

Analyzing the Evolution of Judicial Discipline in the Supreme Court of India

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Abstract

Mirroring the necessity of discipline for a well-ordered life, a well-functioning judiciary system requires judicial discipline to fulfil its commitment to the impartial dispensation of justice for all, as enshrined in the nation's constitution. Judicial discipline is essential in legal operations. Adjudicating agencies are required to follow the previous decisions made by higher authorities in comparable situations. Only a court decision that is rational, just, appropriate, substantial, and widely agreed upon would be satisfactory. The Supreme Court abides by a self-imposed principle that a decision can only be reversed by a larger bench than the one that initially made the ruling. The "Larger Bench Rule" is a principle of stare decisis that aims to improve clarity, fairness, and efficiency in legal rulings, as well as bolster the Court's public credibility. The Rule also emphasises the equal significance of each judge's wisdom. The Court has breached the Rule in numerous significant cases. We highlight situations in which smaller or coordinating benches have either directly or tacitly overturned legally binding rulings. The Court ignored past rulings by either not adhering to them, drawing tenuous differences from them, overtly conflicting with them, or capriciously deeming them void, thus violating the Larger Bench Rule. Judicial restraint is a theory in judicial interpretation that recommends judges to restrict the use of their power. This article explores the idea of judicial restraint and accountability in the Indian legal system, its historical roots and its significance in maintaining a balance between the judiciary's role as a guardian of the Constitution and the principles of representative governance. Additionally, suggest specific ways to ensure adherence to court rules in the future, taking into account the Supreme Court's position as a dynamic judicial authority.

Keywords: *Judiciary, Discipline, Rule of Court, Rights, Accountability, Restraint*

I. Introduction

"It is indeed important to have judges who are prepared to fashion new tools, methods strategies and are ready to evolve a new jurisprudence, who are judicial statesmen with a social vision and creative faculty and who have, above all, a deep sense of commitment to the Constitution with an activist approach and obligation for accountability not to any political party in power nor to the classes which are vociferous but to the half hungry millions of India who are continually denied their human rights".

-Hon'ble Justice P.N. Bhagwati¹

The Supreme Court of India is the supreme judicial authority in the Republic of India. It is the highest court in India for both civil and criminal matters. It also has the power of judicial review. The Supreme Court, led by the Chief Justice of India and consisting of up to 33 justices, holds extensive power through its "original, appellate and advisory" jurisdictions. Being the supreme constitutional court, it mostly reviews appeal challenging rulings issued by various

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¹ S.P. Gupta v. Union of India, AIR 1982 SC 149.

state High Courts and tribunals. It serves as an advisory court and adjudicates cases referred by the President of India. During the judicial review, the court can deem both ordinary legislation and constitutional amendments unlawful if they are discovered to violate the “*Basic Structure Doctrine*”. Protecting citizens' fundamental rights and resolving legal disputes between the federal government and state administrations is essential.²

The decisions made by the Supreme Court hold legal enforceability over all Indian courts, as well as the central and state governments. Article 142 of the Constitution gives the court the inherent power to issue any required order to achieve absolute justice, which the President must enforce. Article 145 of the Indian Constitution allows the Apex Court to establish its own rules for the operation and process of the court. These rules have been updated three times since independence in 1950, 1966, and 2013.³

Natural Justice principles and judicial discipline are interconnected aspects of legal proceedings. Failure to adhere to these mentioned criteria during adjudication proceedings will lead to a court conclusion that is not impartial and fair. Judicial discipline is inherent in the adjudication process and relies on self-control. This is the basic level of discipline and decorum expected from the judicial community. Field formations and adjudicating authorities are required to adhere to precedent judgements and higher appellate orders in similar cases. However, it has been noticed that in some instances, field officers and lower adjudicating authorities are not following these judgements or orders from higher appellate authorities when making decisions on similar issues, thus disregarding the principles of judicial discipline in adjudication proceedings.⁴ A judgement or order given by a higher adjudicating authority remains in effect as a legally binding decision for lower adjudicating authorities, unless an appeal has put a hold on it. This applies not just to the specific case at hand, but also to future cases involving the same legal issue. When dealing with a nationwide law (All India Statute), decisions made by tribunal benches across different locations are considered binding on that particular legal point. This principle is rooted in the concept of judicial discipline, which ensures consistency in legal interpretations.

In a democracy, the court plays a vital role in overseeing the constitutional framework of a federal nation. The judiciary in a federation establishes the boundaries of power for the government and legislature and its rulings are final.⁵ The Supreme Court is important for two main reasons: firstly, due to the unifying impact of the Central Judicature, and secondly, because its foundation signifies the acknowledgement of a new and potentially conclusive phase of India's constitutional development.⁶ The creators of the Indian Constitution likely did not anticipate that the Indian Judiciary would become the most dominant institution of the State

² Aparna Chandra, William H. J. Hubbard and Sital Kalantry, “The Supreme Court of India: An Empirical Overview of the Institution.” In *A Qualified Hope: The Indian Supreme Court and Progressive Social Change*, Gerald N. Rosenberg, Sudhir Krishnaswamy and Shishir Bail (ed.) 43–76 (Comparative Constitutional Law and Policy, Cambridge University Press, 2019).

³ Dharma Pratap, “The Nature of The Discretionary Jurisdiction Of The Supreme Court Of India In Advisory References”, 22(2) *JILI* 179–209 (1980).

⁴ Ramesh Chandra Jaina, “Judicial Discipline”, *Tax Guru*, Nov. 21, 2019, available at: <https://taxguru.in/income-tax/judicial-discipline.html> (last visited Feb. 27, 2024)

⁵ *Meyers v. United States*, 272 U.S. 52.

⁶ Akhil Chandra Moitra, “Position Of The Federal Court In The Constitutional System Of India”, 4(1) *The Indian Journal of Political Science* 95–100 (1942).

within more than seven decades of the country's independence. The Constitution created the High Courts and the Supreme Court as independent institutions to oversee and prevent the executive and legislature from overstepping their constitutional authority, in addition to dispensing justice. These courts were granted the authority to interpret laws and the Constitution, as well as to nullify executive actions that contravened any law or the fundamental rights of individuals. It also had the power to scrutinise if laws created by Parliament adhered to the Constitution and nullify them if they breached it.⁷

Following criticism, the Supreme Court of India occasionally displayed a tendency towards exercising judicial restraint. The court recognised the need to uphold the separation of powers, deferring to elected officials, and being careful when getting involved in policy issues. This represented a change in direction in specific areas while safeguarding essential rights and constitutional principles.⁸ Currently, the Indian court maintains a balance between judicial activism and restraint. Both are two aspects of the same thing. The courts practise judicial restraint by respecting legislative purpose⁹, refraining from interfering in policy issues, and highlighting the significance of democratic discussion. The court acknowledges its duty to safeguard constitutional rights and uphold the rule of law, which may result in occasional acts of judicial activism when deemed essential.

II. Evolution of Judicial System as a Protector of Rights

The challenges of governing complex societies in *Mesopotamia, Egypt, Greece, and Rome* spurred the emergence of the first legal systems comprising nascent legal frameworks that provided much-needed standards and structures to navigate the intricacies of property rights, commerce, and dispute resolution. Each civilization crafted a unique legal tapestry, intricately woven from the threads of their historical experiences and cultural norms. The codification of laws has a substantial impact on the evolution of legal principles. An excellent illustration is the famous “*Code of Hammurabi*”, which comes from ancient Babylon. The code, established in 1754 BCE, standardised laws and punishments to match the social and economic framework of that time. The “*Justinian Code, the Napoleonic Code and the English Common law system*” established intricate legal norms that influenced the idea of justice. Colonialism has a profound influence on legal systems worldwide. European powers enforced their legal systems in colonised regions, amalgamating local customs with foreign legislation.¹⁰

Prior to October 1, 1937, a lacuna existed during British India and among Indian States: the absence of a unified judicial system encompassing the entire nation. Consequently, disputes arising between the central government and the individual constituent states, or amongst the various provinces and states themselves, rested with the Government of India's central administration for resolution. This held true even in instances where the central administration itself had been a party to the disagreement.

⁷ Manish Tewari and Rekha Saxena, “The Supreme Court Of India: The Rise Of Judicial Power And The Protection Of Federalism” In *Courts In Federal Countries: Federalists Or Unitarists?*, Nicholas Aroney and John Kincaid (ed.), 223–55 (University of Toronto Press, 2017).

⁸ Sidharth Sharma, “Myth of Judicial Overreach”, 43(10) *Economic and Political Weekly* 15–18 (2008).

⁹ The Constitution of India, 1950, art. 50.

¹⁰ Nathan Isaacs, “The Schools of Jurisprudence. Their Places in History and Their Present Alignment”, 31(3) *Harvard Law Review* 373–411 (1918).

Furthermore, while High Courts and similar courts across the region enjoyed a degree of coordination and independence, they ultimately deferred to a common court of appeal. This, coupled with the implementation of statutes and regulations throughout British India and most of India, led to varied interpretations by the courts, as documented by George H. Gadbois in his 1963 article.¹¹

The only entity capable of correcting such varied interpretations was the “*Judicial Committee of the Privy Council*”, an Imperial institution located about six thousand miles away from India. The Judicial Committee, which received more appeals from India than from any other dominion or colony for decades, should not be seen as a unifying factor in Indian law as it did not hear appeals indiscriminately. Significant judicial cases and legislative advancements have driven the development of discrimination law, voting rights, and the safeguarding of equal treatment under the law. The creators of the Indian Constitution aimed to construct a democratic and egalitarian society while safeguarding the autonomy of the judiciary. They acknowledged the necessity of judicial review to safeguard fundamental rights and provide oversight on executive and legislative decisions. They stressed the significance of judicial self-restraint to maintain the separation of powers. Following independence, the Supreme Court of India took on a more cautious stance. The main focus was on interpreting constitutional provisions, protecting individual rights, and respecting legislative decisions and executive acts.¹²

Hybrid legal systems emerged due to cultural blending, integrating aspects from both colonisers and native customs. This historical combination impacted the legal structure of numerous post-colonial nations, shaping their legal attributes. Revolutionary enthusiasm resonated across history, challenging conventional notions of authority and control. A prime exemplar of this phenomenon is the “*American Revolution*” resulted in the establishment of the Constitution of the U.S.A., which serves as an enduring emblem of governance and individual rights. The “*French Revolution*” resulted in the formation of the “*Declaration of the Rights of Man and Citizen*”, a pivotal document that had a worldwide influence by transforming perspectives on human rights and constitutional governance.¹³

The demanding events of World Wars I and II emphasised the crucial need for global legal frameworks. When faced with the horrors of war, powerful nations worked together to create organisations like the “*League of Nations*” and later the “*United Nations Organization*”. These entities played a crucial role in influencing international law, advocating for peace, human rights, and cooperation among nations. They are consistently shaping the legal environment of our linked world. Civil rights movements have had a significant and lasting effect on legal systems throughout history. The African-American civil rights movement, among others, initiated legal reforms and advocated for the recognition of equal rights for marginalised groups. The rapid progress of technology, particularly in the digital age, has led to new

¹¹ George H. Gadbois, “Evolution Of The Federal Court Of India: An Historical Footnote”, 5(1) *Journal of the Indian Law Institute* 19–46 (1963).

¹² Fali S. Nariman, “Fifty Years Of Human Rights Protection In India - The Record Of 50 Years Of Constitutional Practice”, 1 *National Law School of India Review* 13–26 (2013).

¹³ John Henry Merryman, “Comparative Law and Social Change: On the Origins, Style, Decline & Revival of the Law and Development Movement”, 25(3) *The American Journal of Comparative Law* 457–91 (1977).

challenges and necessitated legal modifications. The rise of the internet, e-commerce, and social media has propelled legal systems into uncharted territory.¹⁴

Historical events have significantly impacted legal systems. Early civilizations faced societal problems that necessitated the creation of legal codes and institutions. Legal frameworks were created to handle specific requirements for governance, property rights, commerce, and conflict resolution. Historical events prompted legal transitions, enabling legal systems to evolve and respond to changing situations as societies developed and encountered new challenges. Thus, in the 21st Century Legislators established novel legal structures to address cybersecurity concerns, safeguard data privacy and enhance intellectual property rights in the digital realm while making the judiciary the protractor of the same.¹⁵

III. Judicial Discipline and Accountability of Judges

India has a democratic form of government. In democracy, the people's will is expressed through elected representatives who act on their behalf, distinguishing it from other types of governance. These representatives are granted authority through elections and are selected by the public to advocate for their interests. Therefore, it is believed that their remarks and acts represent the wishes of the citizens who voted for them. Contrastingly, judges are appointed, not elected by the general population. Thus, it is essential to restrict the authority held by individuals who were not chosen by the public. Granting them too much authority to establish the law would go against democratic values. Exercising judicial restraint is crucial in our system.¹⁶

Judges should use caution in striking down any legislation unless they are found to be unconstitutional. It opposes Judicial Activism, which encourages judges to actively shape public policy. Conversely, judicial restraint stresses the importance of judges practising self-control and avoiding intruding on the powers of the executive and legislative branches. This idea advocates for judicial activism by the court while also emphasising the importance of avoiding judicial overreach. Judicial restraint upholds the separation of powers by limiting the court's involvement in legislative functions and ensuring it stays within its designated duty. It enables the executive and legislature to carry out their individual duties. Courts can focus on performing their responsibilities by using judicial restraint, especially considering the substantial number of pending cases. This method helps the court save time by focusing on key issues and motivates the executive to rapidly pass essential laws within a set period.¹⁷

Since the 1970s, there has been a clear trend towards judicial activism, characterised by a greater readiness of the court to get involved in issues of public concern. The Supreme Court started interpreting basic rights broadly and taking proactive steps to alleviate social and economic disparities. During this time, there were significant legal decisions made about environmental conservation, public interest lawsuits, and socio-economic entitlements. With

¹⁴ Janet Sims-Wood, "African Americans and World War II An Annotated Bibliography", 51/57 (1/12) *Negro History Bulletin* 62–68 (1993).

¹⁵ Avery Devereaux, "The Evolution of Law: How Historical Events Shape Legal Principles and Practices", *The Havoc Journal*, May 25, 2023, available at: <https://havokjournal.com/legal-issues/the-evolution-of-law-how-historical-events-shape-legal-principles-and-practices/> (last visited Feb. 28, 2024).

¹⁶ D. C. Chauhan, "Parliamentary Sovereignty Vs. Judicial Supremacy In India", 74(1) *The Indian Journal of Political Science* 99–106 (2013).

¹⁷ M. M. Semwal and Sunil Khosla, "Judicial Activism", 69(1) *The Indian Journal of Political Science* 113–26 (2008).

the rise of judicial activism, there was increasing disapproval of judicial overstepping and the apparent intrusion into the policy-making realm of the legislature and government. Critics contended that the judiciary was taking on the functions of legislator and administrator, which might weaken the idea of separation of powers. As a result, judicial constraint was applied.¹⁸ In 1973, the Supreme Court gained the authority to invalidate constitutional amendments that were deemed to contradict the fundamental framework of the Constitution by creatively interpreting the provision that allows Parliament to modify the Constitution. Several laws and constitutional amendments have been invalidated by the Courts in this timeframe. The superior courts in India have become one of the most powerful courts globally, wielding significant and unrestrained authority. Court instructions, often issued without warning, must be observed by all executive officers to avoid contempt of court, unlike executive actions or legislation which can be challenged in court. These abilities were frequently used to address significant executive inactivity. The Court gained additional powers by a creative interpretation known as purposive, which allowed it to assume the authority to appoint judges by reinterpreting the article related to government nomination of judges. High Court and Supreme Court judges are currently appointed by a collegium consisting of senior Supreme Court judges.¹⁹

The judiciary has transformed into a self-sustaining oligarchy. The selection of judges lacks a structured mechanism and transparency. The evaluation of judges does not consider their commitment to the constitutional principles of a secular, socialist democratic republic or their empathy towards the disadvantaged individuals who may struggle to access justice. The courts in India have nearly total and unrestrained power that is unparalleled by any other court globally. Under these conditions, it is crucial that judges in the superior judiciary are held responsible for their actions and behaviour, whether it involves corruption or ignoring constitutional principles and citizens' rights. Regrettably, there is no institution or method established by the Constitution or any other law to evaluate the performance of judges or address complaints lodged against them. According to the Constitution, High Court and Supreme Court judges can only be removed through impeachment.²⁰

IV. Role of Supreme Court Judgments: Enforcing Judicial Discipline

The Supreme Court, in the landmark case of *Union of India vs. Kamalakshi Finance Corporation Ltd.* (AIR 1992 SC 711), emphasized the importance of judicial discipline within the administrative hierarchy. It observed that lower authorities, such as Assessing Officers, are obligated to adhere to the pronouncements of higher bodies like Tribunals, particularly in matters pertaining to the same assessee. This extends even to decisions made by non-judicial Tribunals. While arguments may arise regarding departmental acceptance of Tribunal rulings, courts have consistently condemned such language as "obnoxious" and "unparliamentary" when referring to decisions from superior authorities. It is well-established that unless a legal challenge (appeal) suspends an order from a higher authority, it remains a valid and binding precedent for lower authorities. This applicability extends not only to the

¹⁸ A.S. Anand, "Judicial Review - Judicial Activism - Need For Caution", 42(2/4) *Journal of the Indian Law Institute* 149–59 (2000).

¹⁹ B. Shekar. Hegde, "Independence Of The Judiciary And The Supreme Court", 9(4) *JILI* 638–49 (1967).

²⁰ Ian F. Haney López, "Institutional Racism: Judicial Conduct and a New Theory of Racial Discrimination", 109(8) *The Yale Law Journal* 1717–1884 (2000).

specific case at hand but also to future cases involving the same legal question. Furthermore, for nationwide statutes, decisions rendered by Tribunal benches across different locations are considered binding on the legal point in question, further solidifying the principle of judicial discipline.

In *Director of Settlements, A.P. and Ors. v. M.R. Apparao and Anr.* 2023 Online SC 1348, the Supreme Court unequivocally reaffirmed the principle enshrined in Article 141 of the Indian Constitution. It observed that the article explicitly mandates that legal pronouncements by the Supreme Court are binding on all courts within the nation's territory. By virtue of this article, the Supreme Court holds the exclusive power to definitively interpret legislation. Consequently, the Court's interpretations of law are obligatory, while pronouncements on factual matters, which are inherently case-specific, may not hold the same binding force. The core principle, or ratio decidendi, extracted from a holistic reading of a judgment in relation to the specific issues before the Court, constitutes the binding element, not isolated words or sentences. Determining whether a decision constitutes a "declaration of law" excludes instances where a point is conceded, as the binding force lies in the underlying legal principle. Furthermore, Supreme Court judgments must be interpreted within the context of the specific questions presented in the case. Notably, such decisions cannot be challenged on the grounds that certain aspects were overlooked or relevant provisions were not brought to the Court's attention. Therefore, a High Court judgment that disregards or attempts to circumvent a Supreme Court decision, or seeks to revive a previously overruled High Court decision, is deemed null and void.

Through a series of landmark judgments, the Supreme Court has elevated the doctrine of judicial discipline to a ubiquitous principle, mandating adherence by all subordinate courts and adjudicatory bodies. The Court has unequivocally emphasized its disapproval of any disregard for this principle, particularly when proper analysis could have facilitated its application. This unwavering stance stems from the Court's commitment to fostering uniformity in legal interpretations, ensuring efficient judicial functioning, upholding the rule of law, and preserving public confidence in the judiciary.

Conclusion

The notion of 'law' is dynamic and adapts to the changing demands and situations of society as it evolves with human understanding and civilization. The history of human society demonstrates that the present is influenced by the past. Similarly, this applies to legal institutions. Our current legal system and judiciary have evolved throughout time via experimentation and strategic development. To understand the current judicial discipline in India, it is essential to examine its historical evolution and development. Firstly, it is crucial to comprehend and recognise the concept of judicial accountability. Accountability entails ensuring transparency in the legal system and subjecting it to rigorous public scrutiny to prevent judicial wrongdoing. The contemporary discussion on accountability continues simultaneously. Tampering with the independence of the judiciary is a critical issue that requires immediate resolution. Judicial independence must be coupled with judicial accountability. The dispute arises from the lack of a direct mechanism in the Constitution to hold the court accountable. The goal was to prevent any violation of judicial independence,

which is essential for creating a fair and unbiased judiciary. Going ahead, the goal is to promote accountability by utilising a self-regulation method while maintaining independence.

A more sophisticated and equitable mechanism is needed to ensure accountability in assessing court outcomes, managing judicial time for cases, and determining the frequency of adjournments. Seeking accountability entails addressing the fundamental issues within the judicial system through a broader public discussion while also preserving its independence, instead than solely focusing on holding judges responsible. Establishing principles in the judiciary to tackle challenges is essential to maintain the public's confidence in the court's power. One suggestion is to create a standing committee consisting of distinguished retired judges to examine issues and offer suggestions to the Chief Justice. An unbiased probe would offer clarity on the rumours circulating in the media.