

Between Guardian and Arbiter: Seeking Equilibrium Between Activism and Restraint in Indian Jurisprudence

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Abstract

India's Constitution lives and breathes through judicial interpretation, yet judges face the challenge of defining their limits. This article examines how Indian judiciary have navigated between judicial restraint and judicial activism since the 'Maneka Gandhi' judgment. The 'Originalism' affected early rulings like 'A.K. Gopalan.' But over time, the courts tilted toward a more flexible and evolving view, as seen in the cases of 'Kesavananda Bharati', 'K.S. Puttaswamy', and 'Navtej Singh Johar.' The research explores how Public Interest Litigation led to increased judicial involvement in resolving social disputes. At the same time, it also stirred debates over potential Judicial Overreach. Key judgements like 'S.R. Bommai' and the 'Ayodhya Case' reveal how the judiciary sought to maintain a balance, knowing when to step back and when to interfere. The paper suggests that the judges must protect fundamental rights without obstructing the smooth working of democratic institutions. The study advises the that judges should act wisely and only get involved when laws or government actions are making constitutional values vulnerable. This careful approach protects justice, builds trust among people, and keeps India's democracy strong and adaptable.

Keywords: Judicial Activism, Judicial Restraint, Living Constitutionalism, Originalism, Fundamental Rights

1. Introduction

The Constitution of India is often called a "living document" and is basis of India's democracy. It guarantees rights, guides governance, and ensures justice. But how it is interpreted and enforced has sparked debate for years. A major point of conflict lies in how the judges apply this powerful document in different situations. This debate is largely framed by two main viewpoints: one supports 'Originalism,' and the other follows 'Living Constitutionalism.' Different ideas on how the Constitution should be applied today are offered by these schools of thought.

After the remarkable case of 'Maneka Gandhi v. Union of India, 1978'[1], the Supreme Court gave a much broader meaning to fundamental rights. This decision indicated a transfer toward a more active and involved judiciary. Since then, an ongoing and intense debate has been fired up by the Court's proactive attitude. This was a clear shift from the past, where courts stuck to a strict and narrow reading of the Constitution. With support from Articles 13, 14, 19, 21, 32, and 226, the judiciary started playing a more active role. It began reading the Constitution in a way that matched the needs of a changing society.

2. Understanding Originalism and Living Constitutionalism

The debate between originalism and living constitutionalism is about how the Constitution should be understood over time. In India's case, the issue is even more complicated, as the Constitution is seen as dynamic and evolving. The question is how its meaning should adapt to political, cultural, and social changes. Originalism is about interpreting according to what the framers intended or the meaning they had in mind at the time they wrote it, whereas living constitutionalism sees the Constitution as a changing, flexible document that can address modern needs. The two approaches have had a significant and profound impact on the evolution of Indian jurisprudence in the post - Maneka Gandhi era when the court kept vacillating between these two approaches to interpretation of the various rights guaranteed under the Constitution.

2.1 Originalism: Anchoring Constitutional Interpretation in Foundational Intent

The term "Originalism" was propounded by Paul Brest in 1980 in a journal article of Boston University Law Review namely 'The Misconceived Quest for the Original Understanding'[2]. An 'originalist' interpretative philosophy seeks to bind judges rigorously to the amending text and original intentions of the constitution framers. This approach is necessary to maintain stability and predictability in legal interpretation whereby the Constitution- as a foundational document-remains sacrosanct. Supporters say anything beyond is an overstep in judicial authority and an assault of the separation of powers by turning courtrooms into legislatures.

Early pronounced judicial interpretations, especially in Indian context, often defaulted to originalism, as seen in cases like 'A.K. Gopalan v. State of Madras, 1950'[3]. In this context, the Court interpreted the right to personal liberty under Article 21 in a narrow sense, in line with the framers' intent and respected legislators' authority. This stood in name for the principle of judicial restraint — that a court exists not to make laws but to interpret them. Critics counter that originalism may overlook timely issues never envisioned by the Constitution's framers, such as privacy in the digital age or LGBTQ+ rights.

2.2 Living Constitutionalism: Adapting to Evolving Societal Norms

On the other hand, the idea of "living constitutionalism" argues that society can change the Constitution as it evolves. It is indicated by this approach how freedom, justice, and fairness are aimed to be protected by the Constitution—even in the presence of modern problems that were not familiar to its framers. The idea of a 'living Constitution' was propounded by Woodrow Wilson in his book, "Constitutional Government In The United States"[4], which was published in 1908. In it, he stated that the society was meant to help the Constitution flourish and it must be amended with the changing circumstances, rather than being strictly bound by the original intentions of its framers. After the 'Maneka Gandhi' case, a more active and flexible approach was begun to be adopted by the Indian judiciary.

A decisive moment was marked by this historic case, showing that the Constitution isn't rigid and can be grown and adjusted with society while its core principles are adhered to. The Supreme Court applied the harmonious construction rule of interpretation to expand the scope of Article 21. It recognised that the right to life and personal liberty under Article 21 must be read harmoniously with Article 14 and 19. This judgment moved away from the narrow approach taken in the 'A.K. Gopalan' case. Later, in the landmark case of 'Kesavananda Bharati v. State of Kerala, 1973'[5], which established the doctrine of basic structure, the apex court described limits of constitutional amendments. Similarly, in 'K.S. Puttaswamy v. Union of India, 2017'[6], the right to privacy was recognised as a fundamental right by the Supreme Court. It supported the view that the Constitution should be amended with the changing times, while maintaining its core values.

3. Post-Maneka Gandhi Era: Judicial Expansionism

In the ‘Maneka Gandhi’ case, the petitioner contended that the government take away her passport without any reasonable explanation. This action was questioned by her, with the challenge that it was an unnecessary encroachment on her fundamental rights given under Article 14, 19, and 21 of the Indian Constitution. These three Articles are portrayed as the “Golden Triangle of Fundamental Rights” in the landmark judgement of ‘Minerva Mills Ltd. and Others v. Union of India and Others (1980)’[7]. The Supreme Court delivered a landmark judgment by holding that such an arbitrary move breached her constitutional protections. The Court said that Article 21 protects life and personal liberty. A person can be deprived of these rights only through a fair, just, and reasonable legal process. This judgement added a strong layer of protection to investigation procedures. They must now follow fairness—not just rely on basic or unambiguous rules.

This judgement changed the earlier approach taken in the ‘A.K. Gopalan’ case, which gave a very narrow view of Article 21. It broke down the rigid separation between different fundamental rights by exploring their entrenched correlations. The ‘Maneka Gandhi’ judgment recognised that fundamental rights are interconnected and support each other. It arranged the legal groundwork for comprehensive judicial involvement in safeguarding personal liberties. This was the time when judiciary transformed from being a “Passive Interpreter” to an “Active Guardian” of Constitutional Values.

3.1 Judicial Activism and the Public Interest Litigation (PIL) Revolution

After the ‘Maneka Gandhi’ judgment, the judiciary began using Public Interest Litigation (PIL) as a mechanism to resolve social issues. During this period, the courts took a more vibrant responsibility. Judges like Justice P.N. Bhagwati and Justice V.R. Krishna Iyer played a key role so that non-governmental organisations and ordinary citizens can file petitions in the best interests of indigenous or marginalised group of society. The courts also eased the strict rules of locus standi, which previously required only directly affected individuals to file a case. This change empowered the judiciary to interfere in the larger concerns of prejudice and weak governance. One of the most important examples of this change was the case of ‘S.P. Gupta v Union of India, 1981’[8]. It displayed how a PIL could be used to challenge administration’s accountability and encourage transparency.

In ‘M.C. Mehta v. Union of India, 1986’[9], the judiciary played an active role in defending the environment. It gave clear instructions to prevent pollution and safeguard public health. In another landmark case, ‘Vishaka v. State of Rajasthan, 1997’[10], the Supreme Court dealt with a gap in the law by creating guidelines to prevent sexual harassment of women at the workplace, which later became the basis of “The Sexual Harassment Of Women At Workplace (Prevention, Prohibition And Redressal) Act, 2013”. These cases show how the judiciary explains the Constitution as a living document. It acclimatises the meaning of its provisions to meet the changing needs of the general public. This phase was, however, not without its share of controversy and it set off the most robust debates on judicial overreach as critics argued that often such activism transgressed upon the domains apportioned to the legislature and the executive.

3.2 Role of judiciary in governance and policy-making process

The post- Maneka Gandhi period also witnessed judicial review intruding into the preserves of governance and policy-making to uphold constitutional values. In ‘S.R. Bommai v. Union of India, 1994’[11], the Court laid down principles to avoid misuse of Article 356, which hence protected federalism. Similarly, in ‘Minerva Mills’ case, the judiciary upheld the basic structure doctrine. This reinforced the judiciary's power to review constitutional amendments and provide protection against any misuse of legislative power. Although, such actions were seen as steps toward strengthening democracy and ensuring

accountability, they also raised concerns. Many felt that the judiciary was stepping into areas meant for the legislature and the executive.

The judiciary's growing role, after the 'Maneka Gandhi' case, has faced some criticism. Critics contend that judicial activism, taken to extremes, risks breaking with the principle of separation of powers and democratic accountability. Instances like 'Subramanian Swamy v. A. Raja, 2012'[12], popularly known as '2G Spectrum Case' and 'Manohar Lal Sharma v. The Principal Secretary, 2014'[13], infamously known as 'Coal Block Allocation Case', which brought judicial activism to a point of policy paralysis, indicate the risks of overreach. Moreover, critics argue that while the judiciary's interpretations can be quite broad, they are not always applied consistently — and lack transparency — demanding accountability from the judiciary.

4. Importance of Judicial Restraint

The doctrine of judicial restraint is often attributed to American jurist James Bradley Thayer - one of the leading constitutional scholars of the 19th century. In his writings, especially his article 'The Origin and Scope of the American Doctrine of Constitutional Law,'[14] published in the Harvard Law Review in 1893, Thayer encouraged courts to be judicially restrained and defer to the legislative and executive branches unless an act constitutes a clear and undeniable violation of the Constitution. Judicial restraint is premised on the principle that policy is better decided by representatives of the people, who are held directly accountable to the electorate. As unelected officials, judges should tread carefully and not supplant the role of lawmaker with that of law interpreter—or in Amato's case, law-maker-or-amender. Through this way, the judiciary acts as a protector of the constitution. It stops the legislature and executive from going too far, while keeping itself in check.

4.1 Cases Advocating Judicial Restraint

In India, Supreme Court often practice judicial restraint. For example, in the 'A.K. Gopalan' case, the Hon'ble Court stuck to the legal process under Article 21. It didn't question if the process was fair, keeping its focus narrow. The judges checked only whether the law followed the correct procedure. Similarly, in 'State of Rajasthan v. Union of India, 1977'[15], the Court backed the President's power to dissolve state assemblies. This showed it valued the executive's control over political matters. Another landmark case of 'S.R. Bommai' highlights this balance. Here, the Apex Court respected the executive's authority but added rules to stop misuse of Article 356. Still, it didn't take over the President's decision.

4.2 Need for Judicial Restraint

Judicial restraint is fundamental for safeguarding the separation of powers authorised by the Constitution of India. It prevents the judiciary from invading the domain of the legislature or the executive, both of which draw their authority from democratic processes. Nothing in this process is automatic or impulsive, and its only downside comes when a court finds itself overstepping its bounds and ends up infringing or unduly interfering with policymaking, thereby upsetting the constitutionally prescribed dynamic of power-sharing in a constitutional democracy.

Also, judicial restraint respects the principle of institutional competence. While they wield some power, legislatures and executives have greater resources, expertise and public opinion on hand when tackling complex socio-economic problems. Budgetary allocations or determinations of public welfare policies, for example, or signing or ratifying international treaties, should be left to the discretion of elected representatives and not to judicial scrutiny. By exercising restraint, courts also honour the expertise and democratic mandate of other branches of government.

5. Judicial Activism vs. Restraint: The Balancing Act

In constitutional democracies, the judiciary serves as not just the interpreter of the law but also the guardian of the Constitution. In India, this role has undergone a remarkable evolution after the post-Maneka Gandhi era. Balancing judicial activism and judicial restraint is crucial to preserving the credibility of the judiciary and preventing it from overriding the jurisdictions of the legislature and the executive.

5.1 The Responsive Nature of the Constitution

India's Constitution is a living document, meant to be amended to reflect changing social, economic and political realities. This flexibility can only be achieved with a judiciary that strikes a balance between the static reading of originalism and the dynamic approach of living constitutionalism. The judiciary has actively expanded the ambit of fundamental rights through judicial activism, but it has also exercised restraint when judicial deference to other branches of government was warranted.

The Apex Court's decision in 'Kesavananda Bharati' case is one such example where the court enunciated the doctrine of the basic structure, safeguarding certain constitutional principles from being violated. While the decision in the 'Maneka Gandhi' case came afterwards, the doctrine continues to inform the court's approach to judicial review, according to which, whilst needing to ensure that Parliament does not overstep its bounds, the court must also recognize the sanctity of parliamentary sovereignty.

5.2. Judicial Activism: The Catalyst for Social Justice

The term "Judicial Activism" was introduced by Arthur Schlesinger Jr.'s in his article titled 'The Supreme Court: 1947'[16], published in the January 1947 issue of Fortune magazine. Judicial activism has historically served to tackle systemic injustices and protect core rights — a recognized role of the judiciary. Even in the 'Maneka Gandhi' judgment itself, the Court expanded the meaning of Article 21, changing the right to life and personal liberty into a strong edifice of human dignity. This decision represented a movement toward a broader and more activist understanding of constitutional rights.

Other subsequent cases — such as 'Vishaka', which established guidelines to prevent sexual harassment in the workplace — also indicate a proactive role played by the judiciary in taking on issues left by the legislature unaddressed. Likewise, in the 'Puttaswamy' case, the Court unanimously recognized an individual's right to privacy, safeguarding personal choices and freedoms socioeconomically, sexually and politically. In 2018, in the case of 'Navtej Singh Johar v. Union of India, 2018'[17], the Court quashed Section 377 of the Indian Penal Code, decriminalizing homosexuality and recognizing LGBTQ+ rights. These cases show how living constitutionalism, through judicial activism, can uphold social justice.

5.3 Balancing Activism and Restraint with checks on judicial overreach

The challenge for the judiciary is identifying when to practice activism versus when to be more restrained. This very balance was on display in 'Justice Puttaswamy' case, where the Supreme Court, while recognizing the right to privacy as a fundamental right under Article 21, also reiterated that all laws that infringe privacy need not be struck down. The Court's decision was activist in defining privacy but restrained in leaving specifics of regulation to the legislature. Likewise, in the 'M. Siddiq (D) thr. L.Rs. Vs. Mahant Suresh Das and Ors, 2019'[18], popularly known as the Ayodhya Verdict, the Apex Court exercised impressive restraint while dealing with a highly sensitive issue. This decision put an old feud to rest. It reminded everyone to respect constitutional values and to protect communal harmony.

The phrase "judicial overreach" is often used to suggest that courts have gone beyond their proper role. This disturbs the balance between active interpretation of law and required restraint. In the case of 'Divisional Manager, Aravali Golf Club v. Chander Hass, 2008'[19], the court warned against judges acting like lawmakers or executives. Judges must stay within the Constitutional structure and should

follow the principles like proportionality. Judiciary's self-restraint is also equally important so that rulings don't appear arbitrary or politically driven. By merging careful activism with restraint, the judiciary can maintain public trust as well as protect our constitutional order.

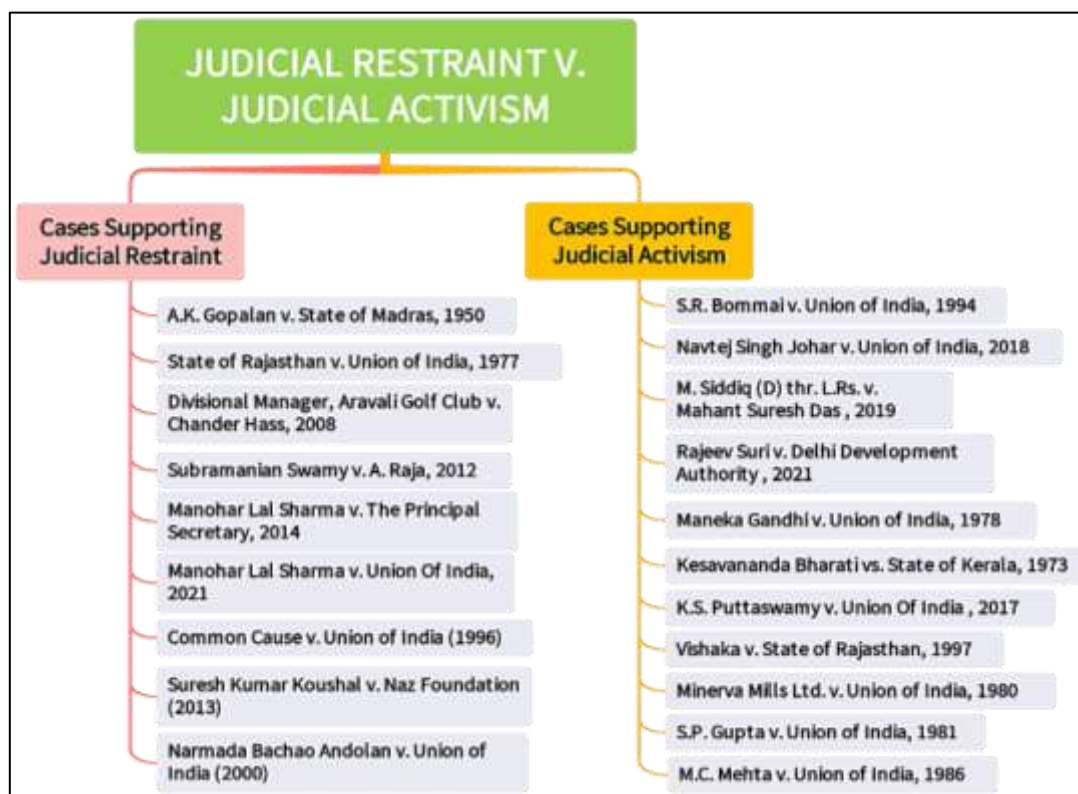


Figure 1. Cases supporting Judicial Restraint and Judicial Activism

6. Challenges and Contemporary Issues

6.1 Judiciary in a Democracy

Courts in a democracy must protect the Constitution and safeguard fundamental rights. Yet they also need to respect the division of powers. Since the 'Maneka Gandhi' judgment, some judicial interventions have sparked concern. Critics worry that judges sometimes step beyond their role and enter areas reserved for lawmakers or the executive. Meanwhile, judicial restraint, where it should matter most, has at times been accused of inaction. This duality underscores the precarious place the judiciary holds in a robust democracy like India.

6.2 Judicial Overreach and backlash

Accusations of judicial overreach emerged in recent years in cases where the judiciary seemed to encroach on the executive functions. In the 'Rajeev Suri v. Delhi Development Authority and Others'[20], popularly known as 'Central Vista Project Case', critics have said that the judiciary avoided rigorously questioning government decisions on major public resource allocation and heritage conservation consequences. These instances provoke questions about whether judicial intervention is a remedy for activism or overreach, illustrating the slim thread between the two.

6.3 Failure to Act: Judicial Inertia

On the other hand, the judiciary's hesitance to strike down sensitive issues can also frustrate the public. One such case was 'Manohar Lal Sharma v. Union of India, 2021'[21], which is infamously known as the

‘Pegasus Surveillance Case’, had raised fears of possible encroachment of citizens’ privacy by the State. The judiciary’s tardiness in resolving such issues was criticized as undermining its role as a guardian of rights, leaving not fully resolved tensions between institutional accountability and judicial restraint.

7. Conclusion

Judicial activism must be balanced with restraint to protect the core of India’s constitutional framework. Even in any post- Maneka Gandhi scenario, the judiciary’s function as the final interpreter of the Constitution makes it the fulcrum of this balancing act. Judicial activism has, indeed, transformed fundamental rights and has been instrumental in combating inequities in our society, but overreach will upset the balance of power between the legislature, executive and the judiciary. On the other hand, excessive restraint would thwart the ability of the judiciary to protect the rights of citizens and the rule of law.

The Indian constitutional structure is crafted to be dynamic but stable. Living constitutionalism has enabled the courts to be dynamic and responsive to changing social conditions, so have been able to confront issues ranging from environmental protection, gender equality, to privacy rights. Landmark decisions such as ‘K.S. Puttaswamy’ and ‘Navtej Singh Johar’ highlight the potential of the judiciary to uphold progressive ideals. Simultaneously, judicial restraint, as seen in cases notably like ‘S.R. Bommai,’ means that courts are required to defer to the democratic mandate of elected representatives and stay out of the business of policymaking.

We need a nuanced approach to the future of judicial interpretation in India, to help ensure confidence in constitutional governance. Judiciary should follow a self-disciplined approach and step in only to safeguard fundamental rights or when laws or acts of executives run contrary to the spirit of the Constitution. But it also has to be careful of going too far and undermining its own democratic institutions. By finding an equilibrium between activism and restraint, the judiciary can continue to serve as a bulwark of justice, equity, and constitutional morality. By so doing, it won’t just give effect to its very basis, it will also secure stronger democracy in the country, and one that keeps the concepts of accountability, separation of powers, and the rule of law.

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