
TRANSFORMING CONSTITUTIONAL GOVERNANCE: THE DUAL ROLE OF JUDICIAL ACTIVISM AND RESTRAINT

Priyanka Pakhare, Balaji School of Law (BSL), Sri Balaji University Pune

ABSTRACT

The Constitution of India stands as the living framework of a nation, reflecting its core values, principles, and institutional design. Within this structure, judicial activism plays a crucial role in upholding constitutional governance, particularly in addressing modern human rights issues that outdated legal provisions may not adequately cover. The judiciary's function in safeguarding human rights, including life and liberty, and maintaining the rule of law must be vigorous and proactive. When guided by constitutional principles and exercised with prudence, judicial activism becomes a powerful instrument for good governance.

Judicial activism differs from judicial restraint by embodying a more proactive judicial approach to addressing gaps or failures in executive and legislative actions. While it remains within constitutional limits, it reinforces the judiciary's responsibility to uphold democratic ideals. Though separate from judicial review, both concepts are closely linked, working together to maintain a balance of power and ensure institutional accountability.

A comparative analysis of South Africa, Canada, and the United States demonstrates how courts dynamically interpret constitutional mandates to address evolving societal challenges. This study employs doctrinal methodology, constitutional interpretation, and case law analysis to critically evaluate judicial activism and judicial restraint. It finds that judicial activism has been essential in promoting democratic values and safeguarding individual rights, while judicial restraint plays a crucial role in maintaining institutional balance and preventing judicial excess.

The research advocates for a harmonious integration of both doctrines to uphold constitutional supremacy and improve justice delivery in India. It also highlights the judiciary's evolving role, as seen in the Supreme Court's decision in *In Re: Demolition of Structures Near Delhi Ridge*, where judicial activism was used to protect the environment by ordering the demolition of illegal constructions.

Keywords: Judicial Activism, Judicial Restraint, Governance, Democracy, Constitution.

INTRODUCTION

“Good Governance attracts the world to invest; it is Judicial Activism¹ that converts such attraction into unquestionable Trust and Judicial Restraint² that ensures such trust is preserved through constitutional fidelity.”³

In a tripartite system of governance, the judiciary serves as a crucial organ tasked with upholding justice and maintaining constitutional balance.³ To protect every citizen’s right to fair adjudication, it often exercises measured authority within the constitutional framework.⁴ Judicial Activism⁵ is displayed in diverse ways in different countries and legal systems, influenced by historical, cultural, and political backgrounds. While certain countries support a proactive judiciary to promote social justice and safeguard rights, others are wary, fearing excessive interference and a weakening of democratic values.⁶ This investigation shows how Judicial Activism acts as a driver of change and a point of disagreement in the understanding of constitutional law globally.

Judicial Restraint⁷ embodies the principle that courts should limit their intervention to cases where statutory interpretation is necessary, refraining from encroaching upon legislative or executive domains unless constitutionally mandated.⁸ Its relevance arises in contexts where judicial overreach may risk undermining democratic processes, prompting courts to rely strictly on the text and intent of the Constitution.⁹

ORIGIN AND HISTORICAL CONTEXT OF JUDICIAL ACTIVISM

The concept of Judicial Activism¹⁰ originated in the United States, coined by Arthur Schlesinger Jr. in 1947.¹¹ It represents the proactive role of the judiciary in interpreting laws and ensuring justice beyond mere statutory limits. In India, Judicial Activism gained

1. Black’s Law Dictionary 1017 (11th ed. 2019).

2. *Id.* at 1018.

3. M.P. Jain, *Indian Constitutional Law* 45 (8th ed. 2018).

4. India Const. pmb.; art. 50.

5. H.M. Seervai, *Constitutional Law of India* vol. 1, 392–93 (4th ed. 2013).

6. Granville Austin, *The Indian Constitution: Cornerstone of a Nation* 263–64 (Oxford Univ. Press 1999).

7. Aharon Barak, *The Judge in a Democracy* 55–58 (Princeton Univ. Press 2006).

8. Justice P.N. Bhagwati, “Judicial Activism and Public Interest Litigation,” 23 *Colum. J. Transnat’l L.* 561 (1985).

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

10. Black’s Law Dictionary 1017 (11th ed. 2019).

11. Arthur Schlesinger Jr., “The Supreme Court: 1947,” *Fortune Magazine* (Jan. 1947).

momentum in the post-independence era, inspired by the Constitution's ideals of social, economic, and political justice.¹² Visionary judges like Justice V.R. Krishna Iyer, Justice P.N. Bhagwati, Justice O. Chinnappa Reddy, and Justice D.A. Desai expanded the scope of *Judicial Review*¹³ to address governmental inaction and protect citizens' rights.

Justice (Retd.) Janardan Sahay described Judicial Activism as the “expansion of judicial review in both administrative and legislative domains”¹⁴ the doctrine of *Judicial Review* thus forms the foundation of Judicial Activism, as it empowers courts to examine and correct actions of other branches of government that violate constitutional principles.¹⁵

Judicial Activism views the Constitution as a living document¹⁶ that must evolve with changing social needs. It enables the judiciary to fill legislative gaps, expand fundamental rights, and uphold constitutional morality when the legislature or executive fails to act effectively.¹⁷ Globally, Judicial Activism has developed differently across nations. In South Africa, it emerged post-apartheid (1994) to enforce equality, dignity, and socio-economic rights under the 1996 Constitution, with landmark cases like *S v. Makwanyane*¹⁸ abolishing the death penalty and *Minister of Health v. Treatment Action Campaign*¹⁹ ensuring healthcare access. In Canada, the 1982 *Charter of Rights and Freedoms* empowered courts to interpret rights expansively.²⁰ The Supreme Court displayed balanced activism in cases like *R. v. Morgentaler*²¹ on reproductive rights and *Carter v. Canada (Attorney General)*²² on assisted dying, while maintaining legislative dialogue through the concept of “dialogic constitutionalism.”²³ In the United States, modern Judicial Activism began with *Marbury v. Madison*²⁴, which established Judicial Review. The Warren Court (1953–1969) advanced civil liberties through cases like *Brown v. Board of Education*²⁵ and *Roe v. Wade*²⁶. Later courts adopted more

12. Granville Austin, *The Indian Constitution: Cornerstone of a Nation* 265–68 (Oxford Univ. Press 1999).

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

14. Janardan Sahay, “Judicial Activism in India: Prospects, Challenges and Threat,” Inaugural Conference Address (2018).

15. M.P. Jain, *Indian Constitutional Law* 245–46 (8th ed. 2018).

16. H.M. Seervai, *Constitutional Law of India* vol. 1, 401 (4th ed. 2013).

17. Aharon Barak, *The Judge in a Democracy* 63–65 (Princeton Univ. Press 2006).

18. *S v. Makwanyane*, 1995 (3) SA 391 (CC) (S. Afr.).

19. *Minister of Health v. Treatment Action Campaign (TAC)*, 2002 (5) SA 721 (CC) (S. Afr.).

20. *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982*, c. 11 (U.K.).

21. *R. v. Morgentaler*, [1988] 1 S.C.R. 30 (Can.).

22. *Carter v. Canada (Attorney General)*, [2015] 1 S.C.R. 331 (Can.).

23. Peter W. Hogg & Allison A. Bushnell, “The Charter Dialogue Between Courts and Legislatures,” 35 *Osgoode Hall L.J.* 75 (1997).

24. *Marbury v. Madison*, 5 U.S. (1 Cranch) 137 (1803).

restrained approaches, as seen in *Dobbs v. Jackson Women's Health Organization*²⁷, reflecting the ongoing tension between activism and judicial conservatism.

DEVELOPMENT OF JUDICIAL ACTIVISM IN INDIA

In India, Judicial Activism²⁸ has developed in reaction to violations of human rights and excessive government power, especially following the Emergency Period in the 1970s.²⁹ The Indian legal system utilizes tactics such as Public Interest Litigation (PIL)³⁰ to tackle societal injustices, enabling the judiciary to be proactive in safeguarding the rights of individuals. Similarly, in South Africa, Judicial Activism³¹ is marked by a strong commitment to human rights and social justice, shaped by the country's history of apartheid.³² In the United States, Judicial Activism³³ is characterized by the Supreme Court's broad interpretation of the Constitution and frequent interventions in legislative and executive matters.³⁴ On the other hand, Canada demonstrates a more moderate approach to Judicial Activism, emphasizing the Rule of Law.³⁵

The constitutional foundation of Judicial Review³⁶ in India is established under Article 13, which empowers the Supreme Court and High Courts to examine pre-constitutional laws and determine their consistency with the principles of the present Constitution.³⁷ Any law found in conflict with constitutional values is rendered ineffective until amended or repealed. To ensure this balance, the Indian Constitution grants wide-ranging powers to the Supreme Court under Articles 32, 141, 142, and 144,³⁸ enabling it to issue appropriate directions or orders to address legislative or executive inaction, thereby filling the void until the concerned authorities fulfill their constitutional obligations.³⁹

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

26. *Roe v. Wade*, 410 U.S. 113 (1973).

27. *Dobbs v. Jackson Women's Health Organization*, 142 S. Ct. 2228 (2022).

28. *S.P. Gupta v. Union of India*, AIR 1982 SC 149 (India).

29. Upendra Baxi, *The Indian Supreme Court and Politics* 45–47 (Eastern Book Co. 1980).

30. Justice P.N. Bhagwati, "Judicial Activism and Public Interest Litigation," 23 *Colum. J. Transnat'l L.* 561, 563 (1985).

31. *Minister of Health v. Treatment Action Campaign (TAC)*, 2002 (5) SA 721 (CC) (S. Afr.).

32. *S v. Makwanyane*, 1995 (3) SA 391 (CC) (S. Afr.).

33. *Marbury v. Madison*, 5 U.S. (1 Cranch) 137 (1803).

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

35. Peter W. Hogg, *Constitutional Law of Canada* 41–43 (Carswell 2011).

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

37. India Const. art. 13.

38. *Id.* arts. 32, 141, 142, 144.

Overall, while Judicial Activism serves as a vital mechanism for upholding constitutional principles globally, its application and implications differ widely based on each country's unique legal and cultural landscape.⁴⁰

JUDICIAL ACTIVISM: A CONSTITUTIONAL NECESSITY

According to Justice William Rehnquist,⁴¹

“*Judicial Activism* means judicial legislation.”⁴²

Judicial Activism⁴² is nothing but judicial innovation, which continues to be one of the judiciary's most vital and enduring roles. It has significantly contributed to improving the quality of justice accessible to the public, making it a key instrument for judicial efficacy. However, this does not mean its limitations or the possibility of misuse should be ignored. *Judicial Activism* is not the only path to justice, nor is it necessary for every judge to adopt an activist approach. Nonetheless, its constructive influence is undeniable, and judges should apply it with discernment when circumstances genuinely warrant it.

Legislative enactments alone cannot always address every societal need. As Upendra Baxi rightly noted, Judicial Activism cannot be restricted by the boundaries of statutory language or legislative procedures.⁴³ An activist judge must exercise independent reasoning and sound judgment, rather than relying solely on constitutional or legislative texts.⁴⁴ In this context, the judge's role becomes inherently creative, using Judicial Activism thoughtfully to fill legal voids where existing laws prove inadequate.⁴⁵

The Supreme Court of India has played a pivotal role in shaping the contours of Judicial Activism through its landmark judgments.⁴⁶ These rulings have not only expanded the meaning of fundamental rights but have also acted as crucial safeguards for justice, equality, and environmental sustainability. Through judicial creativity and dynamic interpretation, courts

^{39.} M.P. Jain, *Indian Constitutional Law* 305–08 (8th ed. 2018).

^{40.} Aharon Barak, *The Judge in a Democracy* 75–77 (Princeton Univ. Press 2006).

^{41.} William H. Rehnquist, “Judicial Activism: The Problem and the Response,” *38 Tex. L. Rev.* 319 (1960).

^{42.} Black's Law Dictionary 1017 (11th ed. 2019).

^{43.} Upendra Baxi, *Courage, Craft and Contention: The Indian Supreme Court in the Eighties* 66–68 (N.M. Tripathi 1985).

^{44.} H.M. Seervai, *Constitutional Law of India* vol. 1, 398 (4th ed. 2013).

^{45.} M.P. Jain, *Indian Constitutional Law* 289–90 (8th ed. 2018).

have addressed governance failures and filled legislative voids, ensuring that constitutional promises are effectively realized.

One of the most significant international examples of *Judicial Activism* is *Minister of Health v. Treatment Action Campaign (TAC)*, 2002 (5) S.A. 721 (CC),⁴⁷ where the South African Constitutional Court ordered the government to expand access to antiretroviral drugs to prevent mother-to-child transmission of HIV. It found that the government's restrictive health policy breached the constitutional rights to health and equality under Sections 27 and 9. This landmark ruling showcases the transformative role of *Judicial Activism* in promoting socio-economic rights through pragmatic constitutionalism. The Court upheld democratic values while compelling the state to fulfil its constitutional obligations, reinforcing the judiciary's role as a protector of public welfare. The *TAC* judgment reflects balanced activism firm in delivering justice, yet respectful of institutional boundaries.

Similarly, in *Carter v. Canada (Attorney General)*, [2015] 1 S.C.R. 331,⁴⁸ the Supreme Court of Canada invalidated the criminal ban on physician-assisted dying, finding it breached Section 7 of the *Canadian Charter of Rights and Freedoms*, which protects the rights to life, liberty, and security. Recognizing shifts in societal values and medical ethics, the Court stressed the importance of proportionality and human dignity. This landmark ruling reflects *Judicial Activism* rooted in constitutional morality, advancing personal autonomy while directing Parliament to establish suitable safeguards.⁴⁹

In *Obergefell v. Hodges*, 576 U.S. 644 (2015),⁵⁰ the U.S. Supreme Court held that same-sex marriage is a constitutional right under the Due Process and Equal Protection Clauses of the Fourteenth Amendment. Although some viewed the decision as *Judicial Activism*, the Court emphasized that constitutional interpretation must evolve to preserve human dignity and equality. The ruling exemplifies progressive constitutionalism, expanding individual rights in line with societal change while remaining anchored in the constitutional framework.⁵¹ In the Indian context, *Judicial Activism* has evolved as a key mechanism for enforcing constitutional mandates and promoting social justice. In *Indian Young Lawyers Ass'n v. State*

^{46.} Granville Austin, *Working a Democratic Constitution: The Indian Experience* 290–92 (Oxford Univ. Press 1999).

^{47.} *Minister of Health v. Treatment Action Campaign (TAC)*, 2002 (5) SA 721 (CC) (S. Afr.).

^{48.} *Carter v. Canada (Attorney General)*, [2015] 1 S.C.R. 331 (Can.).

^{49.} Peter W. Hogg, *Constitutional Law of Canada* 55–56 (Carswell 2011).

of Kerala, (2019) 11 S.C.C. 1,⁵² the Supreme Court invalidated the long-standing ban on women's entry into the Sabarimala Temple, ruling that it contravened Articles 14 and 25 of the Constitution. The judgment exemplified assertive *Judicial Activism* in addressing gender discrimination. However, it also ignited debate over the judiciary's role in religious affairs, underscoring the ongoing tension between activism and restraint within the framework of constitutional governance.⁵³

A more recent example of Judicial Activism in environmental governance is *Ashok Kumar Sharma v. Union of India*, (2025) 8 S.C.C. (Order dated March 4, 2025),⁵⁴ where the Supreme Court took an assertive stance to address extensive deforestation in Hyderabad's Kancha Gachibowli area. Responding to unauthorized overnight tree falling, the Court directed all non-compliant States and Union Territories to establish expert committees within one month and complete environmental surveys within six months as per the Van Rules 2023. Invoking Article 21 and the public trust doctrine,⁵⁵ the Court censured the State of Telangana for neglecting green spaces and mandated geospatial monitoring and compensatory afforestation.

This case stands as a compelling example of how judicial intervention can drive public law and environmental reform, aligning with global standards such as SDG 13 (*Climate Action*) and SDG 16 (*Peace, Justice & Strong Institutions*).

Other cases such as *Confederation of Real Estate Developers' Associations of India (CREDAI) v. Union of India*, (2025) INSC 1112,⁵⁶ and *In Re: Demolition of Structures Near Delhi Ridge*, (2025) 7 S.C.C. 114,⁵⁷ further demonstrate the expanding scope of *Judicial Activism* in environmental jurisprudence. In *CREDAI*, the Court upheld the National Green Tribunal's directive classifying all building projects within five kilometers of eco-sensitive zones as "Category-A," reinforcing the precautionary principle and the right to a healthy environment under Article 21. Likewise, in *Delhi Ridge*, acting *Suo motu*, the Supreme Court ordered demolition of illegal structures, imposed penalties, and directed ecological restoration, underscoring that Judicial Activism becomes necessary when executive inaction threatens fundamental and ecological rights.⁵⁸

These judgments underscore the judiciary's evolving role as an instrument of social change and constitutional guardianship. Whether addressing gender equality, individual liberty, or environmental protection, Judicial Activism has served as a catalyst for reform, bridging the gap between constitutional ideals and social realities.⁵⁹

HISTORICAL EVOLUTION OF JUDICIAL RESTRAINT

The doctrine of Judicial Restraint⁶⁰ has evolved as a vital principle of constitutional adjudication across major democracies such as the United States, India, South Africa, and Canada. In the United States, it emerged as a counterbalance to Judicial Activism following *Marbury v. Madison*⁶¹. Jurists like Justice Oliver Wendell Holmes and Justice Felix Frankfurter cautioned courts against substituting judicial preferences for legislative judgment.⁶² After the interventionist *Lochner Era* (1897–1937), the Court's decision in *West Coast Hotel Co. v. Parrish*⁶³ reaffirmed deference to legislative policy and restored institutional balance.⁶⁴

In India, restraint developed as an essential complement to activism.⁶⁵ The framers envisaged a judiciary strong yet disciplined under the separation of powers.⁶⁶ Post-independence, the Supreme Court largely followed restraint until the post-Emergency period, when activism through *Public Interest Litigations (PILs)* gained prominence.⁶⁷ Even then, jurists such as Justice H.R. Khanna and Justice J.S. Verma emphasized that restraint ensures legitimacy and prevents judicial overreach.⁶⁸

In South Africa, post-apartheid constitutionalism promoted transformative justice, yet the Constitutional Court maintained institutional respect. In *Economic Freedom Fighters v. Speaker of the National Assembly*⁶⁹, the Court enforced accountability without intruding into executive functions, reflecting principled restraint within an activist framework.⁷⁰

In Canada, restraint operates through *dialogic constitutionalism*⁷¹ under the *Charter of Rights and Freedoms* (1982). In *Canada (Attorney General) v. Bedford*⁷² and *Carter v. Canada (Attorney General)*⁷³, the Supreme Court struck down unconstitutional laws but deferred to Parliament for policy reform.⁷⁴ This approach balances rights protection with democratic responsibility.⁷⁵

^{50.} Upendra Baxi, *The Indian Supreme Court and Politics* 112–14 (Eastern Book Co. 1980).

^{51.} B. Shiva Rao, *The Framing of India's Constitution: A Study* vol. 4, 256 (Universal Law Publ'g 2006).

^{52.} *S.P. Gupta v. Union of India*, AIR 1982 SC 149 (India).

^{53.} H.R. Khanna, *Neither Roses nor Thorns* 245–46 (Eastern Book Co. 1980); J.S. Verma, "Judicial Restraint: A Virtue of Strength," *All India Reporter Journal* (1998).

^{54.} *Marbury v. Madison*, 5 U.S. (1 Cranch) 137 (1803).

^{55.} Felix Frankfurter, "Some Reflections on the Reading of Statutes," 47 *Colum. L. Rev.* 527, 533–35 (1947).

^{56.} *West Coast Hotel Co. v. Parrish*, 300 U.S. 379 (1937).

^{57.} Cass R. Sunstein, *One Case at a Time: Judicial Minimalism on the Supreme Court* 45–47 (Harv. Univ. Press 1999).

^{58.} Upendra Baxi, *The Indian Supreme Court and Politics* 112–14 (Eastern Book Co. 1980).

Across these systems, Judicial Restraint remains a stabilizing principle ensuring that judicial power is exercised with wisdom, humility, and respect for constitutional boundaries.⁷⁶

JUDICIAL RESTRAINT: LIMITING JUDICIAL POWER

Judicial Restraint⁷⁷ represents a philosophy of decision-making in which judges refrain from imposing their personal beliefs about public welfare and instead focus on interpreting the law strictly according to the legislature's intent and established precedents. It is the counterpart of Judicial Activism, symbolizing the other face of the same coin. Judicial Restraint holds particular importance for two key reasons. First, since the judiciary alone determines the jurisdictional boundaries of the other branches of government, this authority must be exercised with humility and caution.⁷⁸ Second, while errors made by lower courts may be corrected through appellate review, there exists no higher authority above the Supreme Court to rectify its own mistakes.⁷⁹ As Justice Markandey Katju aptly stated, "*In a democracy, the remedy for the malfunctioning of the legislature and the executive must come from the people, not the judiciary.*"⁸⁰ However, it must also be emphasized that Judicial Restraint should not become a shield for ignoring illegality or injustice, which the courts are duty-bound to address.⁸¹

Judicial Restraint is the antithesis of Judicial Activism.⁸² Restraint serves as a counterbalance to activism, ensuring the judiciary does not undermine democratic processes. The delicate balance between Judicial Activism and Judicial Restraint lies at the heart of constitutional

59. B. Shiva Rao, *The Framing of India's Constitution: A Study* vol. 4, 256 (Universal Law Publ'g 2006).

60. *S.P. Gupta v. Union of India*, AIR 1982 SC 149 (India).

61. H.R. Khanna, *Neither Roses nor Thorns* 245–46 (Eastern Book Co. 1980); J.S. Verma, "Judicial Restraint: A Virtue of Strength," *All India Reporter Journal* (1998).

62. *Economic Freedom Fighters v. Speaker of the National Assembly*, 2016 (3) SA 580 (CC) (S. Afr.).

63. Theunis Roux, *The Politics of Principle: The First South African Constitutional Court, 1995–2005* 268–70 (Cambridge Univ. Press 2013).

64. Peter W. Hogg & Allison A. Bushell, "The Charter Dialogue Between Courts and Legislatures," 35 *Osgoode Hall L.J.* 75 (1997).

65. *Canada (Attorney General) v. Bedford*, [2013] 3 S.C.R. 1101 (Can.).

66. *Carter v. Canada (Attorney General)*, [2015] 1 S.C.R. 331 (Can.).

67. Lorraine Weinrib, "Canada's Charter of Rights: Paradigm Lost?" 6 *Rev. Const. Stud.* 119, 124–26 (2001).

68. Kent Roach, *Constitutional Remedies in Canada* 412–15 (2d ed. Carswell 2010).

69. Justice P.N. Bhagwati, "Judicial Activism and Public Interest Litigation," 23 *Colum. J. Transnat'l L.* 561, 580 (1985).

70. Black's Law Dictionary 1085 (11th ed. 2019).

governance.⁸³ This balance ensures that courts fulfil their duty as guardians of the Constitution while respecting the democratic roles of the legislature and executive.

As the constitutional guardian of institutional boundaries, the Indian judiciary is entrusted with the responsibility of maintaining the delicate balance among the three organs of the State legislature, executive, and judiciary.⁸⁴ This principle assumes particular significance for two key reasons. First, the judiciary, as the final authority on constitutional interpretation under Articles 141 and 142, defines the jurisdictional limits of the other branches of government.⁸⁵ Such a role necessitates judicial modesty and restraint to prevent encroachment upon legislative and executive functions. Second, while subordinate courts are subject to appellate review, the apex judicial forum, under Article 124, has no higher authority to correct its own errors, thereby imposing a heightened duty of constitutional fidelity and institutional discipline.⁸⁶

Justice Markandey Katju aptly articulated this principle, stating, “In a democracy, the remedy for the malfunctioning of the legislature and the executive must come from the people, not the judiciary.”⁸⁷ However, *Judicial Restraint* must not be interpreted as a license for judicial abdication. Courts remain constitutionally obligated to intervene in instances of manifest illegality, arbitrariness, or violations of fundamental rights.⁸⁸ Thus, Judicial Restraint, when properly applied, preserves the delicate balance of powers while ensuring that the *Rule of Law* and constitutional supremacy remain intact.⁸⁹

The Supreme Court has also demonstrated remarkable prudence and constitutional discipline through its practice of Judicial Restraint.⁹⁰ While *Judicial Activism* seeks to expand the judiciary’s interpretative reach, restraint ensures that the Court does not overstep its institutional limits or encroach upon the legislative and executive domains.⁹¹ Judicial Restraint

71. Aharon Barak, *The Judge in a Democracy* 118–19 (Princeton Univ. Press 2006).

72. India Const. art. 141.

73. Markandey Katju, “Judicial Restraint,” *The Hindu* (Jan. 2007).

74. H.M. Seervai, *Constitutional Law of India* vol. 1, 412 (4th ed. 2013).

75. Cass R. Sunstein, *One Case at a Time: Judicial Minimalism on the Supreme Court* 22–23 (Harv. Univ. Press 1999).

76. M.P. Jain, *Indian Constitutional Law* 333–34 (8th ed. 2018).

77. B. Shiva Rao, *The Framing of India’s Constitution* vol. 4, 252 (Universal Law Publ’g 2006).

78. India Const. arts. 141–42.

79. *Id.* art. 124.

preserves the separation of powers, upholds democratic legitimacy, and reinforces public confidence in constitutional governance.⁹²

A leading example of this principle is *Hollingsworth v. Perry*, 570 U.S. 693 (2013),⁹³ where the U.S. Supreme Court declined to rule on California's same-sex marriage ban, citing the petitioners' lack of standing once state officials refused to appeal. The Court reaffirmed that Article III confines federal judicial authority to genuine "cases or controversies," thereby underscoring that even deeply significant social issues must be adjudicated within established jurisdictional boundaries.⁹⁴ By abstaining from pronouncing on the merits, the Court showcased Judicial Restraint as a guardian of constitutional procedure.

Similarly, in *Canada (Attorney General) v. Bedford*, [2013] 3 S.C.R. 1101 (Can.),⁹⁵ the Supreme Court of Canada struck down provisions criminalizing aspects of prostitution, holding that they violated Section 7 of the *Canadian Charter* by endangering sex workers. However, the Court suspended its declaration of invalidity for one year to allow Parliament time to legislate, exemplifying *dialogic constitutionalism*.⁹⁶ Chief Justice McLachlin emphasized that policymaking rests with the legislature, while the Court's function is to ensure constitutional compliance.⁹⁷

In *Economic Freedom Fighters v. Speaker of the National Assembly*, 2016 (3) SA 580 (CC),⁹⁸ the South African Constitutional Court held that the President's failure to comply with the Public Protector's recommendations was unconstitutional. Yet, it refrained from ordering his removal, instead directing Parliament to take corrective steps.⁹⁹

In the Indian context, the Supreme Court has likewise adopted a careful, constitutionally sensitive approach in politically and socially charged matters. In *Found. for Media Professionals v. Union of India*, (2020) 3 S.C.C. 637,¹⁰⁰ the Court chose not to invalidate

^{80.} Markandey Katju, *Judicial Restraint and the Role of the Judiciary in Democracy* (Lecture, Delhi University 2007).

^{81.} Upendra Baxi, *The Indian Supreme Court and Politics* 122–23 (Eastern Book Co. 1980).

^{82.} Aharon Barak, *The Judge in a Democracy* 129–30 (Princeton Univ. Press 2006).

^{83.} Granville Austin, *Working a Democratic Constitution* 310–12 (Oxford Univ. Press 1999).

^{84.} Justice P.N. Bhagwati, "Judicial Activism and Public Interest Litigation," *23 Colum. J. Transnat'l L.* 561, 578 (1985).

^{85.} H.R. Khanna, *Neither Roses nor Thorns* 262–63 (Eastern Book Co. 1980).

^{86.} *Hollingsworth v. Perry*, 570 U.S. 693 (2013).

^{87.} U.S. Const. art. III, § 2.

^{88.} *Canada (Attorney General) v. Bedford*, [2013] 3 S.C.R. 1101 (Can.).

government-imposed internet restrictions in Jammu and Kashmir but directed periodic executive reviews instead.¹⁰¹

Other cases such as *Dobbs v. Jackson Women's Health Organization*, 142 S. Ct. 2228 (2022),¹⁰² further illustrate the modern contours of restraint. In *Dobbs*, the U.S. Supreme Court overturned *Roe v. Wade* (1973), concluding that the Constitution does not establish a right to abortion. The Court's originalist majority reasoned that social policy questions, like abortion, belong to democratic deliberation at the state level rather than judicial creation.¹⁰³ Similarly, in *Supriyo @ Supriya Chakraborty v. Union of India*, (2023) 10 S.C.C. 1,¹⁰⁴ while recognizing equal dignity for queer individuals, the Supreme Court of India declined to extend marriage rights through judicial interpretation, holding that such changes require legislative action.¹⁰⁵

Further examples include *In Re: Electoral Bonds Scheme*, (2024) 9 S.C.C. 1,¹⁰⁶ where the Supreme Court invalidated opaque aspects of political funding but refrained from annulling past donations or disrupting elections thereby coupling activism with restraint. Likewise, in *Upholds Strict Environmental Laws: Prior Clearance Must for Projects, No Retrospective Approvals* (2025),¹⁰⁷ the Court invalidated retrospective environmental clearances while preserving administrative stability. In *State of Tamil Nadu v. Governor of Tamil Nadu*, (2025) 6 S.C.C. 211,¹⁰⁸ the Court corrected constitutional delays in granting assent to bills under Article 200 without issuing coercive orders, emphasizing restraint in maintaining institutional harmony.

These cases reveal that *Judicial Restraint* complements *Judicial Activism* as an essential pillar of constitutional adjudication.¹⁰⁹ While activism expands the reach of justice, restraint ensures that judicial authority remains rooted in constitutional text, process, and prudence. Together,

89. Peter W. Hogg & Allison A. Bushell, "The Charter Dialogue Between Courts and Legislatures," 35 *Osgoode Hall L.J.* 75 (1997).

90. Beverley McLachlin, "The Role of Judges in Modern Society," *Jud. Rev.* 1, 5–6 (2001).

91. *Economic Freedom Fighters v. Speaker of the National Assembly*, 2016 (3) SA 580 (CC) (S. Afr.).

92. Theunis Roux, *The Politics of Principle* 301–02 (Cambridge Univ. Press 2013).

93. *Found. for Media Professionals v. Union of India*, (2020) 3 S.C.C. 637 (India).

94. *Id.*

95. *Dobbs v. Jackson Women's Health Org.*, 142 S. Ct. 2228 (2022).

96. Laurence H. Tribe, *American Constitutional Law* 1041–42 (3d ed. 2000).

97. *Supriyo @ Supriya Chakraborty v. Union of India*, (2023) 10 S.C.C. 1 (India).

they maintain the delicate balance between intervention and deference essential for preserving constitutional democracy and the Rule of Law.¹¹⁰

KEY SIMILARITIES BETWEEN JUDICIAL ACTIVISM AND JUDICIAL RESTRAINT

Despite being viewed as contrasting judicial philosophies, Judicial Activism and Judicial Restraint share several fundamental similarities that strengthen constitutional democracy.¹¹¹ Both doctrines originate from the same constitutional foundation and aim to uphold justice, fairness, and the Rule of Law.¹¹² Each approach derives its legitimacy from the judiciary's duty to interpret and protect the Constitution, ensuring that all state actions conform to constitutional limits.¹¹³

Both philosophies are rooted in the doctrine of *Judicial Review*,¹¹⁴ which empowers courts to examine the legality of legislative and executive actions. While activism employs this power expansively to address injustice or governmental inaction, restraint applies it cautiously to preserve institutional harmony.¹¹⁵ In either form, the ultimate objective remains the same to protect fundamental rights, maintain constitutional supremacy, and reinforce public confidence in the judiciary.¹¹⁶

Moreover, both doctrines uphold the *Separation of Powers* by ensuring that no branch of government exceeds its authority.¹¹⁷ Judicial Activism intervenes when constitutional values are at risk, whereas Judicial Restraint ensures that courts do not intrude into the domains of the legislature or executive.¹¹⁸ Importantly, both are context-driven courts may adopt activism or restraint depending on the nature of the issue, societal need, and constitutional context.¹¹⁹

^{98.} India Const. art. 14.

^{99.} *In Re: Electoral Bonds Scheme*, (2024) 9 S.C.C. 1 (India).

^{100.} *Upholds Strict Environmental Laws: Prior Clearance Must for Projects, No Retrospective Approvals* (2025) (Legal Chamber India).

^{101.} *State of Tamil Nadu v. Governor of Tamil Nadu*, (2025) 6 S.C.C. 211 (India).

^{102.} M.P. Jain, *Indian Constitutional Law* 343–44 (8th ed. 2018).

^{103.} Aharon Barak, *The Judge in a Democracy* 150–51 (Princeton Univ. Press 2006).

^{104.} Cass R. Sunstein, *One Case at a Time: Judicial Minimalism on the Supreme Court* 26–27 (Harv. Univ. Press 1999).

^{105.} M.P. Jain, *Indian Constitutional Law* 347 (8th ed. 2018).

Thus, Judicial Activism and Judicial Restraint are not adversarial but complementary principles.¹²⁰ Together, they embody the judiciary's dual role to act decisively when justice demands intervention, and to remain measured when constitutional prudence requires restraint.¹²¹ This balance between dynamism and discipline ensures the continuing strength and credibility of constitutional governance.¹²²

COMPARATIVE ANALYSIS OF JUDICIAL ACTIVISM BETWEEN INDIA, SOUTH AFRICA, CANADA, AND THE USA

Judicial Activism has been effectively constitutionalized in South Africa, where courts are mandated to uphold socio-economic rights such as food, clothing, and housing.¹²³ In the *Treatment Action Campaign* case,¹²⁴ the Constitutional Court ensured access to life-saving anti-retroviral drugs. Similarly, in India, despite socio-economic rights not being directly enforceable, the Supreme Court has creatively expanded them through judicial innovation recognizing rights such as protection against malnutrition and the right to shelter.¹²⁵ Indian courts have even adopted supervisory roles to ensure compliance, reflecting an activist approach toward social justice.¹²⁶

On the other hand, Canada demonstrates a more moderate approach to Judicial Activism, emphasizing *the Rule of Law*.¹²⁷ The *Canadian Charter of Rights and Freedoms* is interpreted by the Supreme Court of Canada, which prioritizes balancing individual rights with legislative authority.¹²⁸ Although Canadian judges have been accused of activism in cases concerning social issues such as LGBTQ+ rights, they tend to prioritize legal reasoning over political ideology in their rulings.¹²⁹ Additionally, the judicial appointment process in Canada seeks to

^{106.} H.M. Seervai, *Constitutional Law of India* vol. 1, 412–13 (4th ed. 2013).

^{107.} *Marbury v. Madison*, 5 U.S. (1 Cranch) 137 (1803).

^{108.} Granville Austin, *Working a Democratic Constitution* 310–12 (Oxford Univ. Press 1999).

^{109.} Aharon Barak, *The Judge in a Democracy* 132–33 (Princeton Univ. Press 2006).

^{110.} India Const. arts. 50, 121–22.

^{111.} Justice H.R. Khanna, *Judicial Review and the Supreme Court* (1980).

^{112.} Peter Cane, *Controlling Administrative Power: An Historical Comparison* 243–44 (Cambridge Univ. Press 2016).

^{113.} Upendra Baxi, *The Indian Supreme Court and Politics* 125–26 (Eastern Book Co. 1980).

^{114.} Justice P.N. Bhagwati, “Judicial Activism and Public Interest Litigation,” 23 *Colum. J. Transnat'l L.* 561, 579 (1985).

^{115.} Beverley McLachlin, “Judicial Power and Democracy,” 6 *U. Queensland L.J.* 1, 7 (1988).

^{116.} S. Liebenberg, *Socio-Economic Rights: Adjudication under a Transformative Constitution* 44–46 (Juta 2010).

minimize bias, resulting in a judiciary generally perceived as less ideologically driven than its American counterpart.¹³⁰

In the United States, Judicial Activism is characterized by the Supreme Court's broad interpretation of the Constitution and frequent interventions in legislative and executive matters.¹³¹ For instance, landmark cases such as *Brown v. Board of Education*, 347 U.S. 483 (1954),¹³² illustrate how the Court used the *Equal Protection Clause* of the Fourteenth Amendment to overturn laws enforcing racial segregation. The history of the U.S. judiciary involves using Judicial Review to establish its power, resulting in major societal shifts as well as criticisms of excessive influence and political bias.¹³³ The introduction of politics into judicial appointments adds another layer of complexity, as justice could be seen as promoting specific ideologies.¹³⁴

Overall, while Judicial Activism serves as a vital mechanism for upholding constitutional principles globally, its application and implications differ widely based on each country's unique legal and cultural landscape.¹³⁵

TRANSFORMING CONSTITUTIONAL GOVERNANCE: STRIKING A BALANCE BETWEEN ACTIVISM AND RESTRAINT

To ensure a balanced relationship between Judicial Activism and Judicial Independence, several recommendations emerge from constitutional analysis, judicial precedents, academic scholarship, and comparative insights.¹³⁶ First, the Supreme Court or Parliament should codify clear guidelines defining the scope and limits of judicial activism.¹³⁷ This would prevent arbitrary interference in legislative and executive domains while preserving the judiciary's authority to act in exceptional circumstances. Second, judicial accountability mechanisms must

^{117.} *Minister of Health v. Treatment Action Campaign (TAC)*, 2002 (5) S.A. 721 (CC).

^{118.} *Olga Tellis v. Bombay Municipal Corp.*, (1985) 3 SCC 545 (India).

^{119.} *People's Union for Civil Liberties v. Union of India*, (2001) 5 SCC 577 (India).

^{120.} P. W. Hogg, *Constitutional Law of Canada* 113 (5th ed. 2019).

^{121.} *Carter v. Canada (Attorney General)*, [2015] 1 S.C.R. 331 (Can.).

^{122.} Kent Roach, *The Supreme Court on Trial: Judicial Activism or Democratic Dialogue?* 77–78 (Irwin Law 2001).

^{123.} Richard Albert, "Judicial Appointments in Canada," *14 German L.J.* 883, 887 (2013).

^{124.} Cass R. Sunstein, *Radicals in Robes: Why Extreme Right-Wing Courts Are Wrong for America* 58–60 (Basic Books 2005).

^{125.} *Brown v. Board of Education*, 347 U.S. 483 (1954).

^{126.} Barry Friedman, *The Will of the People: How Public Opinion Has Influenced the Supreme Court and Shaped the Meaning of the Constitution* 154–56 (Farrar, Straus & Giroux 2009).

be strengthened to avoid misuse of power without compromising judicial independence.¹³⁸ Third, capacity building and regular training for judges, particularly at lower levels, should focus on constitutional interpretation, socio-economic rights adjudication, ethics, and independence, thereby enhancing consistency and the quality of judicial reasoning.¹³⁹

Fourth, transparency in judicial functioning should be improved through measures such as live streaming of *Constitutional Bench* proceedings, publication of performance and pendency statistics, and making judgments more accessible via summaries and regional language translations.¹⁴⁰ Fifth, public legal awareness must be promoted through legal literacy programs, as many instances of judicial activism arise from institutional failures or lack of public understanding.¹⁴¹ Finally, India should draw comparative lessons from other constitutional democracies like the *United States*, *Canada*, and *South Africa*, where judicial activism is moderated by adherence to precedent, clear ethical standards, and the use of declaratory judgments over enforceable directives.¹⁴² These steps collectively aim to preserve the integrity, effectiveness, and democratic legitimacy of the judiciary.

A balanced, precedent-informed approach is key to aligning Judicial Activism with *Constitutional Governance*.¹⁴³ Judicial Intervention must be institutional, not personal, with decisions grounded in clear, consistent legal standards rather than individual preferences. For legitimacy and respect, rulings must apply universally accepted principles across contexts, reinforcing the Rule of Law and institutional credibility.¹⁴⁴ The balance between Judicial Activism and Judicial Restraint reflects the evolving complexity of constitutional interpretation. The Indian judiciary must uphold this equilibrium to safeguard democracy, justice, and fairness while serving as the *Constitution's Guardian*.

^{127.} Mark A. Graber, *A New Introduction to American Constitutionalism* 189–91 (Oxford Univ. Press 2013).

^{128.} Aharon Barak, *The Judge in a Democracy* 240–41 (Princeton Univ. Press 2006).

^{129.} Aharon Barak, *Proportionality: Constitutional Rights and Their Limitations* 15–16 (Cambridge Univ. Press 2012).

^{130.} M.P. Jain, *Indian Constitutional Law* 297 (8th ed. 2018).

^{131.} Upendra Baxi, *The Indian Supreme Court and Politics* 122–24 (Eastern Book Co. 2010).

^{132.} S.P. Sathe, *Judicial Activism in India: Transgressing Borders and Enforcing Limits* 221 (Oxford Univ. Press 2002).

^{133.} S. Krishnaswamy, “Democracy and Constitutionalism in India: A Study of the Basic Structure Doctrine,” *Oxford University Press* 179 (2009).

^{134.} Law Commission of India, *Report on Legal Literacy and Judicial Awareness* No. 278 (2023).

^{135.} Kent Roach, *The Supreme Court on Trial: Judicial Activism or Democratic Dialogue?* 103–05 (Irwin Law 2001).

^{136.} Sudhir Krishnaswamy, *Constitutionalism and the Rule of Law* 243 (Oxford Univ. Press 2016).

SUGGESTIONS AND RECOMMENDATIONS

Based on an analysis of constitutional provisions, judicial precedents, academic scholarship, and comparative insights, the following recommendations are proposed to ensure a healthy balance between judicial activism and judicial independence:

1. **Codification of Guidelines for Judicial Activism:** There is a need for the Supreme Court or Parliament to frame the guiding principles that clearly define the scope and limits of judicial activism. This will help prevent arbitrary judicial interference in legislative and executive functions, while preserving the judiciary's power to intervene in exceptional cases.
2. **Strengthening Judicial Accountability Mechanisms:** To ensure that judicial activism does not lead to the overreach or misuse of power, judicial accountability must be institutionalized without compromising independence.
3. **Capacity Building and Judicial Training:** Judges, especially at the lower levels, should be regularly trained in: Constitutional interpretation and limitations, Socio-economic rights adjudication, Ethics, and judicial independence. This reduces inconsistencies in judgments and improves the quality of judicial reasoning.
4. **Enhancing Transparency in Judicial Functioning:** To promote public confidence and accountability: Live streaming of constitutional bench proceedings (already recommended by the SC), Publishing of performance and pendency statistics, making judgments more accessible through summaries and translations in regional languages.
5. **Promoting Public Legal Awareness:** Many instances of judicial activism stem from the absence of public awareness or the failure of other institutions. Empowering citizens through Legal literacy programs.
6. **Comparative Learning from Other Democracies:** India can learn from the practices of other constitutional democracies, such as the USA, Canada, and South Africa:

^{137.} Cass R. Sunstein, *One Case at a Time: Judicial Minimalism on the Supreme Court* 8–9 (Harvard Univ. Press 1999).

^{138.} Justice H.R. Khanna, *Neither Roses nor Thorns* 311 (Eastern Book Co. 1985).

Judicial activism is tempered by strict adherence to judicial precedent. Clear standards exist for judicial ethics and independence. Courts often use declaratory judgments rather than enforceable directives.

CONCLUSION

Judicial activism and judicial restraint together define the dynamic character of constitutional governance in modern democracies. This study finds that judicial activism has served as a transformative force in advancing social justice, human rights, and environmental protection as seen in *In Re: Demolition of Structures Near Delhi Ridge (2025)*, where the Supreme Court acted to preserve ecological integrity through constitutional interpretation. Conversely, judicial restraint ensures stability by maintaining institutional balance and respecting the prerogatives of the legislature and executive.

A comparative assessment of South Africa, Canada, and the United States reveals that while activism enables the realization of constitutional ideals, restraint safeguards democratic legitimacy and prevents judicial overreach. Both doctrines, therefore, are not oppositional but mutually reinforcing aspects of judicial review. Judicial activism addresses governance failures through constitutional innovation, whereas judicial restraint preserves institutional harmony and the rule of law. Together, they strengthen constitutional supremacy, uphold democratic accountability, and ensure that justice in India and globally remains both principled and progressive.