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# **THE CONSTITUTIONAL DIMENSION OF JUDICIAL RESTRAINT IN THE GLOBALISING WORLD**

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## **ABSTRACT**

The evolution of globalization has introduced intricate challenges to the traditional doctrine of judicial restraint, a principle rooted in the separation of powers and the rule of law. As nations become increasingly interdependent, the judiciary faces the complex task of harmonizing domestic legal frameworks with emerging international norms and standards. This paper explores the constitutional dimensions of judicial restraint within this shifting global landscape, arguing that cautious and prudent decision-making is indispensable for preserving judicial integrity while navigating the demands of a networked world. From a jurisprudential perspective, the study draws on Austin's legal positivism, which emphasizes the separation of law from morality and respects the legislature's primary role in law-making to maintain the proper role of the judiciary. In the Indian context, the constitutional foundation for restraint is embedded in the "Basic Structure" doctrine and various articles, such as Article 50 (separation of judiciary from executive) and the limited original jurisdiction under Article 131. Recent judicial trends, such as the shift toward "remedial discipline," highlight a move by courts to grant specialized, party-specific relief rather than broad, universal injunctions, as seen in cases like *Trump v. CASA (2025)* and *Bajaj Allianz General Insurance v. Rambha Devi (2024)*. The paper identifies several critical obstacles posed by globalization, including the debate over the supremacy of international versus domestic law, the enforcement of transnational human rights, and regulatory gaps created by rapid economic integration. Furthermore, the rise of technological advancements necessitates a delicate balance between fundamental rights, like data privacy, and technical breakthroughs. To address these challenges, the study examines potential approaches such as the principle of subsidiarity—where decisions are taken at the most local level possible—and the use of international human rights law as a "floor" for minimum protection. While judicial restraint promotes democratic stability, respects the legislative process, and encourages international diplomatic cooperation, the paper

acknowledges potential negative impacts, such as the limited protection of individual rights when other branches remain silent. By analysing the European Court of Human Rights (ECtHR) as a global model, the research demonstrates how a supranational body can employ the "margin of appreciation" to balance rights protection with the democratic functioning of national legal systems. Ultimately, the paper concludes that the judiciary must serve as a "principled guardian," exercising authority sparingly under provisions like Article 142 to maintain a stable, harmonious legal order in a globalized era.

**KEYWORDS:** Judicial Restraint, Globalization, Separation of Powers, Subsidiarity, Constitutional Dimension.

## INTRODUCTION

Globalization has added new dimensions and challenges to Judicial restraint conceived within the matrix of separation of powers and the rule of law. Indeed, Judicial restraint has increasingly become relevant in a globalizing world. With nations increasingly becoming interdependent and interconnected, the role of the judiciary becomes even more complicated, with the growing need to harmonize domestic legal frameworks with international norms and standards. The burden is increasing upon the judiciary to interpret and apply constitutional principles within a constantly changing global framework. Judicial restraint has thus become indispensable in such a complex scenario. Accordingly, through such cautious and prudent decision-making, the courts are capable of keeping a critical balance between domestic and international law while preserving judicial integrity and independence. The paper will therefore discuss the constitutional dimension of Judicial restraint in a globalizing world. Attention shall be paid to the main challenges and considerations facing the judiciary in that perspective, the impact likely to be observed, and the potential approaches to maintaining Judicial restraint while effectively addressing the demands of globalization.

## JURISPRUDENTIAL ASPECT OF THE TOPIC

On one hand, Austin's theory is concerned with separation of law and Judicial restraint for maintaining separation of powers so that the judiciary can keep itself within its proper role and respects the authority of the legislature. It is here that Austin's theory of legal positivism does have some theoretical foundation for Judicial restraint underscoring, as it does, that must be kept separation of law from morality, and the legislature is assigned a prime role both in the

creation and interpretation of laws.<sup>1</sup>

## CONSTITUTIONAL ASPECT OF THE TOPIC

Many Constitution Articles and Principles contribute indirectly to Judicial restraint, particularly in the context of globalization.

- Fundamental Rights (Part III): Article 14, 21, 32.
- Directive Principles of State Policy (Part IV): Article 36, 44.
- Separation of powers: Article 50.
- Judicial Review: Article 13.
- Limited Original Jurisdiction of the Supreme Court: Article 131.<sup>2</sup>

## JUDICIAL RESTRAINT

Judicial restraint is theory of the judicial interpretation that solicit judges to exercise restraint in exercising their own power. It says that until a statute is blatantly unconstitutional, judges should be reluctant to overturn it. Judges who exemplify Judicial restraint respect stare decisis that are the principle of adhering to established precedent passed down by past judges. In any case, there is no dispute over the fact that the judiciary needs to self-regulate itself. It should also put some restraints on its powers whenever required. The Supreme Court in *Divisional Manager, Aravali Golf Course v. Chander*<sup>3</sup> has observed that: "Judges must know their limits and must not try to run the Government. They must have modesty and humility, and not behave like Emperors." There is separation of powers under the Constitution and each organ of the State-the legislature, the executive and the judiciary- must have respect for the others and is not to encroach into the domains of the others. In *Kesavananda Bharati v. State of Kerala (1973)*<sup>4</sup> case the Court had thus given its seal of approval to the basic structure doctrine, which acts as a brake on the legislative power to amend the Constitution. At the same time, the Court exhorted the judiciary on the need for Judicial restraint and advised caution against undue judicial interference in the functioning of the legislature. Recent scholarly discourse, such as the Judicial Restraint Trilogy, A shift toward "remedial discipline," where the U.S. Supreme Court has started limiting federal judicial power to grant broad, universal relief in favor of more specialized, party-specific remedies, is highlighted by recent

<sup>1</sup> Rashmi Sinha, *Austin's Theory of Law: An Analysis* 88–93 (2023)

<sup>2</sup> INDIA CONST. arts. 13, 14, 21, 32, 36, 44, 50 & 131.

<sup>3</sup> *Divisional Manager, Aravali Golf Course v. Chander Haas*, (2008) 1 SCC 683, 702–03.

<sup>4</sup> *Kesavananda Bharati v. State of Kerala*, (1973) 4 SCC 225, 333–35

scholarly discourse, such as the Judicial Restraint Trilogy<sup>5</sup>. For example, in *Trump v. CASA* (2025)<sup>6</sup>, the Court stressed traditional equitable limits to restrain the power of lower courts from issuing nationwide injunctions against executive actions in *Trump v. CASA* (2025) to limit lower courts' authority to issue nationwide injunctions against executive actions.<sup>7</sup> In a similar vein, in international contexts, the Dutch Supreme Court's 2025<sup>8</sup> decision in the F-35 Parts Case reaffirmed that the judiciary must exercise extreme restraint in cases involving foreign policy and national security, limiting its authority to determining whether the executive's decision was "reasonable" rather than substituting the state's judgment with its own.

## DEFINITION OF JUDICIAL RESTRAINT

Auburn University- In the Glossary of Political Economy Terms, published by Auburn University, the glossary defines Judicial restraint as the “view that the Supreme Court (and other lesser courts) should not read the judges' own philosophies or policy preferences into the constitution and laws and should whenever reasonably possible construe the law so as to avoid second guessing the policy decisions made by other governmental institutions such as parliament, the President, the governor and state governments within their constitutional spheres of authority. On such a view, judges have no popular mandate to act as policy makers and should defer to the decisions of the elected "political" branches of the Federal government and of the states in matters of policy making so long as these policymakers stay within the limits of their powers as defined by the Constitution.”<sup>9</sup>

## CONSTITUTIONAL DIMENSION OF JUDICIAL RESTRAINT

In the Indian constitutional framework, the concept of separation of powers, which is recognised as a component of the Indian constitution's "Basic Structure" even though it isn't stated in the text, is the fundamental foundation of the Judicial restraint dimension. According to the philosophy, the judiciary should refrain from intruding into the legislative and executive domains, especially when it comes to areas of governance and policy that require specialised knowledge. In re: Section 6A of the Citizenship Act, 1955 (2024)<sup>10</sup>, an example of recent

<sup>5</sup> Samuel L. Bray, *The Judicial Restraint Trilogy*, 134 **HARV. L. REV.** 573, 576–82 (2021)

<sup>6</sup> *Trump v. CASA*, 145 S. Ct. \_\_\_\_ (2025) (limiting the scope of universal injunctions in federal equity)

<sup>7</sup> *Trump v. CASA*, 145 S. Ct. \_\_\_\_ (2025) (limiting the scope of universal injunctions in federal equity)

<sup>8</sup> *A Judicial Compromise: The Dutch Supreme Court's Judgment in the F-35 Parts Case*, Verfassungsblog (Oct. 28, 2025), <https://verfassungsblog.de/f-35-a-judicial-compromise/>.

<sup>9</sup> Paul M. Johnson, *Judicial Restraint*, in **A GLOSSARY OF POLITICAL ECONOMY TERMS** (Auburn Univ.), <http://webhome.auburn.edu/~johnspm/gloss/>

<sup>10</sup> *In re: Section 6A of the Citizenship Act, 1955*, (2024) SCC

judicial interpretation that shows a nuanced application of this restraint, the Supreme Court affirmed the constitutionality of a long-standing legislative provision despite its evolving implications over time. Additionally, the Court has placed a greater emphasis on "remedial discipline," as evidenced by decisions like *Bajaj Allianz General Insurance v. Rambha Devi* (2024)<sup>11</sup>, in which the bench directed the Union government to resolve legislative inconsistencies rather than enacting new laws. Scholarly discourse<sup>12</sup> reflects this trend, with recent journals highlighting that constitutional resilience depends on the judiciary serving as a "principled guardian" that is decisive against blatant violations but modest in areas of expert policymaking. The Court has reaffirmed that it must exercise its broad authority under Article 142<sup>13</sup> "sparingly and with great caution," a sentiment that has been reflected in recent reports and evaluations of the 2025–2026 judicial sessions.

The concept of Judicial restraint is closely linked to the objectives of many constitutions, including the Indian Constitution.

- 1. Separation of Powers:** The Constitution establishes three distinct branches of government, each of which operates within its own constitutional bounds and is independent of the others.
- 2. Rule of Law:** The Constitution is based on the rule of law—the law applies equally to everyone, including government agencies. On one hand, it gives judges latitude to base their decisions on established rules of law and procedures; on the other, it seemingly precludes judges from making arbitrary decisions in cases brought before them.
- 3. Judicial Review:** The means by which the judiciary is allowed to pronounce any law enacted by the representatives of the people as unconstitutional. This, while it places great power in the hands of the courts, also entrusts the courts with the heavy responsibility of Judicial restraint in not trespassing into the domains of other government departments.
- 4. Precedent:** Another principle of Judicial restraint is the stare decisis theory, which provides that courts must adhere to what has been decided in cases previously resolved. Precedent helps the courts establish consistency and stability within the law itself and aids them in refusing to deliver arbitrary or whimsical decisions.<sup>14</sup>

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<sup>11</sup> *Bajaj Allianz Gen. Ins. Co. v. Rambha Devi*, (2024) SCC

<sup>12</sup> Gautam Bhatia, *Judicial Review and Constitutional Restraint*, 12 *NUJS L. REV.* 1, 8–12 (2019)

<sup>13</sup> INDIA CONST. art. 142; M.P. JAIN, *INDIAN CONSTITUTIONAL LAW* 240–43 (9th ed. 2023)

<sup>14</sup> M.P. JAIN, *INDIAN CONSTITUTIONAL LAW* 154–60, 182–88 (9th ed. 2023)

## THE ARTICLES THAT CONTRIBUTE TO THE CONSTITUTIONAL DIMENSION OF JUDICIAL RESTRAINT IN INDIA

### ➤ Articles relating to fundamental rights:

- **Article 14–21:** Right of every citizen belonging to a basic fundamental right that includes equality, liberty and life, freedom of speech and expression. While the judiciary possesses all the powers available to it to protect and defend such rights, it is also expected to exercise this power with restraint and to avoid overreaching.
- **Article 32:** It conferred power upon the Supreme Court and granted it the ability to enforce fundamental rights. Yet, the court has emphasized the need for judicial restraint several times while exercising this power.

### ➤ Articles on directive principles of state policy

- **Articles 36 and 44:** These are state policies in directives, which have been offered to guide the government. Although the judiciary cannot directly enforce them since they are unenforceable, they can be used as a tool for interpretation when interpreting other constitutional provisions.

### ➤ Articles about Separation of Powers:

- **Article 50:** Directs the state to separation of the judiciary from the executive.<sup>15</sup>

### ➤ Limited Original Jurisdiction of the Supreme Court Article 131

- The original jurisdiction of the Supreme Court extends only to the cases with disputes between states, foreign ambassadors, or the Government of India. This would be one reason against making the court appear undue in political controversies or matters normally left to the legislative or executive authority.<sup>16</sup>

### ➤ Articles related to the doctrine of basic structure

- **Article 368:** Amendment to the Constitution.
- **Kesavananda Bharati v. state of Kerala (1973)<sup>17</sup>:** The Supreme Court invented the concept that restricts legislature powers to amend the Constitution.

<sup>15</sup> V.N. SHUKLA, *CONSTITUTION OF INDIA* 131–36, 205–10, 273 – 78, 287–90 (Mahendra P. Singh ed., 13th ed. 2017)

<sup>16</sup> M.P. JAIN, *INDIAN CONSTITUTIONAL LAW* 401–05 (9th ed. 2023); **INDIA CONST.** art. 131; Mark Tushnet, *Taking the Constitution Away from the Courts* 47–49 (1999).

<sup>17</sup> *Kesavananda Bharati v. State of Kerala*, (1973) 4 SCC 225.

➤ **Article 13 and the Doctrine of Judicial Review:**

- While judicial review is salutary to be sure in the enforcement of the rule of law and protection of fundamental rights, such review must be judiciously used. It must not displace the judgment of the legislature by its own upon matters obviously within the latter's province, such as questions of policy or expediency.<sup>18</sup>

These articles, along with various judicial decisions, have contributed significantly to the development of a culture of Judicial restraint in India.

## JUDICIAL RESTRAINT IN A GLOBALIZING WORLD

The courts' function of interpreting and applying constitutional principles in a global context is fast becoming complex with increasing interconnection and interdependence.

### Main Obstacles and Considerations

#### 1. International Law and Domestic law

- a) Supremacy:** Supremacy is one of the significant debates in the contemporary world wherein there emerges a question as to whether international law supersedes national law. Some people opine that the domestic courts should give preference to domestic constitutional principles while others hold of the view that international law supersedes the national law.
- b) Harmonization:** The judiciary would thus have to bring into consonance the need for harmonization of domestic law with international standards and the requirement of domestic constitutional principles.<sup>19</sup>

#### 2. Human Rights and International Norms:

- a) Enforcement:** International norms of human rights are frequently enforced in significant degree through the judiciary. This may be difficult, though, when national laws deviate from such standards.
- b) Balancing Domestic Interests:** In the interest of public order and national security in particular courts have to balance both the defense of domestic interests with upholding human rights.<sup>20</sup>

<sup>18</sup> M.P. JAIN, *INDIAN CONSTITUTIONAL LAW* 170–75, 182–85 (9th ed. 2023); INDIA CONST. art. 13; ALEXANDER M. BICKEL, *THE LEAST DANGEROUS BRANCH* 111–12 (2d ed. 1986).

<sup>19</sup> Malcolm N. Shaw, *International Law* 131–38 (8th ed. 2017).

<sup>20</sup> S.K. Verma, *Public International Law* 289–95 (2d ed. 2014).

### 3. Globalization of the Economy and Regulatory Challenges:

- a) **Regulatory Gaps:** The fast pace of economic globalization often leaves it with regulatory gaps that have the tremendous potential to influence the lives of people and corporations. The judiciary may therefore be called upon to shut these loopholes or to interpret the existing legislation so that the challenges of globalization are taken into account.
- b) **Balancing Economic Interests with Public Welfare:** The courts will be called to balance on one hand potential positive impact that globalization may have on the economy as weighed against the possible negative consequences on the welfare of society-at-large, including social welfare or environmental damage.<sup>21</sup>

### 4. Technological Development and Right to Privacy: Data Privacy:

- a) **Data privacy:** Data privacy and surveillance matters are issues seen to spread as technologies continue to advance. New developments make the judiciary interpret several sections of the constitution pertaining to the right to privacy.
- b) **Balancing Technology and Fundamental Rights:** The courts will have to balance between protecting fundamental rights-the right of privacy or freedom of expression-and technical breakthroughs.<sup>22</sup>

## THE INFLUENCE OF FOREIGN LEGAL SYSTEMS ON JUDICIAL RESTRAINT IN THE GLOBALIZING WORLD

### 1. Direct Transplants of Cross-National Legal Doctrines and Laws:

- a) **International Treaties and Conventions:** Countries often appropriate foreign legal conceptions and principles through international treaties and conventions on trade, environmental protection, and human rights.
- b) **Model Laws:** Some countries have accepted model laws developed by some of these international bodies, including the International Institute for the Unification of Private Law (UNIDROIT) and the United Nations Commission on International Trade Law, among others.<sup>23</sup>

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<sup>21</sup> Surya Deva, Globalization and Its Impact on the Protection of Human Rights, 31 *Indian J. Int'l L.* 236, 245–50 (2006).

<sup>22</sup> Justice B.N. Srikrishna, *Framing a Data Protection Framework for India* 18–22 (2018).

<sup>23</sup> Bimal N. Patel, International Law, International Institutions and Domestic Legal Systems, in *Indian Legal System* 189, 195–200 (Oxford Univ. Press 2014).

## 2. Indirect influence by case law

- a) **Foreign Cases Cited:** In a way of building judicial authority when the domestic law is vague or lacks development, courts rely on foreign cases.
- b) **Acceptance of Foreign Legal Thought:** While the particular laws or even facts may vary, courts are able to adopt foreign legal thought or approaches to analysis.<sup>24</sup>

## 3. Effect of Foreign Legal Scholars and Thinkers:

- a) **Scholarly Mobility:** Foreign law ideas and methods can be spread via the movement of legal professionals and intellectuals across borders.
- b) **Translation of Legal texts:** National law specialists may have access to foreign law books better in light of translation of the legal document.<sup>25</sup>

## 4. International business and economic globalization:

- a) **Cross-border transactions:** As cross-border transactions increase, so does the tendency to settle disputes involving foreign parties, which may lead to adopting foreign legal principles for the promotion of international trade.
- b) **Foreign Investment:** Since some nations are trying to adapt their legal systems so that they are more amenable to investment by harmonizing them with international practices, the end result may be the influence that foreign legal systems have on incorporating such systems.<sup>26</sup>

## 5. Human rights and international law:

- a) **Implementation of international standards Enforcement:** When domestic courts are called upon to enforce international human rights standards, there could be the influence of accepting foreign legal doctrines and ideas.
- b) **Transnational Justice:** Pursuance of justice for transnational abuses of human rights may shape the course of developing domestic systems.<sup>27</sup>

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<sup>24</sup> M.P. Jain, *Indian Constitutional Law* 89–94 (9th ed. 2023).

<sup>25</sup> Upendra Baxi, *The Avatars of Indian Judicial Activism* 12–18 (2002).

<sup>26</sup> B.S. Chimni, International Institutions Today: An Imperial Global State in the Making, 15 *Eur. J. Int'l L.* 1, 9–14 (2004).

<sup>27</sup> Bimal N. Patel, International Law and the Indian Legal System, in *Indian Legal System* 212, 219–224 (Oxford Univ. Press 2014).

## POTENTIAL APPROACHES TO JUDICIAL RESTRAINT IN A GLOBALIZING WORLD

- **International Human Rights Law as a Floor:** Because international human rights law provides a minimum standard for the protection of certain fundamental rights and freedoms, this may constitute a floor. That is simply to say this makes it so that, after the minimum extent to which international human rights law offers protection, further protection may be offered under domestic law by courts.<sup>28</sup>
- **Use of Subsidiarity Principle:** The subsidiary principle follows as provided that a decision should as far as possible be taken at the lowest level with given conditions. This, therefore, gives local judgments based on facts but international rules are followed.<sup>29</sup>
- **Communication and Cooperation:** Such courts can share perspectives and information through international courts and tribunals with courts having further comprehensive knowledge about the international law and its resultant interactions.<sup>30</sup>

## IMPACT OF JUDICIAL SELF-RESTRAIN IN GLOBALIZING WORLD

- **Positive Impacts:**
  - **Preservation of democratic values:** Constitutional restraint ensures that democratic values are always guaranteed because the judiciary never gains supreme powers over the other arms of government. It is in this way that democratic standards can be upheld, and individual rights will not be lost.
  - **Respect for the Legislative Process:** Constitutional restraint makes the judiciary respect the legislative branch as the first law-making authority. This contributes to the sustainability of the democratic process, also avoiding judicial supremacy.
  - **Avoidance of political entanglement:** Restraint of the judiciary upon politics, therefore making a more neutral decision toward the law. The more credible and trustworthy the judiciary is, the greater its ability to gain public confidence.

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<sup>28</sup> Upendra Baxi, *The Future of Human Rights* 45–52 (Oxford Univ. Press 2002)

<sup>29</sup> Ran Hirschl, *Comparative Matters: The Renaissance of Comparative Constitutional Law* 61–67 (Oxford Univ. Press 2014)

<sup>30</sup> Bimal N. Patel, *International Law and the Indian Legal System*, in *Indian Legal System* 218–225 (Oxford Univ. Press 2014)

- **Promotion of international cooperation:** Constitutional restraint encourages worldwide cooperation because states are compelled to solve disputes within diplomatic and negotiation rather than taking resort to law. This will add to a peaceful and harmonious world order.<sup>31</sup>

➤ **Negative Impacts:**

- **Limited protection of individual rights:** As far as constitutional dimension of judicial restraint is concerned, that ability of courts to protect individual rights especially when the legislature or the executive branch remains silent to the case at hand.
- **Perpetuation of injustice:** Nonintervention in the courts, they may inadvertently perpetuate injustice or take a long time to end injustice and destructive policies.
- **Erosion of public trust:** if the judiciary is perceived as being too passive or unwillingness to act in crucial matters tends to dilute public trust in the legal system.

## **A Global Example of Judicial Restraint: The European Court of Human Rights (ECtHR)**

The ECtHR has appropriately become an iconic example of Judicial restraint within a more internationalized global order. It is a supranational court interpreting and putting into place the European Convention on Human Rights (ECHR), a treaty to which all states that are part of the Council of Europe are bound by a process of ratification.

### **Key aspects of the European Court of Human Right's Judicial Restraint Approach**

1. **Subsidiarity:** The European Court of Human Rights bases its decision on the subsidiarity rule, whereby a decision must be taken at the lowest echelons; that is to say, as far as compatible with respect for human rights and fundamental freedoms, it is for the national courts to interpret and apply domestic law; the ECtHR should then only be an ultimate jurisdiction.

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<sup>31</sup> *Judicial Activism and Judicial Restraint in India: Balancing Constitutional Powers and Supreme Court Responsibility*, Legal Service India (Oct. 13, 2025), <https://www.legalserviceindia.com/Legal-Articles/judicial-activism-and-judicial-restraint-in-india>

2. **Respect for National Margins of Appreciation:** It also states that member states can be competent enough, flexible, and self-correcting in the implementation of their obligations within the ECHR. It thereby allows any state to strike a balance between apparently conflicting rights and interests within its specific legal and cultural context.<sup>32</sup>
3. **Proportionality and necessity:** The ECtHR is looking into national choices based on proportionality and necessity. Any interference with human rights must be justified by a pressing social need and be commensurate to the aim sought.
4. **Avoiding Political Ties:** The ECtHR determines cases based on the quality of law; therefore, it is blind to political considerations.<sup>33</sup>

**Example: In *Sunday Times v. United Kingdom (1979)***<sup>34</sup>, The European Court of Human Rights accepted a press freedom case. An interim court order prevented the Sunday Times from publishing an article about the thalidomide disaster, which had caused birth deformities in thousands of infants. The interference was deemed unreasonable and a violation of the new. This case clearly displays the ECtHR's use of Judicial restraint. Although the Court has the authority to examine judgments made by national organisations, it does so in a manner that respects national powers and adheres to the principles of proportionality and necessity. Because the ECtHR avoids overly interventionist behavior and considers member states' margins of appreciation when acting or making decisions, it strikes a fair balance between rights protection and the democratic functioning of national legal systems. Paper's right to freedom of expression.

## FINDINGS

- While sometimes the constitutional dimension of Judicial restraint shrinks the capacity of courts to protect individual rights in an unwavering willingness of legislature or executive branch.
- In this regard, the practice of constitutional restraint allows international cooperation to be advanced by permitting states to iron out their differences through diplomatic

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<sup>32</sup> Eva Brems, *Subsidiarity, Margin of Appreciation and International Adjudication within a Cooperative Conception of Human Rights*, 15 *Int'l J. Const. L.* 393, 395–406 (2017)

<sup>33</sup> *Guide on the Case-law – Social Rights* (describing how the ECtHR assesses whether measures are necessary in a democratic society with proportionate balance between general interests and individual rights), Council of Europe (2025), [https://ks.echr.coe.int/documents/d/echr-ks/guide\\_social\\_rights\\_eng](https://ks.echr.coe.int/documents/d/echr-ks/guide_social_rights_eng)

<sup>34</sup> *Sunday Times v. United Kingdom*, 2 Eur. H.R. Rep. 245 (1979).

and negotiating channels, rather than necessarily having to resort to legal action. This can in turn foster a more peaceful and harmonious world order.

- The principle of subsidiarity in courts means arguing that decisions should be made at a lower level. This will facilitate making decisions concerning the local conditions and maintaining international sensitivity.

### **SUGGESTIVE MESURES**

- Mechanisms for judicial review must be provided in the constitutions in order to guarantee that the actions of the other branches of government are in conformity with the constitution. Yet, these provisions should be counterbalanced with the principles of Judicial restraint.
- Comprehensive education and training for the judges and the legal professionals on the principle of Judicial restraint and the importance of maintaining balance of powers is the principal means of engaging them.

### **CONCLUSION**

The said constitutional dimension of Judicial restraint in the background of a globalizing world has many dimensions. While principles of Judicial restraint, founded on separation of powers and rule of law, are important facets of any democracy-for holding democratic values and for making effective functioning of the legal systems possible-the challenges posed by globalization are not to be ignored. It needs to strike a balance between domestic norms and international standards. This balancing is again similar to international law on human rights, for example, equally tough in a number of different regulatory hurdles and economic interests pitted against public welfare. It must consider the implication of technology on privacy for people and the freedom of citizens. There needs to be enough interest in such challenges at the front end for the judiciary to be able to play a critical role toward the stability of a legal and judicial system capable of protecting human rights within a networked world. Judicial restraint works within a constitutional framework, giving the judiciary a negotiating function around the complexities while remaining true to democratic principles.