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JUDICIAL ACTIVISM AND JUDICIAL RESTRAINT IN INDIA: STRIKING THE CONSTITUTIONAL BALANCE

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ABSTRACT

Judicial activism and judicial restraint represent two ends of a spectrum describing how a constitutional court exercises the power of judicial review. Over the past seven decades, the Indian Supreme Court has moved between these two poles depending on the political circumstances, the urgency of the rights involved, and the failure of the elected branches to act. This paper traces the evolution of these judicial philosophies by analysing their doctrinal foundation and the landmark decisions that have defined their development in Indian constitutional law. It further explores whether these two are genuinely opposed to one another or are complementary principles enable courts to respond appropriately to varying constitutional challenges. Using a doctrinal method built on the constitutional text and landmark judgments, and supplemented by academic commentary, the paper argues that neither unchecked activism nor rigid restraint is sustainable in the Indian context. Instead, it argues that a balanced and context-sensitive approach, guided by constitutional values and institutional limitations, is essential. This paper concludes by identifying a set of practical principles, drawn from the Court's own practice, that may assist judges decide when intervention is constitutionally justified and when deference is the wiser course.

INTRODUCTION

The Indian judiciary occupies an unusual position within the constitutional framework. It is not a legislature, and its role goes well beyond simply resolving disputes between private parties. Read together, Articles 13, 32, 226 and 141 vest the higher judiciary with the authority to interpret the Constitution and determine whether legislative or executive action conforms to its

mandates.¹ When a court uses this power broadly, reading new rights into old text or directing the executive to act where it has failed to, commentators usually call this judicial activism. When a court instead holds back and defers to the decisions of the elected branches, the label switches to judicial restraint. Both terms are used loosely in Indian legal writing, sometimes as praise and sometimes as a criticism, but ultimately that loose usage reflects a real and recurring choice that every constitutional court is eventually forced to make.

This paper studies how that choice has played out in India since 1950. It argues that activism and restraint should not be treated as rival ideologies that a court must permanently commit itself to. They function more as two tools kept in the same box, and what separates a mature constitutional court from an erratic one is knowing which tool a given moment calls for.

The significance of this debate is not a purely academic one. It resurfaces every time the Supreme Court is asked to step into an area where Parliament has been slow, silent, or simply unwilling to act, and arises when critics accuse the Court of having gone too far. The debate has real consequences for how power is distributed between the three branches of government, and for how much faith citizens place in courts as opposed to elected institutions when their rights are at stake. Accordingly, the purpose of this paper is to understand where the line between the two postures actually falls, rather than simply accepting where commentators say it should fall.

RESEARCH QUESTIONS

This paper is organised around the following questions:

1. What is the constitutional and historical basis of judicial review in India, and how has it shaped to the development of judicial activism and judicial restraint?
2. How has the Supreme Court's approach shifted across different constitutional eras, from the post-Independence period, through the Emergency, to the Public Interest Litigation era and the present day?
3. What doctrinal and judicial foundations exist for judicial restraint in India, and why does it receive comparatively less attention than judicial activism?

¹ INDIA CONST. art. 13; id. arts. 32, 226, 141.

4. What institutional risks unchecked activism and excessive restraint pose , particularly in relation to the separation of powers and the enforcement of fundamental rights?

LITERATURE REVIEW

The existing literature on judicial activism and judicial restraint falls broadly into three groups. The first is descriptive and doctrinal. M.P. Jain's *Indian Constitutional Law* remains the most reliable starting point for understanding the textual basis of judicial review under Articles 13, 32 and 226, and for tracing how the basic structure doctrine grew out of the running conflict between Parliament's amending power and the judiciary's power of review.² Jain's account is largely neutral as it records what the Court did without strongly endorsing or criticising its approach. Granville Austin's constitutional history performs a similar function from the constituent assembly's point of view, showing that the framers anticipated a judiciary that would check majoritarian excess but did not expect the scale of intervention that developed later.³

The second group adopts a clearly favourable view of judicial activism. Upendra Baxi's early writing on what he called "social action litigation" defended the relaxation of locus standi in the 1980s as a necessary response to the fact that the poorest litigants could not otherwise reach the Supreme Court at all.⁴ S.P. Sathe's later work took a broadly similar view while also flagging that excessive intervention could gradually blur the distinction between adjudication and judicial legislation.⁵ Both authors treat activism as a corrective for institutional failure rather than as a departure from the judicial role.

The third group is more cautious. Pratap Bhanu Mehta has written about what he calls the "rise of judicial sovereignty" in India, that Supreme Court may weaken democratic accountability when judicial preferences repeatedly displace decisions taken by elected institutions.⁶ This concern echoes the older American debate around the "counter-majoritarian difficulty", the

² M.P. Jain, *Indian Constitutional Law* 122-30 (8th ed. 2018).

³ Granville Austin, *Working a Democratic Constitution: The Indian Experience* (1999).

⁴ Upendra Baxi, *Taking Suffering Seriously: Social Action Litigation in the Supreme Court of India*, 4 *Third World Legal Stud.* 107 (1985).

⁵ S.P. Sathe, *Judicial Activism in India: Transgressing Borders and Enforcing Limits* (2002).

⁶ Pratap Bhanu Mehta, *The Rise of Judicial Sovereignty*, 18 *J. Democracy* 70, 71-75 (2007).

idea that unelected judges overturning the decisions of elected legislatures needs a stronger justification than simple disagreement with the outcome.⁷

Two recent student-authored pieces were also useful in preparing this paper. Ahana Basu's 2025 article reviews the major activism cases and argues that the debate is not really about absolutes but about balance, an approach this paper broadly adopts.⁸ Neeharika Singh's article goes further and treats activism, restraint and overreach as three points on a single continuum rather than as separate categories, a position closer to the one defended here.⁹ What is noticeably thinner across all of this literature, including the two recent articles, is any sustained discussion of restraint on its own terms; most writing treats it as the residual category left over once activism has been described. This paper tries to correct that imbalance in the section dealing with restraint, even if only in a preliminary way.

It is also worth flagging a gap common to almost all this writing. Relatively little attention has been paid to the reasons articulated by judges themselves when consciously choosing restraint. Judgments like *Aravali Golf Club*, discussed later in this paper, are generally cited as illustrations in the broader activism debate rather than being examined for their own reasoning on judicial self-restraint. By focusing on that aspect of the jurisprudence, this paper attempts to distinguish judicial restraint as an independent constitutional methodology rather than merely the absence of judicial activism.

RESEARCH METHODOLOGY

This paper follows a doctrinal, library-based method rather than an empirical one. The primary sources relied upon are the constitutional text and the judgments of the Supreme Court of India, read either directly or through their headnotes. These are supplemented by secondary sources, namely academic commentary, treatises and recent journal articles, used to situate the case law within the wider debate on the judicial role. The study adopts both a historical and a normative approach. It traces the case laws chronologically to show how the Court's posture has changed over time, and ends by proposing criteria rather than simply describing what has already

⁷ Barry Friedman, *The Birth of an Academic Obsession: The History of the Counter majoritarian Difficulty*, 112 Yale L.J. 153 (2002); Alexander M. Bickel, *The Least Dangerous Branch: The Supreme Court at the Bar of Politics* 16-23 (1962).

⁸ Ahana Basu, *Judicial Activism vs. Judicial Restraint in India: Balancing Justice and Constitutional Boundaries*, 2(9) Indian J. Rsch. L. & Mgmt. (2025).

⁹ Neeharika Singh, *Understanding Judicial Activism, Restraint, and Overreach in Light of the Indian Constitution*, 4(2) Int'l J. Teaching Learning & Educ. 29, 30-31 (2025).

happened. No empirical survey of judges or litigants was undertaken, so the conclusions drawn here are necessarily limited to what can be gathered from decided cases and existing scholarship.

ACTIVISM AND RESTRAINT DEFINED

Black's Law Dictionary defines judicial activism as a judicial philosophy that encourages judges to depart from strict precedent in favour of progressive, new social policies.¹⁰ The term itself is relatively modern and attributed to American historian Arthur Schlesinger Jr., who is generally credited with coining it in a 1947 magazine article describing the ideological divisions on the US Supreme Court.¹¹ The underlying idea, however, is much older. In *Dr. Bonham's Case*, Chief Justice Coke suggested that even an Act of Parliament could be reviewed by the courts if it went against "common right and reason". Although this principle did not survive in England but travelled to the American colonies and eventually found expression in *Marbury v. Madison*, where Chief Justice Marshall affirmed that it is the duty of the judiciary to say what the law is.¹²

Judicial restraint is usually described as the opposite pole. Judges practising restraint try to confine themselves to the text as written, defer to the presumption that a duly enacted law is constitutional unless clearly shown otherwise, and treat questions of policy as belonging to the legislature and the executive rather than to themselves.¹³ In the Indian setting, both postures draw on the same textual source: the power of judicial review recognised under Article 13, exercised through the writ jurisdiction of Articles 32 and 226 and the appellate jurisdiction of Article 136.¹⁴ The Constitution itself gives no instructions on how expansively or how cautiously this power should be used. That choice has been worked out by the Court itself, case by case, which is precisely why the activism-restraint debate exists at all in a jurisdiction that never adopted either concepts expressly in the constitutional text.

It is worth being a little more precise about these terms because both are frequently used in legal discourse in ways that sometimes obscure their actual meaning. For the purposes of this paper activism refers to judicial decisions that go beyond the plain or historically settled

¹⁰ Black's Law Dictionary 870 (9th ed. 2009) (defining "judicial activism").

¹¹ Arthur Schlesinger Jr., *The Supreme Court: 1947*, Fortune, Jan. 1947, at 73.

¹² *Dr. Bonham's Case*, (1610) 8 Co. Rep. 114a, 77 Eng. Rep. 646 (C.P.); *Marbury v. Madison*, 5 U.S. (1 Cranch) 137 (1803).

¹³ M.P. Jain, *Indian Constitutional Law* 108-15 (8th ed. 2018).

¹⁴ INDIA CONST. art. 13; id. arts. 32, 226; id. art. 136.

meaning of a constitutional provision, either by reading in a right that the text does not name, by placing limits on a power the text does not expressly limit, or by directing the executive to perform functions the Constitution assigns to it rather than to the courts. Restraint, in contrast, refers to a court declining to do any of these things even where it might reasonably have grounds to, on the view that the elected branches are the appropriate body to decide the question. Viewed in this manner, activism and restraint are not opposite ends of a simple binary test. A court can be restrained on one issue and, in the very same judgment, activist on another, which is part of why the case law resists tidy classification.

THE RISE OF JUDICIAL ACTIVISM IN INDIA

The Court's early years were marked by a cautious, text-bound approach. In *A.K. Gopalan v. State of Madras*, the Court read the fundamental rights in Part III as separate, watertight compartments and gave a narrow, procedural reading to the phrase "procedure established by law" under Article 21.¹⁵ The judgment reflected considerable deference towards the legislature in determining the fairness of procedures affecting personal liberty. This began to change through the 1960s and 1970s. In *Golaknath v. State of Punjab*, the Court held that a constitutional amendment was itself "law" within the meaning of Article 13 and could therefore be struck down if it took away a fundamental right. This decision significantly restricted Parliament's amending power and marked an important movement towards a more interventionist judicial role.¹⁶

The most important moment in this shift was *Kesavananda Bharati v. State of Kerala*, where a narrow 7-6 majority held that Parliament could amend any part of the Constitution, including fundamental rights, but could not alter its "basic structure."¹⁷ Constitution does not expressly refer to such a limitation, so the doctrine emerged through judicial interpretation as a restriction on the scope of Article 368. It remains one of the clearest examples of the Court developing a constitutional principle beyond the explicit wording of the text. The doctrine was tested and reaffirmed a few years later in *Minerva Mills v. Union of India*, where the Court struck down clauses inserted by the 42nd Amendment that had tried to place constitutional amendments beyond judicial review altogether.¹⁸

¹⁵ *A.K. Gopalan v. State of Madras*, AIR 1950 SC 27.

¹⁶ *I.C. Golaknath v. State of Punjab*, (1967) 2 SCR 762.

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

¹⁸ *Minerva Mills Ltd. v. Union of India*, AIR 1980 SC 1789.

The Emergency of 1975-77 is usually treated as the turning point in the evolution of Indian judicial philosophy. *Maneka Gandhi v. Union of India* overruled the narrow procedural reading from *Gopalan* and held that any procedure depriving a person of life or liberty under Article 21 must be fair, just and reasonable, effectively reading a due process requirement into a clause that had been drafted to avoid exactly that.¹⁹ The 1980s then saw the rise of Public Interest Litigation, associated with Justices Bhagwati and Krishna Iyer, where the Court relaxed the traditional rule of standing so that any public-spirited person or even a letter addressed to a judge, could set the wheels of litigation in motion on behalf of those unable to approach the Court themselves.²⁰ This period produced some of the most consequential activist rulings in Indian constitutional history. In *Sunil Batra v. Delhi Administration*, the Court interpreted Article 21 to protect prisoners from custodial cruelty and inhuman treatment.²¹ In *People's Union for Democratic Rights v. Union of India*, it was held that the non-payment of minimum wages could amount to forced labour prohibited under Article 23.²² Similarly the case of *M.C. Mehta v. Union of India*, built an entirely new branch of environmental jurisprudence, including the principle of absolute liability.

Perhaps the clearest instance of judicial intervention in the absence of legislative action is *Vishaka v. State of Rajasthan*, where, in the absence of any statute on workplace sexual harassment, the Court drew on international conventions and framed a binding set of guidelines that were to operate as law until Parliament enacted its own legislation.²³ More recent examples suggest the trend has not slowed. *Common Cause v. Union of India* read a right to die with dignity, including passive euthanasia, into Article 21,²⁴ and *Justice K.S. Puttaswamy v. Union of India* recognised privacy as a fundamental right nowhere expressly named in the constitutional text.²⁵ The most recent addition to this list is the 2024 Electoral Bonds judgment, *Association for Democratic Reforms v. Union of India*, where a five-judge bench struck down the anonymous political funding scheme as a violation of the voter's right to information under Article 19(1)(a), a right the Court itself had read into freedom of speech decades earlier.²⁶ Taken together, these cases show a judiciary that has been consistently willing to treat the

¹⁹ *Maneka Gandhi v. Union of India*, (1978) 1 SCC 248.

²⁰ *S.P. Gupta v. Union of India*, AIR 1982 SC 149.

²¹ *Sunil Batra v. Delhi Administration*, (1978) 4 SCC 494.

²² *People's Union for Democratic Rights v. Union of India*, (1982) 3 SCC 235.

²³ *Vishaka v. State of Rajasthan*, (1997) 6 SCC 241.

²⁴ *Common Cause v. Union of India*, (2018) 5 SCC 1.

²⁵ *Justice K.S. Puttaswamy v. Union of India*, (2017) 10 SCC 1.

²⁶ *Association for Democratic Reforms v. Union of India*, (2024) 5 SCC 1.

Constitution as a document whose meaning is allowed to grow with changing social, political, and constitutional circumstances rather than remaining confined solely to the understanding prevailing in 1950.

JUDICIAL RESTRAINT IN INDIA

Restraint receives far less attention in student writing than activism, partly judicial non-intervention rarely attracts the same public attention as decisions that invalidate legislation or expand constitutional rights. That does not mean restraint has been any less a part of the Court's practice. Its clearest expression is the political question doctrine, under which the Court has held that some matters are simply not suited to judicial resolution because there is no manageable legal standard by which to decide them. In *State of Rajasthan v. Union of India*, the Court refused to examine the President's decision to dissolve several state assemblies, holding that the question was essentially political in nature and fell outside the scope of judicial review.²⁷

S.R. Bommai v. Union of India is sometimes read as a purely activist judgment because it held that the exercise of power under Article 356 is subject to judicial review.²⁸ A closer reading, however, reveals that the judgment was equally concerned with defining the limits of restraint. The Court held that while it could examine whether the President's satisfaction was based on relevant material, it would not assess the political wisdom of the decision itself, as doing so would amount to substituting judicial opinion for executive judgment. The judgment is therefore better understood as marking out where restraint gives way to a narrow, procedural form of review, rather than as an example of unchecked activism.

A more direct and more modern statement of restraint can be found in *Divisional Manager, Aravali Golf Club v. Chander Hass*, where the Supreme Court itself cautioned against what it called judicial encroachment into matters of administration and personnel that fall primarily within the executive domain, observing that courts must know their limits and not try to run the government.²⁹ This is a rare instance of the Court publicly disciplining its own tendency toward activism, and it is a useful reminder that restraint in India is not only something

²⁷ *State of Rajasthan v. Union of India*, (1977) 3 SCC 592.

²⁸ *S.R. Bommai v. Union of India*, (1994) 3 SCC 1.

²⁹ *Divisional Manager, Aravali Golf Club v. Chander Hass*, (2008) 1 SCC 683.

academics ask for from the outside but it is also something the Court has occasionally imposed on itself.

Restraint is also visible in several procedural and institutional doctrines that receive even less attention than landmark cases concerning judicial activism. The presumption of constitutionality attached to legislation places the initial burden of demonstrating invalidity upon the party challenging the law rather than upon the State defending it. Similarly, the Supreme Court has repeatedly described its jurisdiction under Article 136 as discretionary, intended for exceptional circumstances rather than as a routine additional stage of appeal. This limitation was affirmed in *Pritam Singh v. State* and has been reiterated in subsequent decisions.³⁰ The doctrine of stare decisis has itself operated as a restraining force, as the Court has departed from its own precedents only in exceptional circumstances. Even the curative petition jurisdiction recognised in *Rupa Ashok Hurra v. Ashok Hurra* was deliberately confined to narrow situations and meant to preserve the finality of judgments rather than to open every decision to fresh challenge.³¹

A further illustration of restraint appears in the Court's approach towards economic and fiscal policy. The judiciary has consistently maintained that decisions involving economic priorities and policy choices generally fall within the domain of elected branches rather than courts. In *Fertilizer Corporation Kamgar Union v. Union of India*, the Court declined to replace governmental and managerial assessments of industrial policy with its own views on what would constitute a better course of action.³² A later and more prominent example is *BALCO Employees' Union v. Union of India*, where workers challenged the Central Government's decision to disinvest its majority stake in a public sector aluminium company.³³ The Court upheld the disinvestment, holding in fairly blunt terms that it is not the domain of courts to decide whether a particular economic policy is wise or whether a better one could have been devised, and that such questions belong to the executive and the legislature. The judgment is a useful counterweight to the environmental and prisoners' rights cases discussed earlier. The same Court that was willing to build an entire body of law out of Article 21 in one context was,

³⁰ *Pritam Singh v. State*, AIR 1950 SC 169.

³¹ *Rupa Ashok Hurra v. Ashok Hurra*, (2002) 4 SCC 388.

³² *Fertilizer Corporation Kamgar Union v. Union of India*, (1981) 1 SCC 568.

³³ *BALCO Employees' Union (Regd.) v. Union of India*, (2002) 2 SCC 333.

in this instance, careful to emphasize that judicial review of policy is not the same thing as judicial review of rights, and that the two should not be confused.

COMPARING THE TWO APPROACHES

When placed side by side, the two philosophies differ along at several important constitutional dimension. The first concerns constitutional interpretation. Activist reasoning, as in *Sunil Batra* or *Puttaswamy*, treats the text as a floor rather than a ceiling and is willing to derive implied rights from broad expressions such as "life" and "personal liberty" under Article 21. Restrained decisions, as in *Aravali Golf Club*, treats the text as a firm boundary and is reluctant to go beyond what it plainly says. The second distinction lies in the judiciary's institutional role. Activist decisions position the Court as a proactive guardian of constitutional rights, particularly where the political branches have resulted in continuing injustice. On the other hand, restrained decisions position it as a passive interpreter that intervenes only once a clear constitutional violation is shown.³⁴ A third point of difference concerns the judiciary's relationship with the legislature. Activist rulings like *Vishaka* fill a legislative vacuum directly, whereas restrained rulings like *State of Rajasthan v. Union of India* leave the vacuum for Parliament and the political process to fill in their own time.

Neither approach is without cost. Judicial activism has undoubtedly protected rights where the political process was too slow, too indifferent, or too captured by majoritarian pressure to protect on its own. The case of *Vishaka* is the standard example, since it took roughly sixteen years for Parliament to eventually legislate on workplace sexual harassment, during which the Court's guidelines were the only real protection available to working women. But activism also carries the risk of the courts making decisions that are essentially legislative or policy-oriented, particularly where the judiciary moves beyond enforcing existing constitutional guarantees and begins designing regulatory frameworks of its own. Judicial restraint, in turn, protects the separation of powers and preserves the Court's legitimacy as a legal rather than a political body. However, if applied too rigidly, it also risks judicial silence in the face of real injustice, particularly where the injured party has no meaningful access to the legislative process at all. The comparison suggests that the two philosophies are best judged not in the abstract but against the specific facts of the case in which each was used, since a rule that looks sound in one context can look evasive or overreaching in another.

³⁴ Basu, *supra* note 8.

A further, and often less discussed, point of comparison concerns the remedy each posture tends to produce. Activist judgments frequently come with detailed, affirmative directions, such as guidelines in *Vishaka*, continuing monitoring orders in *M.C. Mehta*, or specific timelines and disclosure obligations of the kind imposed in the Electoral Bonds case. Restrained judgments, by contrast, generally confine themselves at declaring what the law is and leave the question of implementation to the other branches, as in *Fertilizer Corporation Kamgar Union* and *BALCO Employees' Union*. This difference in remedy is arguably as important as the difference in interpretive method, because it is often the follow-through, not the initial finding, that determines whether a judgment actually changes anything on the ground.

THE OVERREACH CRITIQUE

The word most often used against activism that has gone too far is “overreach”, a deliberately loaded term suggesting the Court has crossed from interpreting the Constitution into rewriting it. Critics point out that judges are not elected, do not face the electorate, and therefore lack the political accountability that legitimises policy choices made by Parliament or the executive. This concern is reflected in Mehta's observation that India has witnessed a gradual rise in judicial sovereignty. While any individual activist judgment may be justified on its own facts, the broader pattern suggests that the judiciary has steadily expanded its role beyond what the framers of the Constitution may originally have intended.³⁵

There is also a narrower, more practical criticism concerning institutional competence. Courts are well suited to decide whether a right has been violated, but they are less obviously equipped to supervise complex administrative functions. Issues such as how a river should be cleaned, how a prison should be run day to day, or how many additional judges a High Court involves technical expertise, financial planning, and administrative decision-making directions. Even commentators who supported activism like Baxi and Sathe accept that this kind of managerial activism sits less comfortably with the judicial function than activism aimed simply at enforcing an already-recognised right.³⁶ In this context, the counter-majoritarian difficulty discussed in American constitutional scholarship becomes relevant. The central issue is not simply whether the outcome reached by the Court was desirable, but whether the judiciary was

³⁵ Mehta, *supra* note 6.

³⁶ Baxi, *supra* note 4; Sathe, *supra* note 5.

the most appropriate institution to reach that outcome, or whether the same objective could have been achieved through the ordinary legislative process with greater democratic legitimacy.³⁷

A related concern is the lack of consistency in the Court's approach. If judicial activism is justified mainly because the legislature has failed to act, then logically the courts should exercise greater restraint once Parliament has enacted legislation in that area. In practice, however, the Supreme Court has not always followed this approach. At times it has shown considerable deference to legislative choices, while in other cases it has subjected new laws to rigorous constitutional scrutiny despite clear legislative action. This unevenness is itself part of what makes the activism-restraint debate feel less like a settled doctrine and more like a set of instincts the Court applies case by case, without always explaining why one instinct rather than the other governed a particular dispute.

TOWARDS A WORKING BALANCE

The cases discussed in this paper suggests that the Supreme Court itself does not treat activism and restraint as fixed, competing camps but moves between them depending on the kind of question before it. Although there is no formal test that determines when one approach should prevail over the other, the Court's decisions suggest a few guiding principles.

The first is textual anchoring. Activism is generally easier to justify when the Court is enforcing a right that is already recognised under the Constitution, even if it adopts a broad or purposive interpretation to apply that right to new circumstances. Decisions such as *Maneka Gandhi* and *Sunil Batra* illustrate this approach. By contrast, activism becomes more controversial when the Court appears to derive entirely new rights or entitlements from broad constitutional values without a clear textual basis.

The second is legislative vacuum. Judicial activism is often viewed more favourably where Parliament has failed to legislate on an important issue. The decision in *Vishaka* is a good example, as the Court stepped in only because there was no legal framework dealing with sexual harassment in the workplace. Where Parliament has already considered an issue and enacted legislation, however, there is generally a stronger argument for judicial restraint, even if the Court ultimately disagrees with the policy adopted.

³⁷ Friedman and Bickel, *supra* note 7.

The third is institutional competence. The Courts are at their strongest when they identify a constitutional violation, declare the applicable legal principles, and leave the responsibility for implementation to the executive. Greater difficulties arise when courts assume an ongoing administrative role by issuing continuing directions and supervising compliance over long periods. As discussed earlier, this form of managerial activism raises concerns because courts are not designed to function as administrative agencies.

The fourth is the availability of an alternate remedy. Where the ordinary political or administrative process is capable of addressing the harm, even if slowly, judicial restraint is usually the more appropriate course. Decisions such as *State of Rajasthan v. Union of India* and *Aravali Golf Club* demonstrate this approach. Judicial intervention becomes more compelling only where the ordinary political process has clearly failed or is structurally incapable of protecting the rights or interests involved.

None of these criteria produces a mechanical answer, and the Court itself has not always applied them consistently. But they do explain why some activist judgments, such as *Vishaka* and *Sunil Batra*, are widely accepted even by critics of judicial activism in general, while others attract sustained criticism even from scholars otherwise sympathetic to a strong judiciary. A court that keeps these considerations in view is less likely to swing between the two extremes of overreach and excessive restraint, and more likely to use its considerable powers in a way that strengthens its long-term legitimacy. It is also worth noting that these criteria cut both ways. A court that uses them honestly should occasionally find itself restrained in a case where activism would have been more popular and occasionally find itself intervening in a case where restraint would have drawn less criticism. A framework that always happens to justify whatever the Court wanted to do anyway is not really a framework at all.

CONCLUSION

Judicial activism and judicial restraint are best understood not as opposing philosophies that the Indian Supreme Court must permanently choose. Rather, they represent different points on a constitutional spectrum, with the Court moving between them depending on the facts of the case and the broader political and social context. The development of the basic structure doctrine, the expansion of Public Interest Litigation, and the wider interpretation of Article 21 demonstrate the Court's willingness to adopt an activist role when fundamental rights required stronger protection than the political process was able or willing to provide. At the

same time in the decisions applying the political question doctrine, the Court's own emphasis on restraint in cases such as *Aravali Golf Club*, and its generally cautious approach towards economic and administrative policy show that judicial restraint has remained an important part of Indian constitutional jurisprudence.

The task going forward is not to pick a permanent side in this debate but to keep asking, case by case, whether the textual anchor, the legislative vacuum, the institutional competence, and the availability of an alternate remedy genuinely justify intervention. A judiciary that asks the question honestly, rather than reflexively favouring either activism or restraint is more likely to preserve both the rights the Constitution promises and the separation of powers on which its own legitimacy ultimately rests.

Seven decades on, the debate shows no sign of settling, and there is no obvious reason it should. A constitution that is meant to last is going to run into situations its drafters did not foresee, and someone must decide what happens when it does. What this paper has tried to show is that the Indian Supreme Court's answer to that problem has never really been a fixed philosophy at all but a running case-by-case judgment call, made with varying degrees of consistency and varying degrees of success. Recognising this does not excuse instances of judicial overreach or excessive restraint, rather it highlights the importance of reasoned judicial decision-making. If courts possess the discretion to choose between activism and restraint then it has the responsibility to explain in each case, why it chose the one it did.