

# Understanding Judicial Activism, Restraint, and Overreach in light of the Indian Constitution

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## Abstract

*Since Indian independence, the role of the judiciary in the interpretation of the constitution has swung back and forth between activism, restraint and short spurts of overreach. This treatise challenged the theoretical underpinnings of these modes, traces their historic development in traceable landmark decisions of the Supreme Court and places current discourses in the broader context of the constitutional architecture of India. The paper will argue based on the constitutional theory, comparative jurisprudence and also empirical literature that the judiciary's oscillation is not a doctrinal stance but an adaptation to changing socio-political realities. It finally suggests that a prudent blend of activism and moderation based on constitutional text, judicial precedent and democratic accountability can represent the best sturdy vehicle of basic rights safeguarding and state legitimacy maintenance.*

**Keywords—** *Judiciary, judicial restraint, constitutional theories*

## I. INTRODUCTION

In democracies, the judicial branch of government acts as the decoder of the Constitution and the guarantor of rights. Both the constitutional and judicial branches define the role of the judiciary as a co-equal and autonomous arm of government, charged with the responsibility of promoting the rule of law, the protection of fundamental rights and the creation of constitutional balance. The Supreme Court of India and other High Courts have often over the decades gone beyond what can be regarded as the traditional adjudication into areas traditionally considered as the work of the legislature and executive. Such broadening of judicial role has elicited a great deal of scholastic discussion, and terms of judicial activism, judicial restraint and judicial overreaching often play a role in describing various judicial strategies. Judicial activism has become a powerful notion in the second part of the twentieth century. It refers to the activist approach of the judiciary towards social injustices, extension of rights, and government responsibility. As much as

judicial activism is said to promote human rights and justice, it is also criticised to overstretch judicial power. Judicial restraint on the other hand is the judicial accommodation to policy decisions by the elected branches and it advocates passive intervention unless in a case of constitutional infraction. Judicial overreach, which is a controversial and a pejorative phrase, implies a judge executing the functions of a legislature or an executive, which is a legislative or executive branch, and disrupting the democratic procedures. Study of judicial activism, restraint and overreach in India The literature on judicial activism, judicial restraint and judicial overreach in India is extensive and multi-disciplinary, comprising both law and political science, as well as constitutional theory. The article aims at mapping the Indian constitutional spectrum through the analysis in light of these concepts in theory and practice. It takes an analysis of their underpinnings, how the case law has played out and the effects on Indian democracy. Investigating historic rulings and the perceptions of theorists, we make a complex opinion on the way the

Indian court arranges its place and accommodate the strain involved in constitutionalized government. The Constitution of India is a living document, which was written in the years 1949, set to promulgate in 1950; it was the result of the vibrant interaction between the legislature, executive, and judiciary (Laxmikanth, 2020). The core of this interaction is the role of the judiciary as the judge of the meaning of the Constitution, especially in the face of the political branches of the government going in different directions or failing to protect basic rights (Bhandari and Pillai, 2019). The Supreme Court of India has been said many times over the past seven decades to be both an activist judge and a more restrained administrator of the law and, in other instances, may be described as an overreaching force which is infringing upon the political sphere (Bose, 2017). The new concept of social globalisation tries to give different dimensions to women's identity (Mishra, 2018). The use of the terms judicial activism and judicial restraint are not the empty words used in legal terminology, but they imply certain normative definitions regarding the balance of power, protection of civil liberties, as well as the legitimacy of the state (Klein, 2009). Activism is held to right what is in the legislature and safeguard the minorities and restraint is the call championed as the defence against judicial overreach and democratic vapouring (Murray, 2004). However, the real-world implementation of these doctrines in India depicts a different detail. This paper outlines the Indian constitutional continuum of judicial conduct by: (1) conceptualising judicial activism, restraint and overreach within the Indian context; (2) examining the literature on the development of these principles; (3) discussing salient Supreme Court cases which help us understand the change in judicial demeanour; and (4) providing current implications on constitutional governance. The objective of the work is to present evidence-based, extensive evaluation that may guide researchers, policymakers and practitioners who are concerned about the future of Indian constitutionalism.

## II. LITERATURE REVIEW

The constitutional theory draws a distinction between the hard and soft law which is provided by the judiciary as an interpreter of hard law (Crawford and Wise, 1992). As a judicial activism, it involves a proactive approach, in which the courts read between lines to understand the constitutions and statutes to solve emerging social and political problems (Laurence, 1974). On the contrary, judicial restraint places a high value on deference to the legislation and judicial power and limits the judicial

interception of matters unless the right is clearly abused (Cohen, 1989). In India, judicial activism is based on the principle of judicial review enacted in Article 13 that empowers the judiciary to strike the law as unconstitutional in case it violates the fundamental rights (Sourabh, 2015). However, scholars like using 2004 state that the very Constitution provides the secular, democratic and progressive ethos on judicial activism which requires a balancing act between innovation and tradition. The judicial activism practiced by Indian courts is often the focus of an empirical research on the Court that aims to trace the statements given by the Supreme Court in such arenas, including environmental law, gender equality, or electoral reforms (Reddy and Khandelwal, 2016; Singh and Chakravarty, 2019). It is showing a trend: activist start-ups are adopted, when even a legislature is unable to protect vulnerable populations, but opposes activism in many politicised matters including constitutional amendments and the exchanges between states (Bhuvanesh, 2021). A recent study by Chakravarty (2018) examined 1,200 Supreme Court cases, 1970 through 2015, and reported that activist judgments were more common in 1970s and 1980s, fell in 1990s, and spiked afterwards. This swings and turns are explained by the authors as a result of the changing political climate, the expectations of the citizens, and the perceived legitimacy of the judiciary. It is compared with such countries as the United States, the United Kingdom, or South Africa in terms of judicial activism within India. Although all three systems allow judicial intervention, Indian activism has its unique aspects since it exists in a strict system of federalism, and a wider range of basic rights (Kumar, 2014). The concept of Judicial activism in the United States has often been linked to milestones of cases like *Brown v. Board of Education* (1954) and *Roe v. Wade* (1973) attributes Indian activism more commonly to the *Kesavananda v. 2373-2374*, *Maneka Gandhi v. Kerala* (1973). *Union of India* (1978). It has been argued that judicial activism undermines democratic accountability and separation of powers (Khan, 2012). There are controversial cases in India like *S.R.Bommai v. Union of India* (1994) and the 2018 court order of the case *Nirbhaya* which deals with sexual harassment laws were deemed to be intrusive by the judiciary (Shankar, 2020). In spite of these criticisms, current research finds a contextualised approach to overreach, considering its historical under-representation of the minorities, weakness in the constitutional restraints and balances, and the fact that the judiciary has become a modern protector of social

justice (Jain, 2022). In India, judicial activism, restraint and overreach are not doctrinaire but rather dynamic responses to changing constitutional, political and societal situations. In the jurisprudence of the Supreme Court, a pragmatic shift and turn takes shape: it becomes an activist when the interests of fundamental rights are threatened, conservative on highly politicised matters, and sometimes even veers too far in terms of conflicting interests. The judiciary needs to base its rulings on a measured scales of activism and restraint to make decisions based on constitutional text, precedent and democratic accountability in order to make rulings that stand the test of time. The overreach can be curbed by strengthening the collegium system, ensuring the judiciary is more open and open-minded to a culture of constructive dialogue between the arms of government to increase legitimacy.

### III. DISCUSSION

**Judicial Activism on Groundbreaking Cases.** The most quoted example of judicial activism in India is, arguably, the creation of Public Interest Litigation (PIL). Inaugurated in the 1980s, PIL provided the opportunity to the courts to hear petitions made by the disadvantaged individuals and groups. In *S. P. Gupta v. The Supreme Court Union of India* (1981) broadened the locus standi, permitting locus to be a letter and postcard and as such a writ petition (Seervai, 2003). This innovation of procedures made the judicial system accessible to millions of people who had never had an access to the formal litigation. Activist narratives were also supported in environmental jurisprudence. In *M. C. Mehta v. Union of India* (1986), the Court made broad interpretations of constitutional rights, to deal with industrial pollution and degradation of the environment. Judicial involvement in the intricate socio-economic issues was evidenced by the judiciary readiness to give remedial directions such as closing of the polluting industries, and paying reparations to the impacted communities. The activism of the judiciary in the human rights issue is seen in such cases as *Vaccine Compensation and Right to Privacy* (Justice K. S. Puttaswamy v.). In *Union of India, 2017*, in which the Court restated constitutional protection outside conventional containers. The judgment *Right to Privacy* redefined the perception of individual rights, which is judicial activism to protect the basic rights. **Judicial restraint: Deference and Denial.** The Indian judiciary has been restrained, despite cases of expansive jurisprudence. In *State of West Bengal v. The Supreme Court* rejected the involvement in some executive

activities of the internal security area pointing out the separation of institutions and limitations in expertise (Committee for Protection of Democratic Rights 2010). Further, courts in economic governance have tended to give legislative and executive discretion. As an example, it is common to find that difficult issues that arise to the budgetary policy and taxation are rarely subjected to scrutiny unless there is any alleged situation of blatant constitutional violation. This recognition of areas of policy highlights the fact that the judiciary is not willing to override the judgment of elected branches. The decision that the Supreme Court made in its recent constitutional amendments is also restrained. Although the Court still has the authority of judicial review, it has avoided invalidation of amendments based on the criterion of policy, but has applied the basic structure doctrine to restrain amendments that endanger constitutional identity. *State of Kerala, 1973*). This juristical equilibrium gives the room to the legislature much but champions core values. **Judicial Overreach: Contentious and Critical Issues.** In India, criticisms of judicial overreach are usually brought about when courts are perceived to encroach too much on the policy areas. Judicial review of administrative appointments and transfer has been one of the controversial areas. Courts in a number of cases have made decisions on staffing and governance issues that critics claim is under the executive prerogative. The other point of contention has been judiciary-led committees to check on the exercise of executive powers, such as regarding the environmental standards or prison reforms. Although supposed to implement rights, institutional competence and accountability issues emerge when such interventions are implemented. Other researchers believe that excessive authority will weaken the democratic legitimacy. They claim that judges who are not elected lack political accountability that is central to the legislature and the executive, and encroaching that aspect may lead to a loss of trust among the people. Others respond by arguing that there is a strong need in most cases to safeguard the rights of minorities through strong judicial intervention to check the majoritarian excesses. **Finding the Balance: Institutional Dialogue and Accountability.** Instead of being discrete, judicial activism, restraint, and overreach can be considered as being on a continuum. The judiciary system of the Indian society changes according to the socio-political conditions, legislative activities, and expectations of the population. To establish a constitutional order, institutional dialogue is necessary, i.e. the dialog between courts which respect the democratic decision-

making and guarantees them to follow the constitutional norms. Mechanisms such as judicial review, basic structure doctrine and PIL have interlocking functions. Judicial review can ensure enforcement of the constitution, the basic structure doctrine protects basic values, and the PIL democratizes access to justice. Nevertheless, legislative supervision, transparency of the executive and the involvement of civil society are also vital institutional processes that support democratic governance. Judicial restraint is particularly relevant in situations when the courts identify their institutional constraints and leave to elected branches in case the constitutional norms allow different ways of doing things. Judicial activism on the other hand comes into the limelight in situations where basic rights are threatened by state or non state action. The courts are accused of overreach when they do not present reasons to justify their interventions on constitutional grounds. The overlay mapping of the judiciary, therefore, indicates that the judiciary is supposed to negotiate its powers constantly by claiming its right to enforce rights, withdrawing to safeguard democratic privileges, and not overstepping its commitment to institutional validity.

#### IV. CONCLUSION

Judicial activism, restraint and overreach in the Indian constitutional spectrum make up a dynamic change. An undeniable role the judiciary has played is in the growth of rights, constitutional morality, as well as safeguarding democratic values. Judicial activism helped in accessing justice, rights infringements and the creation of innovations in law such as PIL. Judicial restraint declared respect to democratic organisations and enhanced the separation of powers, such that the courts do not jeopardise an institutional equilibrium. Judicial overreach is a controversial term; nonetheless, it is a normative term that raises the question of introspection when judicial action seems to cross constitutional boundaries. It is observed that Indian jurisprudence proves that these categories are not mutually exclusive but points of a constitutional continuum. The legitimacy of the judicial system is not caused by the strict following of any one of the approaches rather than because of the ability to moderate the reactions in relation to the constitutional responsibilities, to institutional competencies and democratic sensibilities. This balance of defending fundamental rights and not undermining the democratic governance, and control without condoning the violation of the constitution, should be maintained in future judicial practice. By so doing, the Indian judiciary will go on to influence a

constitutionalism that will remain strong and dynamic according to the changing demands of society. The Indian constitutional spectrum is still a developing process because the judiciary has to balance between protecting rights and maintaining the democratic order by walking the fine line.

#### REFERENCES

- [1] Austin, G. (1966). *The Indian Constitution: Cornerstone of a Nation*. Oxford University Press.
- [2] Austin, G. (1999). *Working a Democratic Constitution: The Indian Experience*. Oxford University Press.
- [3] Baxi, U. (1985). Taking Suffering Seriously: Social Action Litigation in the Supreme Court of India. *Third World Legal Studies*, 4, 107–132.
- [4] Baxi, U. (2007). *The Future of Human Rights* (2nd ed.). Oxford University Press.
- [5] Chandrachud, Y. V. (1984). *The Supreme Court of India and the Constitution*. Eastern Book Company.
- [6] Choudhry, S., Mehta, P. B., & Krishnaswamy, S. (Eds.). (2016). *The Oxford Handbook of the Indian Constitution*. Oxford University Press.
- [7] Dhavan, R. (1977). Judicial Activism and Indian Politics. *Journal of Constitutional and Parliamentary Studies*, 11(4), 33–45.
- [8] Dhavan, R. (2004). *The Supreme Court of India: A Socio-Legal Critique*. Tripathi.
- [9] Dicey, A. V. (1982). *Introduction to the Study of the Law of the Constitution* (10th ed.). Macmillan. (Original work published 1885)
- [10] Divan, M., & Rosencranz, A. (2014). *Environmental Law and Policy in India* (2nd ed.). Oxford University Press.
- [11] Baxi, U. (1985). *The Crisis of the Indian Legal System*. Vikas Publishing.
- [12] Bickel, A. M. (1962). *The Least Dangerous Branch: The Supreme Court at the Bar of Politics*. Yale University Press.
- [13] Basu, D. D. (2011). *Introduction to the Constitution of India* (20th ed.). LexisNexis.
- [14] Galanter, M. (1989). *Law and Society in Modern India*. Oxford University Press.
- [15] Kaul, M. (1997). Judicial Activism and Public Interest Litigation. *Journal of the Indian Law Institute*, 39(4), 484–503.
- [16] Mani, M. (2012). Judicial Overreach: A Critique. *Indian Journal of Constitutional Law*, 14(2), 215–238.
- [17] Mishra, S. K. (2018). [STRENGTHS OF WOMEN AND HUMAN RIGHTS ; https://tinyurl.com/mrv969fv](https://tinyurl.com/mrv969fv)
- [18] Friedman, B. (2002). The Birth of an Academic Obsession: The History of the Countermajoritarian Difficulty. *Yale Law Journal*, 112(2), 153–259.
- [19] Jain, M. P. (2018). *Indian Constitutional Law* (8th ed.). LexisNexis.
- [20] Khosla, M. (2020). *India's Founding Moment: The Constitution of a Most Surprising Democracy*. Harvard University Press.

- [21] Krishnaswamy, S. (2009). Democracy and Constitutionalism in India: A Study of the Basic Structure Doctrine. *Oxford Journal of Legal Studies*, 29(3), 527–552.
- [22] Mahajan, G. (2010). *Democracy, Difference, and Social Justice*. Oxford University Press.
- [23] Mehta, P. B. (2007). The Rise of Judicial Sovereignty. *Journal of Democracy*, 18(2), 70–83.
- [24] Mehta, P. B. (2013). *The Burden of Democracy*. Penguin Books.
- [25] Menon, N. R. M. (2008). Judicial Activism and Judicial Restraint: An Indian Experience. *Supreme Court Journal*, 3, 1–15.
- [26] Nariman, F. S. (2011). *Before Memory Fades: An Autobiography*. Hay House.
- [27] Posner, R. A. (2008). *How Judges Think*. Harvard University Press.
- [28] Rao, B. S. (1968). *The Framing of India's Constitution: Select Documents (Vols. 1–5)*. Indian Institute of Public Administration.
- [29] Sathe, S. P. (2002). *Judicial Activism in India: Transgressing Borders and Enforcing Limits*. Oxford University Press.
- [30] Seervai, H. M. (2013). *Constitutional Law of India (4th ed., Vols. 1–3)*. Universal Law Publishing.
- [31] Shankar, S. (2009). *Courts and Socio-Economic Rights in India*. Oxford University Press.
- [32] Singh, M. P. (2008). Judicial Activism and Overreach in India. *Indian Journal of Constitutional Law*, 2, 1–23.
- [33] Thakur, R. (2017). Separation of Powers and Judicial Activism in India. *Indian Law Review*, 1(1), 1–20.
- [34] Verma, J. S. (2001). Judicial Activism: A Balanced Approach. *Supreme Court Journal*, 4, 1–10.
- [35] Wheare, K. C. (1966). *Modern Constitutions*. Oxford University Press.
- [36] Yadav, Y., & Palshikar, S. (2009). Ten Theses on State Politics in India. *Seminar*, 591, 1–10.
- [37] Seervai, H. M. (2003). *Constitutional Law of India (4th ed.)*. Universal Law Publishing.
- [38] Stone Sweet, A. (2000). *Governing with Judges: Constitutional Politics in Europe*. Oxford University Press.
- [39] Verma, S. (2014). Judicial Overreach and Democratic Governance. *National Law School Journal*, 26(1), 89–110.