



The Role Of Judicial Restraint In Upholding The Constitution: A Study Of Indian Jurisprudence

MUDITA SINGHAL

LL.M. (Hons.)

Department of Law, Prestige Institute of Management and Research

I. ABSTRACT

Judicial restraint is a guiding principle in constitutional law which encourages the courts of the nation to interpret laws based on their plain text and legislative intent, with minimal intervention in legislative and executive functions. In democratic systems, judicial restraint supports the separation of powers, ensuring that the judiciary respects the policymaking roles of elected representatives. This paper explores the role of judicial restraint in upholding constitutional values in Indian jurisprudence. Through an analysis of case law, constitutional provisions, and theoretical frameworks, it examines how judicial restraint promotes democratic principles, stability, and neutrality in the judicial process, while also assessing the potential risks associated with over-reliance on restraint. Using a doctrinal approach, preliminary sources i.e., judicial declarations and constitutional provisions, along with secondary academic commentaries, provide insight. Cases like *Kesavananda Bharati Case*, *Naz Foundation Case*, and the recent *Supriyo v. Union of India* illustrate the Indian judiciary's application of restraint. The analysis shows that judicial restraint in India has supported the separation of powers, especially during the nation's formative years. However, periods of excessive restraint, such as during the Emergency, reveal limitations, where restraint compromised fundamental rights. Post-Emergency, the Indian judiciary has navigated a middle path, using restraint to defer to legislative action while still protecting core constitutional values, especially through doctrines like the "basic structure" doctrine. Judicial restraint is crucial for maintaining a balanced democratic system and preserving judicial legitimacy, yet it poses challenges when excessively applied. The paper concludes that while judicial restraint encourages democratic solutions to rights-based issues and legislative accountability, over-reliance on restraint may inhibit necessary interventions, especially in emerging areas of social justice. Balancing judicial restraint with selective activism allows the judiciary to protect rights without undermining democratic governance, ensuring the judiciary remains a guardian of both constitutional principles and democratic values.

Keywords: Judicial restraint, fundamental rights, legislative autonomy, separation of powers.

II. INTRODUCTION

The courts and more particularly, High Courts and the Supreme Court acts as a protector of fundamental rights and plays a vital role in upholding the principals contained in the *grundnorm* i.e., the Constitution. With respect to Indian jurisprudence, the principle of judicial restraint has evolved to constitute and shape the interrelation amongst the different pillars or so to say the organs of governance i.e., the Legislature, Executive and Judiciary. The Indian Constitution, with its elaborative concepts of fundamental rights, directive principles, and institutional frameworks, lays the groundwork for judicial review. However, this power of review must be exercised within the limits of judicial power as entailed in the Constitution. Several historical as well as recent cases illustrate the tug between judicial activism and restraint, revealing how judicial overreach can disrupt the balance of power and lead to conflicts that compromises democratic governance. Thus, understanding the concept and every nook and cranny of judicial restraint becomes essential for analysing how courts can effectively uphold constitutional principles without encroaching on the powers and functions of other organs of government.

This paper explores the role of judicial restraint in preserving constitutional values, maintaining a balance of power among government branches, and reinforcing a stable democratic framework in India. It analyses significant Supreme Court judgments to show how judicial restraint helps the Court protect individual rights while respecting legislative autonomy, thereby promoting stability and democratic principles.

By emphasizing the importance of restraint, this study aims to underscore the judiciary's critical function in maintaining the delicate equilibrium between the rights, fundamental or any other, of individuals and society, and the power of the legislature, ensuring that the supreme law i.e., the Constitution continues to be an ever-evolving document that responds to the requirements of its people.

III. REVIEW OF LITERATURE

1. **Theoretical Foundations of Judicial Restraint**

A cautious and restraint approach of judges while interpreting laws and interfering in the work of the legislative and executive branches is what the principal of judicial restraint is about. There are scholars who align themselves strictly with the tone set by the Constitution. Alexander Bickel and Robert Bork are some of them, their opinion is that judges can only preserve their dignity by observing the Constitution defined boundaries and doing exactly what the Constitution mandates them to do – interpret laws made by the elected representatives. Basu, in Indian context, also addresses this issue, observing that the judiciary should respect parliamentary supremacy while protecting constitutional mandates.

2. **Judicial Restraint in the Indian Context**

In India, the principles of judicial restraint have evolved based on the tension between, on one hand, constitutionalism and on the other, democracy. Scholars like Upendra Baxi and A. V. Dicey have condemned what they regard as over-emphasis on power of exercising judicial review specially in the context of PIL. According to Baxi, judicial activism, while sometimes necessary, can undermine the role of elected institutions and lead to judicial overreach.

3. **Judicial Restraint vs. Judicial Activism: Landmark Cases in Indian Jurisprudence**

Judicial activism and judicial restraint has been the main theme of discussion of long-drawn legal process in India. Landmark cases such as Kesavananda Bharati case demonstrates how judiciary can interpret constitutional amendments and at the same time respect the principal of judicial restraint. This case introduced, what we call the principle of basic structure, which, although a form of judicial development, reflects a restrained approach as it limits the scope of legislative power without encroaching on policy-making.

In contrast, Indira Nehru Gandhi¹ and the Minerva Mills² cases showcased judicial restraint by recognizing the sanctity of constitutional principles while upholding democratic governance. Here, the judiciary underscored its duty to protect the constitution without engaging in direct policy formulation.

IV. **RESEARCH GAPS**

1. **Judicial Restraint in Emerging Fields**

Relatively small amount of study on judicial restraint in novel fields such as scientific and technological advancement, environmental preservation and liberal freedom has been done.

2. **Impact on Socio-Economic Rights**

Lack of analysis of the effects of judicial restraint on socio-economic rights, particularly for marginalized groups.

3. **Balancing Restraint and Activism in PIL**

Lack of frameworks for courts to balance restraint and activism in Public Interest Litigation cases.

4. **Empirical Impact on Governance**

Sparse empirical studies on how judicial restraint influences governance, judicial efficiency, and public trust.

V. **HYPOTHESIS**

Judicial restraint is essential for upholding constitutional values in India by allowing laws and policies created by elected representatives to prevail, thereby respecting democratic processes.

VI. **RESEARCH METHODOLOGY**

This paper adopted a doctrinal research methodology, also known as "library-based" research, which involves an in-depth perusal of primary along with secondary legal sources. It aims to examine, scrutinize, and analyse, and interpret the concept and implications of judicial restraint, especially with respect to the context of upholding constitutional principles and simultaneously protecting fundamental rights.

1. **Primary Sources:** The paper reviews constitutional texts, statutes, and landmark cases that define and apply judicial restraint. Important case law illustrates how courts uphold constitutional provisions and boundaries without overstepping into policy-making.
2. **Secondary Sources:** Scholarly articles, legal dictionaries, and judicial philosophical texts forms the secondary sources which offer insights into the theoretical and historical foundations of judicial restraint. These sources provide definitions, contextual background, and critiques of the principle.
3. **Analytical Framework:** A qualitative, interpretive approach evaluates the impact of judicial restraint on constitutional governance. The paper analyses arguments for and against judicial restraint, assessing its role in preserving the separation of powers and judicial impartiality.

VII. **THE PRINCIPLE OF JUDICIAL RESTRAINT: MEANING AND IMPORTANCE**

Meaning and Definition

Judicial restraint is a principle within constitutional law and judicial philosophy that advocates for a limited role of the judiciary in interfering with the working and authority of the legislature and the executive. It refers to the self-limiting nature of courts in exercising their powers, particularly when interpreting laws and adjudicating disputes. Judges who practice judicial restraint tend to interpret the legal provisions strictly as it is put in black

¹ (1975) 2 SCC 159.

² AIR 1980 SC 1789.

and white, focusing on the intent of the legislature rather than allowing their personal beliefs or broader interpretations to influence their decisions. The purpose of judicial restraint is to respect the separation of powers, uphold democratic principles, and maintain a stable and predictable legal framework.

The definition of judicial restraint, as provided in Black's Law Dictionary can be read as "*a philosophy of judicial decision making whereby judges avoid indulging their personal beliefs about the public good and instead try merely to interpret the law as legislated and according to precedent*".³ Under this doctrine, the judiciary refrains from declaring legislative acts unconstitutional unless they are manifestly at odds with the text of the constitution.

Evolution of Judicial Restraint

The ideology of judicial restraint discovers its origins in early constitutional theory, particularly in the works of scholars and legal philosophers such as James Madison and Alexander Hamilton, who emphasized the prerequisite of balance in separation and distribution of powers in government. Judicial restraint was further shaped by influential judicial decisions, particularly in the United States, where the concept found a strong proponent in Justice Oliver Wendell Holmes Jr.⁴ Holmes argued that the judiciary should avoid making decisions based on personal policy preferences, instead deferring to the judgment of elected representatives as much as possible.⁵

Throughout the 20th century, judicial restraint became a cornerstone of conservative judicial thought, especially in contrast to the judicial activism seen during certain periods in American history, such as the Warren Court era. However, it is not solely a conservative or liberal principle; it has been advocated by judges and scholars across the political spectrum as a safeguard for maintaining the judiciary's neutrality and legitimacy.

Importance of Judicial Restraint

1. **Maintaining the Separation of Powers:** Judicial restraint protects and supports the constitutional doctrine of power separation and distribution by establishing that each and every organ of government works within its assigned boundaries and designated confines. By practicing restraint, the courts uphold the authority of the legislative and executive branches, allowing elected officials to create and implement laws without undue interference.
2. **Safeguarding Democratic Principles:** Judicial restraint respects democratic values not interfering into policy-making and leaving it to public officials who are elected through democratic procedure and who are accountable to the people. This approach reduces the risk of an unelected judiciary imposing its will on the public, thus aligning judicial practices with the principles of representative democracy.
3. **Ensuring Judicial Stability and Predictability:** The consistent restraint approach of the courts allows to maintain a stable legal environment where laws are interpreted based on precedent rather than fluctuating judicial ideologies. This predictability fosters public trust in the legal system and allows individuals and businesses to plan their affairs with greater confidence in how laws will be interpreted, thus promoting socio-economic welfare as well.
4. **Maintaining Judicial Neutrality:** Judicial restraint enhances the credibility of the judiciary by preventing it from transgressing its boundaries. When courts exercise self-discipline and avoid engaging in policy-making, they reinforce the perception that judges are impartial arbiters rather than political actors. This neutrality is critical to sustaining public confidence in judicial decisions.
5. **Preventing Judicial Overreach:** Judicial restraint acts as a safeguard against judicial overreach, where courts may otherwise become overly involved in policy issues beyond their purview. By adhering to a limited interpretative role, judges avoid encroaching on legislative functions and ensure that the judiciary does not wield excessive power.

³ BRYAN A. GARNER, BLACK'S LAW DICTIONARY, 852 (Thomson Reuters West 2015).

⁴ Gregory Spindler, *Marbury v. Madison and The Question of John Marshall's Judicial Activism*, STARTING POINTS, (Nov 5, 2024, 9:24 AM), <https://startingpointjournal.com/marbury-v-madison-and-the-question-of-john-marshalls-judicial-activism/>.

⁵ Edmund Fuller, *Oliver Wendell Holmes, Jr.*, BRITANNICA, (Nov. 8, 2024, 04:13 PM), <https://www.britannica.com/topic/common-law>.

VIII. JUDICIAL RESTRAINT IN INDIAN JURISPRUDENCE

In democracy like India, the concept of judicial restraint is rudimentary to preserving the democratic process and upholding the Constitution's separation of powers. This principle encourages obeisance and consideration to distinct branches of government, promoting stability, predictability, and respect for the people's elected representatives. In India, judicial restraint serves as a counterbalance to judicial activism, ensuring the judiciary respects the functions of other branches. This restraint allows for the evolution of democratic governance without undue judicial interference, maintaining the judiciary's role as an impartial interpreter rather than a creator of law.

The Indian judiciary has evolved its approach to judicial restraint largely through case law. Judicial restraint initially gained prominence during the formative years of the Indian Supreme Court when the judiciary sought to avoid conflicts with the other branches of government. Over time, especially during and after the Emergency period (1975-1977), the Indian judiciary oscillated between activism and restraint. Key developments in the doctrine of judicial restraint include:

1. **Post-Independence Phase:** During the 1950s and 60s, the Indian judiciary often practiced restraint to allow the new nation's legislative and executive branches to establish governance structures.
2. **Emergency Period (1975-1977):** During this time, judicial restraint was viewed critically, as the judiciary largely refrained from intervening in government actions under Indira Gandhi's rule. The ADM Jabalpur or the Habeas Corpus Case⁶ is often cited as an example where judicial restraint was perceived negatively due to the judiciary's deference to the executive.
3. **Post-Emergency Era and Rise of Judicial Activism:** Post-1977, the judiciary adopted a more activist role to check abuses of power by the executive and legislature, often leading to debates on the balance between activism and restraint.

IX. CONSTITUTIONAL PROVISIONS SUPPORTING JUDICIAL RESTRAINT

Several constitutional provisions underline the judiciary's role and encourage judicial restraint by defining the separation of powers:

1. **Article 50:** Directive Principles emphasize the separating the judiciary from the other two organs, intending for the judiciary to act independently without encroaching upon executive functions.⁷
2. **Article 121 & Article 211:** These articles prohibit discussion of judicial conduct in Parliament and state legislatures, reinforcing the judiciary's independence and respect within its domain.⁸
3. **Articles 245-255:** Define the powers of Parliament and state legislatures to make laws, highlighting the framework within which the judiciary must interpret laws.⁹
4. **Article 368:** Endow upon the Parliament, the power to amend any of the provisions in the Constitution including fundamental, implicitly suggesting judicial restraint in interpreting amendments unless they violate the "basic structure" of the Constitution.¹⁰

⁶ ADM Jabalpur v. Shivkant Shukla, (1976) 2 SCC 521.

⁷ INDIA CONST., Article 50.

⁸ INDIA CONST., Article 121 & Article 211.

⁹ INDIA CONST., Articles 245-255.

¹⁰ INDIA CONST., Article 368.

X. ROLE OF JUDICIAL RESTRAINT IN UPHOLDING CONSTITUTIONAL VALUES

The concept of judicial restraint plays a critical role in upholding constitutional values by ensuring that the judiciary maintains a balance between interpreting laws and respecting the boundaries of other organs of government. This restraint is essential for the judiciary to protect democratic processes, honour the separation of powers, and uphold constitutional principles.

Judicial restraint supports the principle of separation of powers by preventing judicial overreach. Courts recognize that legislation and policymaking are primarily the domain of the legislature and executive, whose members are elected by and accountable to the public. This respect for the roles of other branches reinforces democratic accountability and avoids undermining the authority of elected officials. In federal structures like that of India and the United States, judicial restraint also supports the autonomy of state governments by limiting judicial interference in state matters unless they violate constitutional mandates.

In practicing restraint, judges rely on the following principles:

- **Deference to Legislative and Executive Decisions:** Judicial restraint mandates deference to the decisions of democratically elected bodies. It ensures that judges respect laws enacted by the representative authority who are directly answerable and responsible to the people, thereby reinforcing democratic principles.
- **Adherence to Precedents (Stare Decisis):** By following precedents, judicial restraint provides consistency and predictability in legal interpretations, upholding the stability of legal principles over time.
- **Narrow Rulings:** Judicial restraint often calls for rulings that are as narrow as possible, limited to the facts of the case at hand, and avoiding broad pronouncements that could affect areas beyond the specific case.¹¹

These principles aim to guard constitutional provisions and values by preserving the integrity of democratic process, maintaining stability in the legal system, and preventing judicial overreach.

XI. JUDICIAL RESTRAINT AND INDIVIDUAL RIGHTS: A DELICATE BALANCE

Judicial restraint often appears to be in conflict with the protection of individual rights, especially in cases where legislative or executive actions are seen as encroaching upon fundamental rights. However, judicial restraint, in this context, does not mean passive non-intervention rather, it signifies a cautious approach, whereby courts only act when there is a clear and compelling violation of Constitution.¹² This practice allows the judiciary to vindicate the provisions enshrined in the Constitution without encroaching into policymaking, preserving the role of elected representatives in framing of law.

Ensuring Minimal Judicial Overreach in Rights Cases

The concept judicial restraint keeps the activism to its minimum and interferes only when required to vindicate rights. Judicial decision makers generally construe rights in terms of the contingencies of a constitution and avoid evolving novel rights which the constitution does not recognize. For instance, in right of privacy, dignity, and personal liberty, while exercising judicial restraint courts do not go an extra mile in interpreting the law hence not acting like the legislature. They take a highly selective approach, destroying the constitutionality of action only where it offends a particular constitutional provision as expressed in a statute or executive order. In an attempt not to interfere with the functioning of a democracy, the principle of judicial restraint means that only

¹¹ Lilly Evie, Jessica Schubert, *Judicial Restraint-Definition, Cases & Examples*, STUDY.COM, (Nov. 9, 2024, 10:28 AM), <https://study.com/academy/lesson/judicial-restraint-definition-examples-cases.html#:~:text=of%20judicial%20restraint.,Lesson%20Summary,and%20reliability%20in%20judicial%20decisions.>

¹² V.Sudhish Pai, *Judicial Activism and Judicial Restraint*, National Judicial Academy India, https://nja.gov.in/Concluded_Programmes/2019-20/P-1187_PPTs/1.JUDICIAL%20ACTIVISM%20AND%20JUDICIAL%20RESTRAINT.pdf.

those provisions that explicitly violates the rights of citizens, are struck down. In maintaining this balance constitution is upheld and saves the courts from making decisions that are coloured with their own values or political persuasions which makes the courts not a political player, but rather the umpire.

Judicial Restraint as a Tool for Promoting Legislative Accountability

Judicial restraint reinforces legislative accountability, especially when it concerns individual rights. The courts place responsibility on elected representatives to address social issues by electing to defer the democratic matters to organs of government that may require deeper democratic engagement. This approach promotes public debate, discussions and societal opinions and other inputs on rights-related matters rather than imposing judicial mandates.

For example, in cases like *Supriyo v. Union of India*,¹³ the Apex Court adhered to the principle of judicial restraint by refraining from giving legal recognition to same-sex marriage, despite acknowledging LGBTQ+ rights. The court recognized that this issue needed democratic debates, dialogues and rigorous discussions in the democratic front. Judicial restraint here encourages the legislature to respond to the continuously evolving needs and rights of society, especially for social rights that requires broad consensus and statutory clarity.

Deferring to Precedent and Narrow Interpretation in Rights Cases

Adherence to established precedents is the main postulate of the concept of judicial restraint, which ensures consistency and predictability while interpreting various individual rights. Courts practicing restraint prioritize *stare decisis*, which means to stick with previous decisions, respecting prior rulings to ensure consistency and continuity in constitutional interpretation. This cautious approach discourages abrupt shifts in jurisprudence leading to confusion and ensures that rights-based decisions are rooted in well-settled precedents rather than the subjective views of individual judges on such matters.

The decision in *ADM Jabalpur vs. Shivkant Shukla*,¹⁴ for example, whereby the Hon'ble Supreme Court of India adopted a constrained and restricted approach in interpreting the right to life and liberty under Article 21, upholding that the suspension of this right during proclamation national emergency could be allowed. Although this judgment was later overruled, it showcases how restrained courts often defer to the textual interpretation of rights and adhere to the precedent, even when faced with complex questions regarding individual liberties.

Balancing Judicial Restraint and Fundamental Rights

Having established that judicial transformation requires restraint as to disregarding the intent of the constitutional framers, judicial restraint, especially when constitutional rights are at play, has to have balance. Courts practicing restraint shy away from giving interpretative rulings and often prefer to give decisions that do not implicate areas beyond that particular case. This approach ensures that courts protect rights without encroaching into legislative functions or making expansive declarations that might be in conflict with democratic values.

The Delhi High Court adopted a restrained approach while decriminalising consensual same-sex relations while pronouncing its decision in *Naz Foundation v. Government of NCT of Delhi*,¹⁵ focusing only on Section 377 of the IPC and leaving boundless issue of LGBTQ rights for future legislative consideration. This restrained approach ensured beneficial progress on individual rights while allowing for further evolution based on societal developments and legislative action.

Similarly, in the historical pronouncement of *Kesavananda Bharati v. State of Kerala*¹⁶ judgment, the Supreme Court maintained a balance between judicial activism and restraint by upholding the constitutionality of the legislature's power to amend the Constitution, provided it did not, in any manner abridge its basic feature under basic structure doctrine. This cautious yet reformative approach ensured that Parliament retained authority over constitutional amendments, while the fundamental rights and essential features of the Constitution are protected.

¹³ Supriyo @ Supriya Chakraborty and Anr. v. Union of India, 2023 SCC Online SC 1348.

¹⁴ ADM Jabalpur v. Shivkant Shukla, (1976) 2 SCC 521.

¹⁵ Naz Foundation v. Government of NCT of Delhi, 2009 (6) SCC 712.

¹⁶ Kesavananda Bharti v. State of Kerala, (1973) 4 SCC 225.

XII. CHALLENGES OF OVER-RELIANCE ON JUDICIAL RESTRAINT

Excess of everything is bad. Same is likely the case with excessive adherence by the judges to the concept of judicial restraint. This over-reliance imposes several challenges in protecting and upholding fundamental rights and keeping-up with the continuously evolving need of contemporary society. Although judicial restraint is appreciated for safeguarding democratic principles and respecting the separation of powers, excessive reliance on this principle can lead to adverse outcomes that could impact justice not only in that particular case but in the future cases as well. The following are some key challenges related with an over-reliant approach towards judicial restraint:

i. Potential Undermining of Fundamental Rights

The major concern advocated against this principle of restraint is that, it may induce the undermining of judiciary's function of safeguarding an individual's rights especially the fundamental rights. This concern increases in the situation when the democratic setup of the government encroaches upon individual freedoms and threatened to take away their fundamental rights. This becomes even more crucial in cases involving marginalized communities and their rights, where legislative action may be slow or insufficient in addressing issues pertaining to them and necessary for their upliftment. Here, the need for judicial activism or rather the balance between the two contracting concept becomes crucial.

ii. Reduced Accountability of the Legislative and Executive Branches

There's a debate on what it means to be a committed originalist and take cues from legislative and executives branches. As per the theory of checks and balances, this is a good thing, but taken to the extreme, it means that any possibly unconstitutional action or policy in an agency can go unchallenged. Specifically in democracies like India, judiciary acts as a watchdog to the other two branches, and prevents their abuse of powers and tyranny. Excessive reliance on restraint will make the judiciary fail in its role to uphold the constitution by correcting most of the wrongs that the legislative or the executive branches of the government do.

iii. Inhibition of Legal and Social Progress

Excessive reliance on judicial restraint can be disadvantageous to a legal and social development since the law puts the onus of defining and protecting rights on the courts in rapidly developing societies. Judiciary, has over time, been very instrumental in asserting rights that parliament may take time to recognize and protect, for example, the rights of LGBTQ+ persons, the environment and rights of women and other marginalised section of society. When judiciary leans on the principle of restraint, it loses direction and may not protect new rights that society now prizes but are not entrenched in law. This also results in delay in legal reforms and thus the rights related to corresponding values is not recognized and protected in a timely manner.

iv. Dependence on Legislative Solutions to Address Complex Issues

Judicial restraint presupposes the practical consideration of the ability of the legislature to deal with entangled social questions. However, they may not always be warranted particularly in polarized or a situation where there is political deadlock. The first implication is that when courts arbitrary defer to legislatures, important questions may never be addressed if legislatures are unable or unwilling to act because of political deadlock, social backlash, or lack of enthusiasm. This is especially so where such consensus is required under emergency circumstances, as may be the case in dealing with climate change, epidemics, or racism. If courts base their decisions on restraint too much, then they can provide inputs for inaction for long periods making essential societal vices unchecked. For instance, when there is the need to address social change pertinent issues like environment and privacies' issues in the virtual world, an restrained judiciary may fail to act as and when needed hence risking public welfare.

v. **Risk of Judicial Passivity**

An overemphasized judicial restraint can inevitably make the judiciary timid and leave it being accused of being a rubber stamp and a lackey of powerful actors. This aspect is for example that where the judiciary fails to be active in cases concerning justice, the public is likely going to lose its confidence in the institutions of law. Such passive role may create a culture of hopelessness among citizen in the event they wait for the judiciary to deal with infringement of rights and the rule of law. At times, it fuses into a variety of judicial passivity where the judiciary bow to legislative hegemony despite clear occasions when action is required.

XIII. SIGNIFICANT SUPREME COURT JUDGMENTS REFLECTING JUDICIAL RESTRAINT

Hon'ble Supreme Court can, time and again, be seen as actively interpreting the Constitution for the purpose of upholding fundamental rights and there are various judgements reflecting judicial activism. However, there are also landmark judgments that shows apex court working on judicial restraint to uphold the Constitution and its values. Some of those landmark cases are illustrated below as follows:

1. **S. R. Bommai v. Union of India:**¹⁷

The Hon'ble Supreme Court, in a historic exercise of judicial restraint, upheld the power of proclamation of President's rule or emergency in state under Article 356 is subject to review by the judiciary, but limited the scope of its intervention. The Court held that:

- i. **Limited Judicial Review:** Judicial review would focus on the existence of "relevant material" to support the proclamation under that article but would not question the political reasoning behind it. This restrained approach preserved the concept of check and balance by the Supreme Court without overstepping into the executive's domain.
- ii. **Floor Test as Standard:** The Court put emphasis on the importance of a legislative floor test, rather than relying on reports or perceptions, to verify whether a government has lost its majority. This standard reflects the Court's respect for the democratic process while curbing arbitrary dismissals.
- iii. **Federalism and Judicial Restraint:** By carefully delineating the use of Article 356, the Court underscored that federalism forms as a part of the doctrine of basic structure of the Constitution. However, it stopped short of invalidating Article 356, showing restraint by maintaining a balance between state autonomy and central oversight.

The instant case originated from the ousting of government several states, including that of S. R. Bommai in Karnataka, under Article 356, which allows the President to declare President's Rule if government of any state cannot function according to the provisions of Constitution. The dismissals, based on allegations that these governments had lost the majority or acted unconstitutionally, were widely seen as politically motivated, raising concerns about federalism and state autonomy.¹⁸ This case highlighted judicial restraint as the Court deferred to the executive's political judgment in matters involving federal powers. The judgment reinforced the judiciary's stance of non-interference in decisions deemed to be within the executive's discretion, especially in the political domain.

2. **ADM Jabalpur v. Shivkant Shukla:**¹⁹

Commonly known as the "*Habeas Corpus*" case, this landmark case came up during the times of proclamation of emergency by the then Prime Minister of India Mrs. Indira Gandhi. The facts of the case entails that several political leaders, especially from the opposition, were detained without trial, and the right to obtain direction in the nature of writ of habeas corpus was suspended.²⁰ The Supreme Court held

¹⁷ S. R. Bommai v. Union of India, 1994 AIR 1918.

¹⁸ *Ibid.*

¹⁹ ADM Jabalpur v. Shivkant Shukla, (1976) 2 SCC 521.

²⁰ *Ibid*

that during the proclamation of emergency, the right guaranteed under Article 21 namely the right of life and personal liberty could be suspended. The Court upheld the government's actions, demonstrating deference to the executive's power during a state of emergency.

Although this judgment was later criticized and recently overturned in *K.S. Puttaswamy* case, it remains a significant example of judicial restraint where the Court ceded authority to the executive during a time of crisis. This judgment is often cited as an example of judicial restraint taken to an extreme.

3. **Ashoka K. Thakur v. Union of India:**²¹

The instant case challenged the validity of reserving seats for Other Backward Classes (OBCs) at the time of admission in educational institutions. The petitioner argued that these reservations are violative of the right guaranteed under Article 14 which provides for equality to all people. The Supreme Court upheld the reservations, stating that affirmative action for backward classes was within the legislature's power to promote social justice. By deferring to the legislative branch's judgment on social policy, the Court demonstrated judicial restraint, allowing the government to implement affirmative action policies aimed at social equity. The judgment affirmed the Court's position that it should not interfere with policy matters unless they contravened basic constitutional principles.

4. **Aravali Golf Club v. Chander Hass:**²²

The case arose from an employment dispute at the Aravali Golf Club. The High Court had intervened in what was essentially a private employment issue, extending constitutional rights in the realm of private employment. The Supreme Court criticized the High Court for overstepping its bounds, cautioning against "judicial activism" that unnecessarily encroaches on legislative and executive domains. The Supreme Court advised lower courts to exercise caution and to refrain from intervening in matters not suited for judicial resolution, emphasizing that the judiciary should respect the limits of its role in governance. This judgment is significant for its advocacy of judicial restraint.

5. **Narmada Bachao Andolan v. Union of India:**²³

The issue in this case concerned the construction of the Sardar Sarovar Dam, which involved displacement and environmental concerns raised by the "*Narmada Bachao Andolan*" movement. The Supreme Court allowed the construction of the dam, deferring to the executive's judgment in matters of developmental policy. The judgment illustrated judicial restraint by respecting the executive's authority in matters related to infrastructure and development, an area traditionally seen as beyond the judiciary's expertise. The Court limited its role, focusing only on ensuring adequate rehabilitation for displaced persons rather than halting the project.

6. **K.S. Puttaswamy v. Union of India:**²⁴

This landmark case challenged the Constitutional validity of the "Aadhaar Act", which mandated a biometric-based identification system for accessing government services. The Supreme Court upheld the Aadhaar Act with some modifications, endorsing the idea that welfare schemes tied to the Aadhaar system were constitutional. However, the Court did not constrain itself from siding with public good and recognized privacy as a fundamental right under Article 21, emphasizing a balanced approach. Although this case involved aspects of judicial activism in establishing the right to privacy, it also reflected judicial restraint. The Court avoided a blanket invalidation of the Aadhaar system, carefully balancing individual rights with legislative intent to promote welfare. This case is illustration of Recognition of Restraint within Activism, a harmonious balance between the contrasting concept.

²¹ Ashoka Kumar Thakur v. Union of India, (2008) 6 SCC 1 138.

²² Divisional Manager, Aravali Golf Club v. Chander Hass, 2008 AIR SCW 406.

²³ Narmada Bachao Andolan v. Union of India, AIR 2000 SC 3751.

²⁴ Justice K.S. Puttaswamy (Retd) v. Union of India, AIR 2018 SC (SUPP) 1841.

7. **Supriyo @ Supriya Chakraborty v. Union of India:**²⁵

In its very recent judgment, the Supreme Court of India deliberated on petitions demanding recognition of same-sex marriage and giving it legitimacy legally, ultimately showcasing judicial restraint by deferring to the legislature to address this complex social issue.

Petitioners sought granting legality to marital and social institutions between same-sex couples under the Special Marriage Act, 1954, arguing that the non-recognition of such marriages violates their fundamental rights under Articles 14, 15, and 21 of the Constitution. They contended that denying LGBTQ+ individuals the right to marry resulted in discrimination based on sexual orientation, infringing on equality, dignity, and the right to privacy. The Supreme Court acknowledged the dignity and equal rights of LGBTQ+ individuals but refrained from judicially mandating marriage equality. The judges pointed out that marriage is a social institution which find its roots in cultural norms and customs, and any redefinition of marriage should come through a democratic process, involving broad societal debate and consensus.²⁶

XIV. CONCLUSION

Judicial restraint works also as a cardinal that enables the courts to weigh civil liberties against respect of the other two branches. This way courts safeguard constitutional freedoms while preventing constitutional rights from undermining the healthy functioning of democracy or interfering with the tasks of other organs of government. Literally, judicial restraint need not mean that there is no judicial protection of individual rights; judicial restraint only means judicial protection of individual rights within a constitutionally prescribed framework. The subject has elaborated how judicial restraint has maintained fidelity with individual rights coupled with the non-interference of policy domains. That way, the judiciary avoids treading on political ground and becoming an actor in the political game that creates laws, instead it stays a check and balance institution that also acts as an interpreter of the Constitution as the people's charter and the country's guideline that can be changed only through democratic method. Hence, as a theory it plays such an important function of scrutinising on encroaching in the other branches of government and even as a safeguard of rights and the constitution, over reliance on it can seriously underplay the essential function of the judiciary especially the function as guarantor of fundamental rights enforcer of constitutionalism. It was equally as needed to rein in the arbitrary exercise of power by the executive branch of the government and the need to ensure that the other branches of government can effectively address complex societal problems and defend individual liberties. Judicial restraint must be applied cautiously; courts may act only when needed to protect constitutional principles, ensure governmental responsibility, and meet the growing social demands, thereby preventing judicial restraint from threatening the judiciary's important task in a democratic state.

²⁵ Supriyo alias Supriya Chakraborty and Anr. V. Union of India, 2023 SCC Online SC 1348.

²⁶ *Ibid.*

XV. **REFERENCES**

- **Books and Bare Acts**
 - a. The Constitution of India
 - b. Austin, Granville, *The Indian Constitution: Cornerstone of a Nation*, Oxford University Press, 1999.
 - c. Basu, D.D., *Introduction to the Constitution of India*, LexisNexis, 2022.
 - d. Seervai, H.M., *Constitutional Law of India*, N.M. Tripathi, 2013.
 - e. Sathe, S.P., *Judicial Activism in India: Transgressing Borders and Enforcing Limits*, Orford University Press, 2022.
 - f. Jain, M.P., *Indian Constitutional Law*, LexisNexis 2018.
- **Articles and Reports**
 - a. S.S. Gopakumar, *Balancing Act: Exploring Judicial Activism and Restraint in Recent Supreme Court Cases*, D.Y. Patil Law College Publications.
 - b. Susan D. Carle, *The Failed Idea of Judicial Restraint: A Brief Intellectual History*, Digital Commons @ American University Washington College of Law.
- **Websites and Online Sources**
 - a. Supreme Court of India Official Website
URL: <https://www.sci.gov.in/>
 - b. National Judicial Academy
URL: <https://nja.gov.in/>
 - c. SCC Online
URL: <https://www.sconline.com/>
 - d. SSRN (Social Science Research Network)
URL: <https://www.ssrn.com/index.cfm/en/>
 - e. Live Law
URL: <https://www.livelaw.in/>
 - f. Britannica
URL: <https://www.britannica.com/>

