamous decision of the U.S. Supreme Court publicized as the judicial restraint template for holding the separate-but-equal doctrine. The Court essentially deferred to the legislature of the state to enact laws regarding segregation, despite their discriminatory effects. While this judicial restraint was much lecture for the adverse social consequences it entailed, the same restraint was expressed by the judiciary when finding it reasonable not to strike down legislation, purely on the grounds of some generalized moral or evolving constitutional interpretations of the time. Instead, it would rather forestall or give way to democratic change of this status by legislation. (In sharp contrast with *Brown v. Board of Education*, which was a classic judicial activism case overthrowing *Plessy*).

Gibbons v. Ogden (1824): While establishing the broad power of Congress under the Commerce Clause, Chief Justice John Marshall's opinion was arguably restrained in how it applied this power. The Court interpreted Congress's power to regulate interstate commerce broadly but did so in a way that clarified federal supremacy without overstepping its own bounds into the legislative domain, thus avoiding broader pronouncements that could have disrupted federal-state balance more radically.

India:

State of Rajasthan v. Union of India (1977): In this landmark case, the Supreme Court of India exercised judicial restraint by refusing to interfere in a situation in which the Central Government had dissolved State Assemblies. The Court characterized the matter as strongly political (involving President's Rule under Article 356) and thus avoided entering into what it deemed a "political thicket," thereby honoring the executive's prerogative in such matters.

S.R. Bommai v. Union of India (1994 - Initial stance on political questions): Although the Bommai case very shortly led to serious judicial review of Article 356, on initial inclinations in some aspects and in earlier related cases it had hesitated to intervene and reapplied the state's actions into the category of political questions. Fair enough, Bommai saw the Court

lay down strict guidelines for invoking Article 356, intending to rein in constitutional discipline without infringing too much into executive discretion.

2.4 Judicial Restraint and the Separation of Powers

Inextricably intertwined with and nurturing the very doctrine of the separation of powers, judicial restraint rests, so to speak, upon the same foundation. This primordially constitutional principle distributes governmental powers among the legislature (law-making), executive (law-implementing), and judiciary (law-interpreting) arms, with checks and balances set in place to overcome any concentration of power in one entity.

There are some salient and critical ways in which judicial restraint protects the separation of powers.

Respect for Legislative Supremacy: Judicial restraint finds expression in the idea that law-making is itself the primary function of elected representatives, therefore, courts should defer to the legislative policy choices and presume legislative acts to be constitutional until the contrary is shown. The judiciary ought not to be perceived as an unelected body acting as a "super-legislature", enacting or nullifying laws by way of its own policy preferences. Such respects for legislative supremacy guarantee that all major policy decisions affecting society are primarily located with the body most directly accountable to the populace.

Limiting Executive Overreach, Not Surrogating with Executive Function: While the judiciary sits in the review of executive actions in the light of legality and constitutionality, it is the caution against judicial overreach that such restraint aims to prevent. By stepping aside, the judiciary persuades the executive to work within such restraints instead of simply usurping its responsibility. It thereby cleverly preserves the operative condition allowing civil service to function. Courts simply cannot take the account of some of the minutiae of day-to-day governance, resource allocation, and implementation of intricate policies in order to carry out administrative functions.

Upholding the Independence and Legitimacy of the Judiciary: Since judges avoid political controversies or the constant overturning of popular legislation, they portray themselves as impartial law followers. This increases judicial independence and legitimacy as neutral adjudicators, making their constitutional interventions revered and potent. Inversely, judicial activism brings about political reactions and challenges to the judicial authority, undermining the stature of the judiciary in future.

Fostering Smooth Institutional Relations: Judicial restraint temperamentally enhances cordial relations among all three arms of government. Constant judicial interference might create tensions, resistance, and eventually hamper cooperative governance. This restraint finishes by respecting the functional autonomy of other branches in such a way that they can perform their functions without interference.

Simply put, in judicial restraint, an assumption is made that while the courts are the ultimate arbiters of the Constitution, they too are a co-equal branch of government and not its superior. Its great power of judicial review must however be exercised with caution and humility, thereby ensuring that it does not become an unelected policymaker but rather acts as the defender of the Constitution. This approach is regarded as essential to ensure the maintenance of the fragile balance of constitutionalism and sustenance of the state as a democracy

3. JUDICIAL ACTIVISM VS. JUDICIAL RESTRAINT

Judicial activism and restraint stand for two completely contrary schools of thought in the current debate as to the role of the judiciary. Activism implies a more aggressive and interventionist type of approach, in which the judge is prepared to engage in flexible interpretations of the Constitution and defy acts of the legislature or executive, and even go so far as to lay down novel legal principles in order to respond to perceived injustices on society, or to fill perceived gaps left by the legislature, reflecting often a living constitution mentality. Conversely, restraint would call for a rather circumscribed role for the judiciary, advocating great respect for the text of the law and for established precedent while showing more respect for the policy choices of the democratically elected legislature and executive. The judiciary ought to intervene only when a constitutional violation is patently clear. While the activist judges view the judiciary as an important instrument of social change and a protector of minority rights, the restriction is in favor of democratic legitimacy, legal stability, and a strict separation of powers

CONCLUSION:

In pure theory, neither judicial activism nor judicial restraint stands either less valid than the other. Both have their arguments weighing for and against their existence, and often, whether they are appropriate or not will depend on context and the need amongst different societies.

When Activism is Good for: In a given society experiencing a great historic shift and its legislature is slow in settling adjustments with the changing norms, when minority peoples are subject to systematic violations of their rights, or even when there is bombardment against fundamental constitutional principles, judicial activism may be by situations most demanding a corrective force. The instance of PIL in India indicates how judicial activism could bridge governance gaps and instigate progressive societal developments and some other things.

When Restraint may be Beneficial: Judicial restraint serves to protect this integrity in instances of healthy democratic stability where the legislature may also evolve into legislative responsiveness and accountability. Legal prediction and propriety are made certain in such democracies, and judicial policymaking becomes less powerful and unaccountable.

The most desirable balance would be struck between these two philosophies. A healthy democracy requires a judiciary that is capable of independent thought and willing to check unconstitutional actions of the other branches, but also one that respects the democratic mandate of the legislature and executive. The proper term often used to describe this balance is "judicial prudence" or "judicial statesmanship," where judges are assertive when constitutional values demand it but also exercise self-control with respect to the political branches on matters of policy better decided through democratic deliberation and debate. The dialogue between these two philosophies is vital to the continuous evolution and strengthening of democratic institutions.

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