

INTERNATIONAL JOURNAL OF LAW MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

Volume 9 | Issue 2

2026

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Judicial Activism and Judicial Restraint in India: Re-Examining the Boundaries of Judicial Power

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ABSTRACT

The role of the judiciary as a role, both when it comes to protecting human rights and the maintenance of constitutional governance in India, is evolving like water by the day. While the expansion of judicial monitoring systems has been more meaningful in strengthening accountability, it also has posed problems of limits when the judicial process is expanded from a purely operational standpoint. The concepts of judicial activism and judicial restraint are used regularly and are the tools of judicial activism, but is their practical application harder in terms of their meaning and use of our experience? This paper comes to this problem from the standpoint of how courts deal with very different types of structural problems of organisations and how they act so as to balance the other.

Keywords: *Judicial Activism; Judicial Restraint; Judicial Review; Constitutional Governance; India*

I. INTRODUCTION

The Constitution of India puts the judiciary in a major position of responsibility - that is, to see the activity of the state and make certain it follows the Constitution. The courts are empowered to act as experts on legislative/executive decision-making by Parliament and of such Supreme Court, with the right to interpret the Constitution and the powers of law-making in that context. From the earliest stages of constitutional adjudication, the judiciary appeared to be very cautious and were concerned more about ensuring that procedures of law were in place. This seemed in line with the courts' own desire for institutional balance, meaning that nothing unnecessary would happen in the other branches of government. However, this approach turned out to be less effective when the procedural process did not achieve justice. Law enforcement in India began to recognise that it must be a broader interpretative framework in this regard that evaluated more than whether laws are proper and whether court actions are just. Judicial decision-making as a whole did change in India as the courts increasingly became interested in

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things that were beyond traditional judicial judgments, and governance, social justice, and public accountability were the central concerns. Some of this intervention has often been supported as necessary, but there is also the question about the possible democratic system of democracy itself, and what does judicial restraint mean, even now? The two are not the same, and they are not the same way at the end of a case, but they are other things, and they represent different ideas. The central, or big concern, is not whether one approach is best to win over the other but rather which is considered more to satisfy judicial independence in terms of control on the role of intervention and restraint consistent with constitutional rights to order and the protection of the Constitution for law.³

Literature Review

Judiciary activism and judicial restraint: An academic perspective is generally broad in the field with various views based in different assumptions that determine how much power the state plays to judicial action. At the forefront of early scholarship, an emphasis on restraint has been seen at a high level: judicial intervention that is too severe in the context of the elected authorities has been shown to lead to adverse consequences.⁴

More recent research has looked at how judicial intervention can bring about change, especially when it comes to protecting rights and improving access to justice. Many scholars believe the courts have been key in tackling structural inequalities and making sure constitutional rights are upheld.⁵

More recent studies attempt to reconcile these positions by adopting a contextual approach. Rather than treating activism and restraint as mutually exclusive, these analyses suggest that judicial behaviour is influenced by the nature of the issue and the institutional environment in which it arises.⁶

This paper builds upon this contextual understanding by examining how judicial intervention operates in practice and how a balanced framework for judicial engagement can be developed.

II. RETHINKING JUDICIAL ACTIVISM AND JUDICIAL RESTRAINT

The distinction between judicial activism and judicial restraint typically describes them in a simple manner, as if courts are consciously taking one path and not another. But in practice, the way judges act depends overwhelmingly on situations around them and is a lot more context-

³ INDIA CONST. arts. 13, 32.

⁴ H.M. Seervai, *Constitutional Law of India* (4th ed., 2013).

⁵ Upendra Baxi, "Social Action Litigation in India" (1985).

⁶ Gautam Bhatia, *The Transformative Constitution* (HarperCollins 2019).

dependent than this. The courts would also go over a set of standard theoretical categories, but instead, they might take some perspective on the set of circumstances facing the client and consider constitutional principles and institutional constraints.⁷

In India, cases where courts have taken a more expansive interpretive posture are usually associated with judicial activism. But the goal of this kind of intervention does not seem to be to heighten judicial power but to help to resolve challenges. It may be because we were caught with a crisis that would not be solved with existing procedures.⁸ This suggests that judicial activism is often a response to institutional gaps rather than a deliberate departure from established principles.

At the same time, the idea of judicial restraint continues to hold relevance, particularly in areas involving policy decisions or administrative expertise. Courts have repeatedly emphasized that certain matters are better addressed by institutions that possess both technical knowledge and democratic legitimacy.⁹ This recognition reflects an understanding that judicial intervention, if not carefully limited, may lead to outcomes that are difficult to implement or may disrupt the balance of power within the constitutional framework.

What becomes evident from this interaction is that activism and restraint are not mutually exclusive. Instead, they function as complementary approaches that guide judicial reasoning in different contexts. A court may adopt an expansive approach when dealing with issues of fundamental rights, while exercising caution in matters involving economic or administrative policy.

The constitutional structure, too, informs this contextual framework. As a legal text, the Indian Constitution is a document reflective of a wider society and political aim that makes it relevant for judicial interpretation.¹⁰ At the same time, they must ensure that such interpretation does not undermine the institutional structure established by the Constitution.

And theoretical theories matter as well. Some people call for judicial action at the frontiers to advance constitutional goals; others argue for restraint to protect democratic legitimacy.¹¹ These competing viewpoints highlight the complexity of the issue and reinforce the need for a balanced approach.

Ultimately, the distinction between judicial activism and judicial restraint may be less

⁷ H.M. Seervai, *Constitutional Law of India* (4th ed., 2013).

⁸ S.P. Sathe, *Judicial Activism in India* (Oxford University Press 2002).

⁹ R.K. Garg v. Union of India, (1981) 4 SCC 675.

¹⁰ Granville Austin, *The Indian Constitution: Cornerstone of a Nation* (1966).

¹¹ Ronald Dworkin, *Taking Rights Seriously* (1977); Alexander M. Bickel, *The Least Dangerous Branch* (1986).

significant than the way judicial power is exercised. What matters is whether judicial intervention is justified, proportionate, and consistent with constitutional principles.

III. EVOLUTION OF JUDICIAL INTERVENTION IN INDIA

The evolution of judicial intervention in India reflects a gradual transformation in the understanding of constitutional adjudication. In its earlier phase, the judiciary appeared to adopt a cautious approach, focusing primarily on procedural compliance rather than engaging with the substantive implications of legal rules.¹² While this approach aligned with a formal conception of legality, it often proved inadequate in addressing deeper concerns related to justice and fairness.

Over the years, the judiciary also began to grasp the limits of a narrow conception of legal procedure. There were moments in which procedures did not truly protect individual rights. In this respect, the judicial position was one in which more care was given to the quality and fairness of state action than simply to state law itself.¹³

That has important implications for constitutional interpretation. Courts started looking for a much more integrated approach— they understood that fundamental rights could not be understood solely in terms of individual rights. But they were seen as interrelated guarantees that, when implemented as a unit, helped to protect human dignity.

The expansion of judicial intervention also reflected changing societal conditions. Issues such as environmental protection, livelihood, and access to basic resources increasingly came before the courts. In responding to these challenges, the judiciary demonstrated a willingness to adapt its interpretative approach, ensuring that constitutional provisions remained relevant in evolving contexts.¹⁴

At the same time, the judiciary has exercised caution in areas involving economic policy and administrative discretion. Courts have often emphasized that such matters require specialized expertise and are better handled by institutions with democratic accountability.¹⁵ This selective approach indicates that judicial intervention in India is guided by context rather than ideology.

The trajectory of India's judicial growth has shown that it is an adaptive act of the judiciary as opposed to just enforcing one side of the story and not another, either the activist state or the passive state. So, thanks to that flexibility for some of the complexity that the courts have faced

¹² A.K. Gopalan v. State of Madras, AIR 1950 SC 27.

¹³ Maneka Gandhi v. Union of India, (1978) 1 SCC 248.

¹⁴ Olga Tellis v. Bombay Municipal Corporation, (1985) 3 SCC 545; M.C. Mehta v. Union of India, (1987) 1 SCC 395.

¹⁵ R.K. Garg v. Union of India, (1981) 4 SCC 675.

and managed to cope with.

And that changing role has also been problematic at much wider levels about the limits of judicial power, too. And court to see more of an organized context with the new kinds of cases is already growing more difficult to come by, and the courts need an organized structure, and in doing so, what happens does not violate laws or constitutional principles if the judiciary can take no more than a few cases. In that case, a system such as this would create a climate in which any judicial intervention in itself is consistent with the role of all other bodies, but we are protected from judicial interference, so in line with constitutional principles.

IV. PUBLIC INTEREST LITIGATION AND EXPANSION OF JUDICIAL REACH

The emergence of Public Interest Litigation (PIL) in India marks a significant shift in judicial intervention, not merely as a procedural innovation but as a transformation in the way courts engage with societal concerns. Traditionally, access to the judiciary was confined by strict procedural requirements, particularly the doctrine of locus standi, which required a direct and personal interest in the matter. The relaxation of this requirement fundamentally altered the relationship between the judiciary and the public.¹⁶

This transformation does not happen in a day or behind closed doors but must be understood in the broader context of social and institutional realities. As we already know, a considerable section of society remained outside the effective reach of the legal system due to economic constraints, lack of awareness, and structural inequalities. In this setting, the judiciary's decision to broaden access can be seen as an attempt to make constitutional guarantees meaningful in practice rather than merely symbolic.¹⁷

What distinguishes PIL from traditional litigation is not only the expansion of standing but also the shift in judicial perspective. Courts began to engage with issues that extended beyond individual disputes and reflected broader systemic concerns. Matters relating to bonded labour, environmental degradation, prison conditions, and administrative accountability came within the scope of judicial scrutiny.¹⁸

However, this expansion also raises an important conceptual question: does PIL represent a necessary evolution of judicial function, or does it signify a movement towards judicial overreach? The answer appears to lie somewhere in between. On the one hand, PIL has enabled the judiciary to respond to institutional failures and protect vulnerable groups. On the other

¹⁶ S.P. Gupta v. Union of India, 1981 Supp SCC 87.

¹⁷ Bandhua Mukti Morcha v. Union of India, (1984) 3 SCC 161

¹⁸ Mark Tushnet, *Weak Courts, Strong Rights* (2008).

hand, it has led to situations where courts have assumed roles that extend beyond traditional adjudication.

The use of continuing mandamus, for instance, illustrates how judicial intervention can evolve into a form of ongoing supervision. While such measures may be justified in cases of persistent non-compliance, they also raise concerns regarding the judiciary's capacity to manage long-term administrative processes.¹⁹ Courts, by their very design, are not equipped to function as supervisory bodies over complex governance structures.

Another issue that has emerged in the context of PIL is the potential for misuse. The openness of the mechanism has, at times, encouraged petitions that are motivated by personal or political considerations rather than genuine public interest. This has led the judiciary to develop safeguards aimed at filtering out frivolous or mala fide petitions.³ While such measures are necessary, they also highlight the challenges involved in maintaining the integrity of PIL as a legal tool.

At a deeper level, PIL reflects a broader tension within constitutional governance. It represents an effort to reconcile two competing objectives: ensuring access to justice and preserving institutional balance. The expansion of judicial reach through PIL demonstrates the judiciary's willingness to adapt its role in response to societal needs, but it also underscores the importance of defining clear limits to such adaptation.

From an analytical perspective, PIL can be seen as both a strength and a vulnerability within the Indian legal system. It has strengthened the ability of courts to address systemic issues and enforce accountability, yet it has also exposed the judiciary to criticisms of overreach and institutional encroachment. This dual character suggests that the effectiveness of PIL depends not on its existence but on how it is applied.

Ultimately, the continued relevance of PIL lies in its capacity to remain both accessible and disciplined. Judicial intervention must be guided by clear principles that ensure that PIL serves its intended purpose without extending beyond its legitimate scope. This requires a careful balance between responsiveness and restraint, ensuring that the judiciary remains an effective guardian of constitutional values while respecting the functional roles of other institutions.

V. JUDICIAL LIMITS AND THE NEED FOR A CALIBRATED FRAMEWORK

Courses of judicial intervention throughout India are expanding, and as such, the question of limits has come into focus. The judiciary is critical since it contributes to upholding

¹⁹ State of Uttaranchal v. Balwant Singh Chaufal, (2010) 3 SCC 402.

constitutional values and preventing democratic failures, but this expanded role in government has led one to question which judicial mechanisms are in need of interpretation. The crux question, however, is not whether judicial intervention is necessary but how far it can go and not interfere in constitutional balances.²⁰

At stake is separation of powers. The Constitution calls for a system in which the judiciary, executive and legislature are given different functions, but we are served simultaneously. That division is not arbitrary but rather logical to make sure that no particular institution holds excessive powers. By appointing judges to fill areas that a branch can usually do best for oneself, there are concerns that the institution will develop over time to a degree of overlapped authority, and democracy will take an overall hit.²¹

The issue of institutional competence is less straightforward. Although courts are formed as an institutional form of the judiciary for defining and adjudicating the law and resolving disputes, they lack the technical experience to handle policy change or administrative processes that demand specialized expertise and constant supervision. If judicial intervention on these matters is forthcoming and cannot produce immediate and actionable results (not achievable), then implementation is impossible.²²

But it is also important to recognise how absent judiciary may produce very tragic consequences unless this happens where other organs of power do not. In India in which I witnessed, judicial intervention has been very necessary to bring about system-based reform and assist the vulnerable. By applying such strict restraint as required cannot achieve what is said in the Constitution of India for such situations and must therefore be balanced. Rather than focusing only on a strict position in one area the courts need to assess each case differently. The judicial intervention needs to be done from the standpoint of necessity that it is only done when constitutional principles are applicable. Proportionality needs to be taken into consideration, also in this context. The type of judicial intervention must correspond to the situation the courts are in. Smaller and lower interventions can suffice in certain cases; even more of them need a little more work. Because courts vary in the manner in which they address their cases, all the way through all their interventions, the courts can avoid too much intrusion. And, more importantly, there is a need for the courts to remain aware of their role and avoid getting involved in areas that require technical expertise or that make sense in terms of democratic

²⁰ Manoj Mate, "Public Interest Litigation and Governance" (2015).

²¹ Granville Austin, *Working a Democratic Constitution* (Oxford University Press 1999).

²² Mark Tushnet, *Weak Courts, Strong Rights* (2008).

decision-making. That doesn't mean a wholesale withdrawal from those areas, but a slow reaction and careful balancing of different institutions. But the legitimacy of judicial action ultimately rests on how judges can act. And a judiciary that acts aggressively and ineffectually may only see them break the democratic order; only if a court gets into crisis in the context of constitutional intrusion would it lose its power. The problem is how to sustain this balance between these different positions and dynamics with the environment, such that an equilibrium is not compromised.

VI. CONCLUSION

In the view of this paper, the growth of judicial intervention in India cannot be encapsulated in a single expansion-versus-restraint narrative. In fact, it is evidence of an even wider development of the judiciary shaped by institutional expectations/political aims, its implementation in the real world, and governance situations. The judiciary has not acted merely in an abstract sense; rather, it has adapted its approach in situations where the existing process was either insufficient or failed. In a lot of cases, judicial action appeared not to have been an act of assertiveness as it has been, but rather to get the authorities to act to make governance better. Specifically, those who are the most vulnerable and have limited recourse, without some form of administrative response, have their fundamental rights destroyed. In similar cases, courts have been at least in part a corrective mechanism in that constitutional provisions are not just symbolic. But there is no uniformity that this expansion brings, as judicial actions will necessarily not be guided by a single ideology, but rather in terms of the context. Finally, the paper emphasizes in a piece of the paper that the tension between judicial activism and judicial restraint is not theoretical but the result and effect of the role of constitutional institutions on a fundamental level. Courts are often not given the option to satisfy our rights both to protect the public's rights and to hold ourselves accountable, but the ability of the political government, as well as the executive, to do the majority justice with power. At the same time, the increasing use of mechanisms such as Public Interest Litigation is indicative of a broader change in the role of the judiciary. While PIL has improved the access to justice and allowed the courts on the one hand to intervene on systems and not only in the judicial system itself but has blurred the lines between policing and governance. The dual nature of PIL— as both force and tool of agency, both as an institution of power of democracy and as a source of institutional tension with the law— is part of the systemic challenges that come in the court. In the literature, a great lesson from this study has always been to realize that we cannot go beyond judicial intervention and apply it when necessary (though it is very much appreciated in a certain case), even in practice. If no clear limits are given into circulation, the effects of this kind of collaboration are

still the same, where institutions and the implementation are to fail, and those who govern the people, and, indeed, so are people. These concerns do not take from respect for judicial activity, but for one of the things that we are arguing for a more measured and principled approach in. In this respect, the paper proposes a modifiable approach of judicial intervention based on three essential principles: necessity, proportionality, and institutional knowledge. Judicial intervention, in other words, should be made only in cases where constitutional morality needs protecting. And even then, what is needed, according to government guidelines, should be there. This also means that the judiciary must operate as it is not necessarily so out to play it outside the boundaries of a state institution. So, courts need to articulate why they decide to intervene in cases like the current one: they need to show a constitutional basis for it and a practical impact. If nothing else, the evidence shows that if they have just made a decision, the case is legally sound, which can even be taken into account by others. In conclusion, a few general observations and suggestions regarding future judicial action for India can be made, given the context of this analysis (above).

Structured Judicial Reasoning: In the future, the courts should follow more rigorous criteria when deciding: you have to decide at the end so that you know what is legal and what is feasible to carry out, and for how long and to what extent? The judiciary should, rather than sit in a vacuum of isolation, speak down the line of dialogue with the legislature and executive members of government with one another. It should be a more responsive and a more constructive discussion that can ensure the practical use of such technology is done so that judicial decisions proceed without damaging the institutional equilibrium.

- The PIL tool must be the correct tool that can be adopted: PIL deserves to be developed more effectively to address the needs, but procedures must improve and ensure it is still operational.
- There's also a need for respect of governance and institutional competency: Courts need to work cautiously with technical skills towards technical knowledge or long-term policymaking. These must be understood as not being a full power of the rule of law but more of a measured approach.
- Development of guiding principles should take place over time for judicial practice to develop and evolve an enabling approach in helping guide judicial power, lessen uncertainty, and ensure certainty of the outcomes.

Final Reflection

On the ethical level, the legitimacy of judicial review in India is determined not only by how powerful judicial power is but also by why it is used. Should the judiciary exercise its judicial powers without justification to see to it that democracy is maintained, whilst not taking any further steps in order to protect those who do not know that the constitution is being breached in one or more cases, justice will be at risk in other instances. So we have to work with both but

it must be a balance between engagement and restraint. And this balance will not just be fixed but can always be reset in the present and future. The judiciary needs to be able to respond in a way that is responsive & restrained to the new reality of the courtroom but also maintains the institutional fabric in which the jurisprudence operates. It is precisely this balance of reflection and adaptation that will be the key to constitutional governance of India in the future.

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