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JUDICIAL ACTIVISM VS JUDICIAL RESTRAINT: BALANCING JUDICIAL POWER IN CONSTITUTIONAL DEMOCRACIES

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Introduction

The judiciary plays a crucial role in constitutional democracies as the guardian of the Constitution, interpreter of law, and protector of fundamental rights. The scope of judicial power and the manner in which courts exercise their authority remain contested topics. Judicial activism and judicial restraint are two competing philosophies that define how courts should approach constitutional adjudication. Judicial activism encourages proactive judicial intervention to promote justice and social welfare, while judicial restraint urges deference to the legislature and executive, emphasizing minimal judicial interference.

In India, judicial activism has been a prominent feature since the 1970s, marked by a willingness of the Supreme Court to engage with social issues and enforce fundamental rights expansively. Conversely, judicial restraint emphasizes respect for democratic processes and separation of powers, cautioning against judicial overreach. This paper explores these two judicial philosophies, their theoretical underpinnings, practical applications in India and comparative jurisdictions, and their implications for democracy.

I. Conceptual Framework and Historical Evolution

Judicial Activism: Concept and Philosophy

¹Judicial activism refers to the assertive role of courts in interpreting and applying the Constitution beyond literal meanings, often engaging in law-making and social reform. This philosophy supports the judiciary acting as a dynamic institution that protects constitutional morality and rights, especially when other branches fail to act. The term gained prominence in the U.S. during the Warren Court era, which expanded civil rights and liberties through landmark rulings.

¹ Mark Tushnet, *Judicial Activism or Restraint?* (Harvard Univ. Press, 1997).

² In India, judicial activism manifested prominently after the 1970s, especially through Public Interest Litigation (PIL) that broadened access to justice. The courts interpreted constitutional rights expansively, promoting social welfare, environmental protection, and governance accountability. However, judicial activism also faces criticism for potentially undermining democratic legitimacy by encroaching on legislative and executive functions.

Judicial Restraint: Concept and Justification

³ Judicial restraint advocates judicial modesty, urging courts to defer to the elected branches of government unless clear constitutional violations occur. It respects the separation of powers and political accountability, warning against judicial overreach or “judicial imperialism.” Court practicing restraint avoid policy decisions and focus on interpreting legal texts narrowly to maintain institutional legitimacy.

⁴ In democracies, judicial restraint is justified to ensure that courts do not usurp the mandate of legislatures, preserve legal stability, and maintain democratic legitimacy. However, excessive restraint risks abdication, allowing fundamental rights to be violated without judicial remedy.[4]

Historical Evolution in India

India’s judiciary initially adopted a restrained stance, narrowly interpreting rights, as in *A.K. Gopalan v. State of Madras*. However, post-⁶ *Kesavananda Bharati*, the Supreme Court asserted the “basic structure” doctrine, limiting parliamentary sovereignty. The emergency period (1975–77) reflected restraint, notably in ⁷ *ADM Jabalpur v. Shivkant Shukla*. After the emergency, judicial activism flourished, particularly via PIL, expanding the Court’s role in social justice and rights enforcement.

² Upendra Baxi, *The Indian Supreme Court and Politics* (Eastern Book Company, 1980).

³ Felix Frankfurter, “Some Reflections on the Reading of Statutes,” 47 *Columbia Law Review* 527 (1947).

⁴ *Ibid.*

⁵ *A.K. Gopalan v. State of Madras*, AIR 1950 SC 27.

⁶ *Kesavananda Bharati v. State of Kerala*, AIR 1973 SC 1461.

⁷ *ADM Jabalpur v. Shivkant Shukla*, AIR 1976 SC 1207.

II. Judicial Activism in Practice: Landmark Cases and Impact in India

Expansion of Fundamental Rights

In ⁸*Maneka Gandhi v. Union of India*,^[8] the Court broadened the interpretation of Article 21, requiring that “procedure established by law” be just, fair, and reasonable. This expanded personal liberty protections and introduced due process concepts, marking a shift to a more activist judiciary.

Public Interest Litigation (PIL)

PIL allowed courts to address public causes on behalf of disadvantaged groups. In ⁹*M.C. Mehta v. Union of India*, the Court tackled environmental pollution, enforcing government compliance and pioneering environmental jurisprudence. PIL expanded judicial reach into social justice and governance accountability.

Social Justice and Governance

In ¹⁰*Vishaka v. State of Rajasthan*, the Court proactively addressed workplace sexual harassment, issuing guidelines before legislation existed. Similarly, in ¹¹*Olga Tellis v. Bombay Municipal Corporation*, the Court recognized the right to livelihood as part of the right to life, protecting pavement dwellers. These cases exemplify activism filling legislative gaps to uphold constitutional morality.

III. Judicial Restraint in Practice: Caution and Deference

Separation of Powers

In ¹²*S.R. Bommai v. Union of India*, the Court balanced judicial oversight with respect for executive discretion, curbing misuse of Article 356 but avoiding overreach. This showcased judicial restraint preserving constitutional governance.

Limits of Judicial Legislation

¹³*Aravali Golf Club v. Chander Haas* emphasized courts should avoid policy-making, restricting their role to legality review. This reflects restraint by respecting administrative and legislative domains.

⁸ *Maneka Gandhi v. Union of India*, AIR 1978 SC 597.

⁹ *M.C. Mehta v. Union of India*, AIR 1987 SC 1086.

¹⁰ *Vishaka v. State of Rajasthan*, AIR 1997 SC 3011.

¹¹ *Olga Tellis v. Bombay Municipal Corporation*, AIR 1986 SC 180.

¹² *S.R. Bommai v. Union of India*, (1994) 3 SCC 1.

¹³ *Aravali Golf Club v. Chander Haas*, (2008) 1 SCC 683.

Respect for Democratic Process

¹⁴*Rojer Mathew v. South Indian Bank* underscored judicial deference to legislative intent unless unconstitutional, emphasizing democratic legitimacy.

IV. Comparative Perspective: U.S. Jurisprudence

Warren Court and Activism

The U.S. Warren Court expanded civil rights and liberties, e.g., ¹⁵*Brown v. Board of Education*, ¹⁶*Miranda v. Arizona*, adopting a dynamic constitutional interpretation to address social injustices.

Burger and Rehnquist Courts and Restraint

Later Courts emphasized restraint, federalism, and textualism, as in ¹⁷*United States v. Lopez*, limiting federal overreach and deferring to political branches.

Ongoing Debate

Contemporary U.S. courts continue to wrestle with activism versus restraint, reflecting broader global judicial tensions.

V. Critical Evaluation: Benefits and Risks

Benefits of Activism

¹⁸Promotes justice, protects minorities, fills legislative gaps, and corrects political inaction.

Risks of Activism

Judicial overreach, politicization, and undermining democratic accountability.

Benefits of Restraint

Preserves separation of powers, democratic legitimacy, and judicial impartiality.

Risks of Restraint

Judicial abdication, unchecked abuses, and weak rights protection.

¹⁴ *Rojer Mathew v. South Indian Bank*, (2019) SCC Online SC 168.

¹⁵ *Brown v. Board of Education*, 347 U.S. 483 (1954).

¹⁶ *Miranda v. Arizona*, 384 U.S. 436 (1966).

¹⁷ *United States v. Lopez*, 514 U.S. 549 (1995).

¹⁸ *Uppendra Baxi, The Indian Supreme Court and Politics* (Eastern Book Company, 1980).

Conclusion

Judicial activism and restraint represent two vital yet competing philosophies in constitutional adjudication. Both have strengths and weaknesses, and a balanced approach is necessary to uphold constitutionalism, protect rights, and respect democratic governance. The Indian judiciary's evolving practice illustrates this tension vividly, mirroring global debates. Ultimately, courts must calibrate their roles prudently to ensure justice without compromising legitimacy.

