



The Indian Journal for Research in Law and Management

Open Access Law Journal – Copyright © 2026

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

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ROLE OF THE JUDICIARY IN CONSTITUTIONAL INTERPRETATION: ACTIVISM VERSUS RESTRAINT

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Abstract-

The judiciary plays a crucial role in ensuring that the Constitution remains the guiding framework for governance and the protection of citizen's rights. As the guardian and interpreter of the Constitution, the judiciary is responsible for resolving disputes, protecting constitutional values, and ensuring that the actions of the legislature and executive comply with constitutional principles. In carrying out this responsibility, courts often face the challenge of choosing between two important approaches to constitutional interpretation: judicial activism and judicial restraint.

Judicial activism refers to proactive role adopted by courts in protecting fundamental rights, addressing social injustices, and filling gaps where legislative or executive action may be inadequate. Through this approach, courts seek to ensure that constitutional ideals are effectively realized in society. On the other hand, judicial restraints emphasize caution and respect for the powers of elected institutions. It encourages judges to avoid unnecessary interference in policy matters and to uphold the principle of separation of powers by allowing the legislature and executive to perform their constitutional functions.

The debate between activism and restraint has remained a significant issue in constitutional law because both approaches influence how constitutional provisions are interpreted and applied. While judicial activism has often contributed to the expansion of rights and the promotion of social justice, excessive intervention may raise concerns regarding judicial overreach. Similarly, although judicial restraint promotes democratic accountability and

institutional balance, excessive deference may sometimes prevent courts from effectively protecting constitutional rights.

This paper examines the role of the judiciary in constitutional interpretation by analysing the concepts, development, advantages, and criticisms of both judicial activism and judicial restraint. Particular attention is given to the Indian constitutional framework, where courts have played an active role in shaping constitutional jurisprudence through landmark decisions. The study also draws insights from other democratic nations to understand how different constitutional systems address this debate.¹

The paper concludes that neither judicial activism nor judicial restraint can independently meet the demands of modern constitutional governance. A balanced and context-based approach is necessary, allowing courts to protect constitutional values and fundamental rights while maintaining respect for democratic institutions and the separation of powers.

Keywords- Constitutional Interpretation, Judiciary, Judicial Activism, Judicial Restraint, Constitutional Governance, Fundamental Rights, Judicial Review.

Introduction-

The Constitution is the Foundation of a democratic nation and serves as the highest law of the land. It lays down the structure of government, defines the powers and responsibilities of various institutions, and guarantees fundamental rights to citizens. By establishing a system of checks and balances among the legislatures, executive, and judiciary, the Constitution seeks to ensure justice, equality, and the rule of law. However, no Constitution can anticipate every social, political, or technological challenge that may arise over time. As society continues to evolve, new issues emerge that require constitutional guidance. This makes the role of the judiciary particularly important. The judiciary acts as the interpreter and guardian of the Constitution. its responsibility goes beyond merely applying legal provisions to specific cases. Courts are often required to determine the meaning and scope of constitutional principles in light of changing social realities and contemporary needs. Through constitutional interpretation, the judiciary ensures that constitutional values remain relevant and effective in addressing modern challenges.

¹ Granville Austin, *The Indian Constitution: Cornerstone of a Nation* 50-52 (Oxford Univ. Press 1966).

While performing this role, courts often face an important question regarding the extent of their involvement in public affairs. This has led to the continuing debate between judicial activism and judicial restraint. Supporters of judicial activism role in protecting rights and addressing governmental shortcomings. In Contrast, advocates of judicial restraint argue that judges should exercise caution and respect the authority of elected institutions. Understanding this balance is essential because it helps define the judiciary's role in maintaining constitutional governance, protecting individual liberties, and preserving democratic principles is a modern constitutional democracy.²

Judicial Activism as an Instrument of Constitutional Development and Social Justice-

Judicial activism refers to a proactive approach adopted by courts while interpreting constitutional provisions. Under this approach, judges do not limit themselves to a strict or literal reading of the law. Instead, they seek to uphold the spirit of the Constitution and ensure that its principles are effectively implemented in society. Judicial activism enables courts to respond to changing social realities and address situations where existing laws may be inadequate or where governmental authorities fail to fulfil their constitutional responsibilities.³

The concept is based on the belief that the Constitution is a living document that must evolve with time. Therefore, courts often play an active role in protecting citizens' rights, promoting social welfare, and ensuring justice for all sections of society. Judicial activism has been particularly important in protecting individuals and groups who may not have sufficient political or economic influence to secure their rights through ordinary democratic processes.⁴

Some of the Key features of judicial activism include:

- Broadening the interpretation of constitutional and fundamental rights to meet constitutional and fundamental rights to meet contemporary needs.
- Declaring laws or governmental actions invalid when they violate constitutional principles.

² H.M. Seervai, Constitutional Law of India 234-36 (4th ed. 1996).

³ Maneka Gandhi v. Union of India, (1978) 1 S.C.C. 248 (India).

⁴ People's Union for Democratic Rights v. Union of India, (1982) 3 S.C.C 235 (India).

- Framing guidelines and directions in areas where legislative provisions are absent or inadequate.
- Safeguarding the interests of disadvantaged, marginalized, and vulnerable sections of society.
- Strengthening transparency and accountability within public institutions and government agencies.

In India, judicial activism gained significant momentum after the Emergency period of 1975-77. During this phase, the Supreme Court adopted a more progressive approach towards constitutional interpretation. The scope of Article 21 was considerably expanded to include several rights essential for a dignified life, such as the rights to livelihood, health, education, privacy, and a clean environment. The development of public interest Litigation (PIL) further strengthened this movement by enabling concerned individuals and organizations to approach courts on behalf of those who lacked access to justice.

As a result, judicial activism has played a transformative role in Indian constitutional law. It has helped bridge the gap between constitutional promises and social realities, ensuring that justice reaches ordinary citizens and that constitutional values remain meaningful in everyday life.

Benefits and Positive Impact of Judicial Activism-

Judicial activism has played an important role in strengthening constitutional governance and ensuring that the rights guaranteed by the Constitution are effectively protected. By adopting a proactive approach, courts have often addressed issues that may otherwise have remained unresolved due to legislative inaction or administrative inefficiency. As a result, judicial activism has become a significant instrument for promoting justice, protecting citizens, and preserving constitutional values.

A. Protection of Fundamental Rights-

One of the most important contributions of judicial activism is the protection of fundamental rights. Courts have consistently intervened whenever individual freedoms and constitutional rights have been threatened by arbitrary or unlawful state actions. Through progressive interpretation of constitutional provisions, the judiciary has ensured that rights are not merely theoretical guarantees but practical protections

available to every citizen. This approach has strengthened public confidence in the justice system and reinforced the rule of law.

B. Advancement of Social Justice-

Judicial activism has also contributed significantly to the promotion of social justice. Courts have addressed various social issues affecting vulnerable and disadvantaged sections of society. Through landmark judgments, the judiciary has taken steps to combat bonded labour, improve prison conditions, protects the environment,⁵ and promote gender equality. Such interventions have helped bridge the gap between constitutional ideals and social realities, making justice more accessible to ordinary people.⁶

C. Ensuring Government Accountability-

Another major benefit of judicial activism is its role in holding public authorities accountable. By reviewing governmental actions and decisions, courts ensure that the executive and legislature exercise their powers within constitutional limits. Judicial scrutiny helps prevent misuse of authority, promotes transparency, and encourages responsible governance. In this way, the judiciary acts as an important safeguard against arbitrary exercise of powers.

D. Promoting Constitutional Growth and Adaptability-

Judicial activism enables the Constitution to remain relevant in a rapidly changing society. As new social, economic, and technological challenges emerge, courts interpret constitutional principles in a manner that addresses contemporary needs.⁷ This dynamic approach allows the Constitution to evolve while preserving its core values, ensuring that it continues to serve as an effective instrument of justice and democratic governance.

Limitation and Criticism of Judicial Activism-

⁵ M.C. Mehta v. Union of India, (1987) 1 S.C.C. 395 (India).

⁶ Vishaka v. State of Rajasthan, (1997) 6 S.C.C. 241 (India).

⁷ Olga Tellis v. Bombay Municipal Corp., (1985) 3 S.C.C. 545 (India).

Although judicial activism has played an important role in protecting rights and promoting justice, it has also been the subject of considerable criticism. Many scholars, politicians, and legal experts believe that excessive judicial intervention can create challenges for democratic governance and disturb the balance among the organs of government. While judicial activism often helps in addressing social and constitutional issues, its overuse may lead to several concerns.

A. Judicial Overreach-

One of the most common criticisms of judicial activism is the possibility of judicial overreach. Critics argue that courts sometimes go beyond their constitutional role and begin dealing with matters that are better left to the legislature or the executive. Since policymaking is primarily the responsibility of elected representatives, excessive judicial involvement in policy matters may blur the boundaries between the different branches of government. Such intervention can weaken the principle of separation of powers, which is essential for a healthy democracy.⁸

B. Concerns Regarding Democratic Legitimacy-

Another criticism is that judges are not directly elected by the people. Unlike legislators who are accountable to voters, judges hold office through constitutional appointment processes. Therefore, when courts make decisions that significantly influence public policy, some critics question whether such decisions reflect the will of the people. This concern becomes more prominent when judicial decisions affect areas that involve social, economic, or political policy choices.

C. Possibility of Legal Uncertainty-

Judicial activism may sometimes create uncertainty in the law. Since activist judgments often rely on broad interpretations of constitutional provisions, different judges may interpret similar issues differently. As a result, it can become difficult for citizens, government authorities, and legal practitioners to predict how courts may decide future cases. Excessive reliance on judicial discretion may therefore affect consistency and stability in the legal system.

D. Institutional Tensions and Conflict-

⁸ Alexander M. Bickel, *The Least Dangerous Branch: The Supreme Court at the Bar of Politics* 16-23 (2d ed. 1986).

Frequent intervention by courts can sometimes lead to disagreements between the judiciary, legislatures, and executive. When courts repeatedly review or overturn governmental decisions, tensions may rise among these institutions. Such conflicts can affect cooperation between branches of government and may create challenges in maintaining a balanced constitutional framework. Therefore, while judicial activism serves an important purpose, it must be exercised with caution to preserve institutional harmony and democratic accountability.⁹

Judicial Restraint: Concept and Underlying Philosophy-

Judicial restraint is a legal philosophy that encourages courts to exercise caution while performing their constitutional duties. Under this approach, judges are expected to interpret and apply the law without unnecessarily interfering in matters that fall within the domain of the legislature or the executive. The central idea behind judicial restraint is that courts should avoid becoming involved in policy decisions unless there is a clear violation of the Constitution or fundamental rights. This philosophy is based on the belief that elected representatives are better equipped to make decisions concerning public policy because they are directly accountable to the people. Legislators and government officials are chosen through democratic processes and are responsible for addressing social, economic, and political issues. Therefore, supporters of judicial restraint argue that courts should respect the decisions of these institutions unless their actions clearly exceed constitutional limits.

Judicial restraint seeks to maintain a proper balance among three organs of government. Rather than actively shaping public policy, courts following this approach focus on interpreting existing laws and ensuring that constitutional provisions are correctly applied. Judges avoid imposing their personal opinions or preferences while deciding cases and instead rely on established legal principles and precedents.¹⁰

⁹ Mark Tushnet, *Taking the Constitution Away from the Courts* 26-31 (1999).

¹⁰ Aharon Barak, *The Judge in a Democracy* 45-52 (2006).

The philosophy of judicial restraint promotes several important constitutional values:

- Respect for democratic decision-making and the authority of elected institutions.
- Stability and consistency in the legal system by following established laws and precedents.
- Protection of the principle of separation of powers among the legislatures, executive, and judiciary.
- Maintenance of cooperation and institutional balance among different branches of government.
- Prevention of unnecessary judicial interference in administrative and policy matters.

Supporters of judicial restraint believe that courts should act as neutral interpreters of the Constitution rather than policymakers. Excessive judicial intervention may weaken democratic governance by limiting the role of elected bodies. Therefore, restraint is viewed as an important safeguard that preserves institutional harmony and respects the constitutional framework.

However, judicial restraint does not mean complete inaction. Courts still have the responsibility to protect constitutional values and fundamental rights whenever they are threatened. Thus, judicial restraint represents a careful and balanced approach in which judges respect democratic processes while ensuring that governmental actions remain within constitutional boundaries.

Strengths and Limitations of Judicial Restraint-

Judicial Restraint is often regarded as an important principle in constitutional governance because it promotes respect for democratic institutions and helps maintain a proper balance among the different branches of government. Supporters of this approach believe that courts should exercise their powers carefully and avoid unnecessary interference in matters that fall within the authority of the legislature and executive. While judicial restraint offers several advantages, it also has certain limitations that cannot be ignored.

A. Strengths of Judicial Restraint-

One of the major strengths of judicial restraint is that it reinforces democratic governance. In a democratic system, elected representatives are entrusted with the responsibility of making laws and formulating public policies. By showing restraint, courts allow these institutions to perform their constitutional functions without undue judicial interference. This approach respects the will of the people, as legislators and government officials are directly accountable to voters.

Another important advantage is that judicial restraint helps prevent judicial overreach. When courts avoid stepping into areas reserved for policymakers, the principle of separation of powers is preserved. This ensures that each branch of government functions within its assigned sphere of authority, thereby maintaining institutional balance.

Judicial restraint also contributes to stability and consistency in the legal system. Courts that rely on established laws, precedents, and constitutional provisions provide greater predictability in judicial decisions. This helps citizens, lawyers, and government authorities understand and follow the law with confidence.

Furthermore, a restrained judiciary strengthens public trust in the judicial process. By remaining neutral and avoiding unnecessary involvement in political controversies, courts preserve their credibility and legitimacy as impartial interpreters of the Constitution.

B. Limitations of Judicial Restraint-

Despite its advantages, judicial restraint is not without criticism. One of its major limitations is that excessive restraint may weaken the protection of constitutional rights. If courts become overly deferential to the actions of the legislatures or executive, they may fail to intervene when citizens face injustice, discrimination, or violations of fundamental rights.

Another concern is that judicial restraint may be ineffective during periods of governmental inaction. There are situations where political institutions are unwilling or unable to address serious social and constitutional promises remaining unfulfilled and vulnerable groups continuing to suffer without adequate remedies.

For this reason, judicial restraint should not be confused with judicial passivity. While courts should respect democratic institutions, they must also remain vigilant in protecting constitutional values. A balanced approach is necessary, where judges

exercise restraint when appropriate but are willing to intervene when fundamental rights, constitutional principles, or the rule of law are at risk.

The Indian Experience: Balancing Judicial Activism and Judicial Restraint-

The development of constitutional law in India reflects a continuous balance between judicial activism and judicial restraint. Over the years, the India judiciary has adapted its approach according to the needs of society and the constitutional challenges of the time. At different stages of India's constitutional journey, the courts have sometimes exercised restraint and, at other times, adopted a more active role in protecting constitutional values and citizens' rights.

In the years immediately following the adoption of the Constitution, the Supreme Court generally followed a cautious approach. The judiciary largely respected the decisions of the legislature and executive and avoided interfering with policy matters unless there was a clear constitutional violation. This reflected the philosophy of judicial restraint and the belief that elected representatives were primarily responsible for making laws and governing the country.

A significant turning point came with the landmark case of *Kesavananda Bharati v. State of Kerala* (1973).¹¹ In this historic judgment, the Supreme Court introduced the Basic Structure Doctrine, holding that although Parliament has the power to amend the Constitution, it cannot alter its essential features. This decision strengthened the judiciary's role as the guardian of the Constitution and demonstrated a more active approach towards constitutional interpretation.

The importance of judicial independence became even more evident during the Emergency period (1975- 1977). The judgment in *ADM Jabalpur v. Shivkant Shukla* (1976)¹² is often criticized because the Court failed to adequately protect individual liberties during a time when fundamental rights were under severe threat. This case highlighted the risks of excessive judicial deference to the executive and remains an important lesson in Indian constitutional history.

¹¹ *Kesavananda Bharati v. State of Kerala*, (1973) 4 S.C.C. 225 (India).

¹² *ADM Jabalpur v. Shivkant Shukla*, (1976) 2 S.C.C. 521 (India).

After the Emergency, the judiciary adopted a more proactive stance. The growth of Public Interest Litigation (PIL) allowed courts to address issues affecting marginalized and disadvantaged communities. Through PILs, the judiciary played an active role in matters relating to human rights, environmental protection, labour rights, prison reforms, child welfare, and gender justice. This period marked the rise of judicial activism in India.

In recent years, the Supreme Court has continued to protect constitutional rights through significant decisions such as *Justice K.S. Puttaswamy v. Union of India* (2017)¹³, which recognized the right to privacy as a fundamental right. At the same time, courts have shown restraint in areas involving economic policy, taxation, and highly technical administrative matters. This reflects a balanced approach where the judiciary protects constitutional values while respecting the functions of other branches of government.

The Indian experience demonstrates that neither activism nor restraint is sufficient on its own. A careful balance between the two is necessary to ensure effective constitutional governance, protect fundamental rights, and preserve democratic institutions.

Comparative Perspectives on Judicial Activism and Judicial Restraint-

The debate between judicial activism and judicial restraint is not limited to India. Many constitutional democracies across the world have faced similar questions regarding the appropriate role of courts in constitutional interpretation. Different countries have developed their own approaches based on their own approaches based on their constitutional structures, political systems, and historical experiences. A comparative study of these approaches helps in understanding how courts can balance the protection of rights with respect for democratic governance.

In the United States, judicial activism has played an important role in advancing civil rights and social justice. One of the most significant examples is the landmark case of *Brown v. Board of Education* (1954),¹⁴ in which the United States Supreme Court declared racial segregation in public schools unconstitutional. This judgment not only protected the rights of African Americans but also demonstrated how courts can bring

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

¹⁴ *Brown v. Board of Education*, 347 U.S. 483 (1954).

about meaningful social change when existing laws or government policies fail to ensure equality.

The United Kingdom follows a different constitutional tradition based on the principle of parliamentary sovereignty. Historically, British courts exercised limited powers in reviewing legislative actions. However, the enactment of the Human Rights Act, 1998 expanded the role of courts in protecting individual rights. While Parliament continues to remain supreme, courts have gained greater influence in ensuring that public authorities act consistently with human rights standards.

South Africa provides another valuable example of constitutional interpretation. Since the adoption of its post-apartheid Constitution, the Constitutional Court has actively protected socio-economic rights such as housing, healthcare, and education. At the same time, the Court has generally respected the government's role in designing and implementing public policies. This approach reflects a careful balance between judicial intervention and institutional restraint.

Canada has also developed a balanced constitutional framework through its Charter of Rights and Freedoms. Canadian courts frequently use the principle of proportionality to determine whether restrictions on rights are justified. This method allows courts to protect fundamental freedoms while recognizing that certain limitations may be necessary in the public interest.

These international experiences demonstrate that modern constitutional democracies increasingly prefer a balanced approach rather than adopting complete judicial activism or absolute judicial restraint. Courts across the world are striving to protect constitutional rights while respecting the functions of elected institutions. This balanced model has become an important feature of contemporary constitutional governance.

Achieving a Balance Between Judicial Activism and Judicial Restraint-

In the modern constitutional era, neither complete judicial activism nor absolute judicial restraint can effectively address all constitutional challenges. As societies become more complex and new legal issues emerge, courts are increasingly required to strike a careful

balance between protecting constitutional values and respecting the authority of elected institutions. A balanced judicial approach is therefore essential for maintaining both constitutional supremacy and democratic governance.

Courts have a duty to intervene whenever fundamental rights, constitutional principles, or the rule of law are threatened. In situations where governmental actions violate constitutional guarantees or where vulnerable sections of society are denied justice, judicial intervention becomes necessary. At the same time, courts must recognize that legislatures and executives possess the democratic legitimacy and institutional expertise required to formulate policies and make governance-related decisions. Therefore, judicial review should not replace democratic decision-making but should ensure that such decisions remain within constitutional limits.

A balanced judicial approach is based on several important principles:

- Effective protection of fundamental rights and individual liberties.
- Respect for democratic processes and the decisions of elected representatives.
- Faithful adherence to constitutional values and established legal principles.
- Clear, transparent, and well-reasoned judicial decisions.
- Adoption of remedies that are proportionate to the nature of the constitutional violation.
- Constructive cooperation and dialogue among the legislature, executive, and judiciary.

Such an approach enables courts to fulfil their constitutional responsibilities without unnecessarily interfering in matters that fall within the jurisdiction of other branches of government. It also promotes public confidence in the judicial system by ensuring that decisions are based on legal reasoning rather than personal preferences.

Judicial activism and judicial restraint should not be viewed as competing or mutually exclusive philosophies. Instead, they should be understood as complementary approaches that serve different purposes in different circumstances. There may be situations where active judicial intervention is necessary to protect constitutional rights, while in other cases judicial restraint may be more appropriate to preserve democratic governance. The true strength of constitutional adjudication lies in the judiciary's ability to determine when activism is required and when restraint is preferable. This balanced approach ultimately strengthens constitutional

democracy, safeguards individual rights, and preserves institutional harmony within the framework of the Constitution.¹⁵

Conclusion-

The judiciary occupies a vital position in every constitutional democracy because it is entrusted with the responsibility of interpreting, protecting, and upholding the Constitution. As society continues to evolve and new challenges emerge, courts play an important role in ensuring that constitutional principles remain relevant and effective. Through constitutional interpretation, the judiciary protects individual rights, resolves disputes, and ensures that all organs of government function within the limits prescribed by the Constitution.

The debate between judicial activism and judicial restraint has remained a significant aspect of constitutional law. Both approaches represent different methods through which courts perform their constitutional responsibilities. Judicial activism has contributed greatly to the protection of fundamental rights, advancement of social justice, and promotion of governmental accountability. By adopting a proactive approach, courts have often provided remedies in situations where legislative or executive action was inadequate. Many important constitutional developments, particularly in India, have been achieved through judicial intervention aimed at protecting the rights and dignity of citizens.

At the same time, judicial restraint serves an equally important purpose. It promotes respect for democratic institutions, preserves the separation of powers, and ensures that courts do not exceed their constitutional limits. By exercising restraint, judges acknowledge the role of elected representatives in making policy decisions and governing the country. This approach helps maintain institutional balance and strengthens the democratic process.

The constitutional experience of India clearly demonstrates that neither judicial activism nor judicial restraint can be regarded as a complete solution to every constitutional issue. Excessive activism may lead to concerns about judicial overreach, while excessive restraint may result in inadequate protection of constitutional rights. Therefore, the effectiveness of constitutional governance depends on the judiciary's ability to adopt a balanced and context-based approach.

¹⁵ M.P. Jain, Indian Constitutional Law 1450-58 (8th ed. 2018).

A responsible judiciary must be prepared to intervene when fundamental rights, constitutional values, or the rule of law are threatened. At the same time, it must exercise caution in matters that are more appropriately handled by the legislature or executive. Such balanced approach enables courts to protect constitutional principles without undermining democratic governance.

In conclusion, the true role of the judiciary is not to govern the nation but to ensure that governance remains consistent with constitutional values and democratic ideals. A careful balance between judicial activism and judicial restraint is therefore essential for preserving constitutional supremacy, protecting citizens' rights, strengthening democratic institutions, and maintaining the rule of law in contemporary society.