

CRITICAL APPRAISAL OF JUDICIAL CREATIVITY WITH SPECIFIC REFERENCE TO INTERPRETATION OF PART-III PROVISIONS OF THE CONSTITUTION OF INDIA

by

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“The concept of judicial creativity in constitutional context undoubtedly vectored a Darwinian model of evolution. From earlier stages where constitutional interpretation was in its formative stage till the recent ages where this interpretation has evolved to a much profound and matured level through the judicial craftsmanship. However, since inception, the very concept of judicial creativity confronted multidimensional arguments and thereby questioning firstly, the very validity and secondly, the permissible extent of creative approach of the judges.”

INTRODUCTION: JUDICIAL CREATIVITY AS CONSTITUTIONAL EVOLUTION

In the constitutional context, one of the most significant issues in defining the development of constitutional governance in India is judicial creativity. A constitution, unlike ordinary statutes, is intended to last over centuries and to keep up with the changing social realities, political expectations, and moral values. The interpretation of such a document, therefore, cannot remain static. In this regard, judicial creativity has followed a Darwinian model of evolution, gradually evolving the substantive meaning of the constitution over time to meet the needs of a transforming society. Since an early development characterized by caution and textual rigidity, constitutional interpretation has progressively matured through judicial craftsmanship, enabling the Constitution to function as a living and dynamic instrument.

The judiciary was relatively conservative during the early years of independence as far as the interpretation of the constitution is concerned, especially the Fundamental Rights. It placed more emphasis on literal readings and formal limits, which implied institutional restraint and respect towards legislative power. But with time this approach was replaced by a more purposive and value-based method of interpretation. Courts began to acknowledge that the abstract guarantees contained in Part III of the Constitution were not mere legal promises but binding commitments that were intended to guarantee human dignity, equality, and liberty in a

real and substantive manner. This shift marks the emergence of judicial creativity as a defining feature of Indian constitutional adjudication.

However, judicial creativity has always been a deeply contested issue since its very beginning. Although it has been praised for expanding the scope and content of Fundamental Rights, it was also criticized on grounds of democratic legitimacy and separation of powers. Critics have contended that too much judicial innovation can lead to interpretation being a law-making exercise and that will undermine the authority of elected institutions. This conflict leads to two fundamental questions: whether judicial creativity is constitutionally valid, and if yes, what are the permissible limits within which judges may interpret constitutional provisions creatively.

This paper aims to discuss the role of judicial creativity in the interpretation of Part III, the methods through which it has been exercised, and the extent to which it has strengthened or strained constitutional balance.

CONSTITUTIONAL NECESSITY OF JUDICIAL CREATIVITY IN PART III

The necessity of judicial creativity in interpreting Part III arises from the nature and purpose of Fundamental Rights within the constitutional framework. These rights are framed in broad and abstract language using concepts such as equality, liberty, freedom and dignity that cannot be exhaustively defined during the time of drafting of the constitution.¹ The framers purposefully used open-ended expressions in order to ensure that the guarantees could adapt to evolving social, economic and political contexts. Consequently, interpretation becomes an important judicial function and creativity an inseparable aspect of that process.²

Fundamental Rights are not self-executing promises; their practical substance is to be determined by judicial enforcement. Most of the modern issues, like environmental harm, economic vulnerability, administrative arbitrariness and systemic injustice were either unanticipated or insufficiently resolved during the time of enactment. Courts have thus interpreted these rights based on the changing realities while still basing it on the constitutional values. Judicial creativity therefore serves as a bridge between constitutional text and lived experience so that Part III will not become a mere symbol.³

¹ Jeffrey M. Shaman, The Constitution, the Supreme Court, and Creativity, 9 Hastings Const. L.Q. 257, 262–64 (1982).

² Roger J. Traynor, The Limits of Judicial Creativity, 63 Iowa L. Rev. 1, 9–12 (1977).

³ M. M. Semwal & Sunil Khosla, Judicial Activism, 69 Indian J. Pol. Sci. 113, 117–19 (2008).

The role of judiciary as a protector of Fundamental Rights also imposes a duty to protect individuals from State excesses. These guarantees would be reduced to narrow interpretations and their transformative purpose would be undermined via a purely literal approach. Courts add substantive fairness to constitutional provisions through creative interpretation and allow them to develop in line with modern standards of justice.

Nevertheless, such creativity is still interpretative and not legislative. The new dimensions that the courts create are based on the existing guarantees and not an invention of rights independently. This distinction is important in addressing issues of judicial overreach. Judicial creativity, when exercised within constitutional boundaries, is aimed at actualisation of the underlying objectives of Part III and not replacement of the will of the Constitution.⁴ Thus, the interpretative development of Fundamental Rights reflects not judicial arbitrariness, but a constitutional necessity based on the dynamic character of the Indian Constitution.

EXPANSION OF THE MEANING AND CONTENT OF FUNDAMENTAL RIGHTS THROUGH JUDICIAL INTERPRETATION

The development of fundamental rights in India can be seen as the gradual transition from textual formalism to a value based constitutional culture. During the early years the Supreme Court adopted a restrictive interpretation of liberty. In *A.K. Gopalan v. State of Madras*,⁵ the guarantee of personal liberty under Article 21 was treated as satisfied once deprivation occurred according to a procedure established by law, regardless of whether that procedure was fair or reasonable. Fundamental rights were viewed as separate compartments, and the Court refused to test a law both on the touchstones of equality and freedom. This formalist position slowly proved inadequate for protecting substantive liberty in a constitutional democracy.

A momentous change occurred in the case of *Maneka Gandhi v. Union of India*,⁶ in which the Court construed Articles 14, 19 and 21 together and held that any law that impacts personal liberty should be just, fair and reasonable. Such an interpretative change brought procedure under Article 21 to include with substantive due process, and equality under Article 14 became a standard governing all State action. The judgment became the start of a unified rights

⁴ John Harrison & Robert Bork, Judicial Creativity, and Judicial Subjectivity, 80 U. Chi. L. Rev. Dialogue 205, 208–10 (2013).

⁵ *A.K. Gopalan v. State of Madras*, 1950 S.C.C. 228 (India).

⁶ *Maneka Gandhi v. Union of India*, (1978) 1 S.C.C. 248 (India).

jurisprudence where fundamental rights were taken to be mutually reinforcing and not isolated guarantees.

Legal scholars have described the Maneka Gandhi ruling as the moment when the Supreme Court inaugurated a new path of rights expansion, moving decisively away from the formalist interpretation of A.K. Gopalan. The significance of this shift lay not merely in the outcome for the petitioner but in the Court's reconceptualisation of the relationship between Articles 14, 19 and 21 as forming a mutually reinforcing constitutional code governing State action, subsequently referred to as the golden triangle of fundamental rights.⁷

Once life was interpreted as a dignified existence and not mere animal survival in *Maneka Gandhi v. Union of India*,⁸ a series of decisions obtained concrete entitlements from constitutional guarantees. In *Olga Tellis and Others v. Bombay Municipal Corporation*,⁹ eviction of pavement dwellers was recognised as a deprivation of livelihood and therefore of life itself under Article 21. The preservation of life in *Parmanand Katara v. Union of India*¹⁰ imposed a duty upon every doctor and hospital to provide immediate medical assistance. The Court recognised in *Mohini Jain v. State of Karnataka*¹¹ and subsequently in *Unnikrishnan J.P. v. State of Andhra Pradesh*,¹² that education is indispensable to the meaningful exercise of liberty, thus providing substantive content to life and dignity. Environmental protection became a part of the constitutional law in *Rural Litigation and Entitlement Kendra v. State of Uttar Pradesh*¹³ and it was further elaborated in *M.C. Mehta v. Union of India*,¹⁴ where the prevention of pollution and ecological preservation were regarded as the part of the right to live in a healthy environment. Similarly, *Vishaka and Others v. State of Rajasthan*¹⁵ used the provisions of equality, non-discrimination and liberty to recognise protection against sexual harassment at the workplace as part of constitutional dignity.

⁷ Record of Law, 'Maneka Gandhi v Union of India: A Landmark in the Evolution of Indian Constitutional Law' (Record of Law, 5 July 2025) <<https://recordoflaw.in/maneka-gandhi-v-union-of-india-a-landmark-in-the-evolution-of-indian-constitutional-law/>> accessed 15 January 2024; see also The Juris Society, 'Maneka Gandhi v Union of India (1978): The Golden Triangle and the Evolution of Substantive Due Process in Indian Constitutional Law' (Medium, 22 November 2025) <<https://medium.com/@thejurissoc/maneka-gandhi-v-37fa61f9045f>> accessed 15 January 2024.

⁸ Supra Note 6.

⁹ *Olga Tellis & Ors. v. Bombay Municipal Corporation & Ors.*, (1985) 3 S.C.C. 545 (India).

¹⁰ *Parmanand Katara v. Union of India & Ors.*, (1989) 4 S.C.C. 286 (India).

¹¹ *Mohini Jain (Miss) v. State of Karnataka*, (1992) 3 S.C.C. 666 (India).

¹² *Unnikrishnan J.P. and Ors. v. State of Andhra Pradesh and Ors.*, (1993) 1 S.C.C. 645 (India).

¹³ *Rural Litigation and Entitlement Kendra v. State of Uttar Pradesh*, 1985 Supp. S.C.C. 79 (India).

¹⁴ *M.C. Mehta v. Union of India (Oleum Gas Leak case)*, (1987) 1 S.C.C. 395 (India).

¹⁵ *Vishaka and Others v. State of Rajasthan*, (1997) 6 S.C.C. 241 (India).

The practical significance of the Vishaka judgment extended well beyond the judicial sphere. The guidelines issued by the Court in 1997 operated as binding law for sixteen years until Parliament enacted the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act in 2013, which codified and expanded upon the constitutional framework that the Court had created. This trajectory from judicially mandated norms to codified legislation illustrates how creative constitutional interpretation under Part III can directly catalyse legislative action to protect fundamental rights in a substantive manner.¹⁶

Equality jurisprudence also underwent transformation. In *E.P. Royappa v. State of Tamil Nadu*,¹⁷ the Court ruled that arbitrariness is incompatible with equality under Article 14. This principle was applied to State contracts in *Ramana Dayaram Shetty v. International Airport Authority of India*¹⁸ and extended to public authorities in *Ajay Hasia v. Khalid Mujib Sehravardi*,¹⁹ ensuring that constitutional obligations could not be avoided through institutional form. The decision in *Indra Sawhney v. Union of India*²⁰ also showed that equality under Articles 14, 15 and 16 permits affirmative action designed to achieve real instead of formal parity.

Freedom of expression also expanded beyond traditional censorship issues. *Bennett Coleman and Company Limited v. Union of India*²¹ considered press freedom as essential to democratic participation, whereas *S. Rangarajan v. P. Jagjivan Ram*²² emphasised that anticipated public hostility cannot justify suppressing ideas. Later, *Shreya Singhal v. Union of India*²³ struck down vague online speech restrictions as inconsistent with free expression, and *Justice K.S. Puttaswamy (Retd.) v. Union of India*²⁴ recognised privacy as part of liberty, autonomy and dignity within the constitutional framework.

The Puttaswamy judgment, delivered by a nine-judge bench that unanimously recognised privacy as a fundamental right, has had far-reaching implications beyond the immediate challenge to the Aadhaar identification project. The Court's unanimous holding that privacy is

¹⁶ International Bar Association, 'India's Workplace Sexual Harassment Law: A Decade On' (IBA, 2023) <<https://www.ibanet.org/india-decade-of-posh-act>> accessed 15 January 2024.

¹⁷ *E.P. Royappa v. State of Tamil Nadu*, (1974) 4 S.C.C. 3 (India).

¹⁸ *Ramana Dayaram Shetty v. International Airport Authority of India*, (1979) 3 S.C.C. 489 (India).

¹⁹ *Ajay Hasia v. Khalid Mujib Sehravardi*, (1981) 1 S.C.C. 722 (India).

²⁰ *Indra Sawhney v. Union of India*, 1992 Supp. (3) S.C.C. 217 (India).

²¹ *Bennett Coleman & Co. v. Union of India*, (1972) 2 S.C.C. 788 (India).

²² *S. Rangarajan v. P. Jagjivan Ram*, (1989) 2 S.C.C. 574 (India).

²³ *Shreya Singhal v. Union of India*, (2015) 5 S.C.C. 1 (India).

²⁴ *K.S. Puttaswamy (Retd.) v. Union of India*, (2017) 10 S.C.C. 1 (India).

intrinsic to Articles 14, 19 and 21 established a proportionality framework for assessing State intrusions on personal data and bodily autonomy, which subsequently influenced constitutional challenges in areas ranging from biometric surveillance to digital data governance. The recognition of informational privacy as a constitutional value has, in particular, set the terms of debate around data protection legislation in India.²⁵

Religious freedom and personal autonomy were protected in *Bijoe Emmanuel and Others v. State of Kerala*,²⁶ where conscientious belief prevailed over majoritarian expectations, and dignity-based equality guided the decision in *Shayara Bano v. Union of India*,²⁷ invalidating instantaneous triple talaq. The concept of procedural fairness became substantive in the case of *Hussainara Khatoon v. State of Bihar*,²⁸ which recognised speedy trial as a part of personal liberty, and *Sunil Batra v. Delhi Administration*,²⁹ which affirmed that prisoners retain constitutional dignity. Free legal aid was recognised in *Khatri (II) v. State of Bihar*³⁰ and *Suk Das v. Union Territory of Arunachal Pradesh*.³¹ Safeguards against custodial violence was laid down in *D.K. Basu v. State of West Bengal*.³² Protection against exploitation broadened when *People's Union for Democratic Rights v. Union of India*³³ treated payment below minimum wage as forced labour under Article 23³⁴ and *Bandhua Mukti Morcha v. Union of India*³⁵ addressed bonded labour through continuing judicial supervision.

With these decisions, Fundamental Rights evolved from narrowly defined legal guarantees into a comprehensive framework safeguarding dignity, fairness and participation in social life. The expansion occurred not by amendment but by interpretative development responding to new social realities. Meanwhile, it remains open to debate whether the ability of the judiciary to

²⁵ Record of Law, 'Right to Privacy as a Fundamental Right in India: An Analysis of the Puttaswamy Judgment' (Record of Law, 3 December 2025) <<https://recordoflaw.in/right-to-privacy-as-a-fundamental-right-in-india-an-analysis-of-the-puttaswamy-judgment/>> accessed 15 January 2024; see also Hugh Tomlinson QC, 'Case Law, India: Puttaswamy v Union of India' (Inform, 4 September 2017) <<https://inform.org/2017/09/04/case-law-india-puttaswamy-v-union-of-india-supreme-court-recognises-a-constitutional-right-to-privacy-in-a-landmark-judgment-hugh-tomlinson-qc/>> accessed 15 January 2024.

²⁶ *Bijoe Emmanuel v. State of Kerala*, (1986) 3 S.C.C. 615 (India).

²⁷ *Shayara Bano v. Union of India*, (2017) 9 S.C.C. 1 (India).

²⁸ *Hussainara Khatoon v. State of Bihar*, (1980) 1 S.C.C. 81 (India).

²⁹ *Sunil Batra v. Delhi Admin.*, (1978) 4 S.C.C. 494 (India).

³⁰ *Khatri (II) v. State of Bihar*, (1981) 1 S.C.C. 627 (India).

³¹ *Suk Das v. Union Territory of Arunachal Pradesh*, (1986) 2 S.C.C. 401 (India).

³² *D.K. Basu v. State of W.B.*, (1997) 1 S.C.C. 416 (India).

³³ *People's Union for Democratic Rights v. Union of India*, (1982) 3 S.C.C. 235 (India).

³⁴ INDIA CONSTI, art. 23.

³⁵ *Bandhua Mukti Morcha v. Union of India*, (1984) 3 S.C.C. 161 (India).

reshape rights through interpretation defines the proper boundary between constitutional interpretation and policy formulation.

DOCTRINAL DEVELOPMENT AND STRUCTURAL INNOVATION UNDER PART III

The expansion of Fundamental Rights was accompanied by the evolution of constitutional doctrines designed to maintain the supremacy of Part III while preserving legislative functioning. Article 13, declaring laws inconsistent with Fundamental Rights void, required judicial clarification regarding the nature and extent of invalidity. In *Keshavan Madhava Menon v. State of Bombay*,³⁶ the Supreme Court held that pre-constitutional laws inconsistent with Fundamental Rights were not void ab initio but became unenforceable after the Constitution came into force. This reasoning matured into the **doctrine of eclipse** in *Bhikaji Narain Dhakras v. State of Madhya Pradesh*,³⁷ where such a law was treated as dormant and capable of revival if the constitutional limitation disappeared.

The related **doctrine of severability** was elaborated in *State of Bombay v. F.N. Balsara*,³⁸ where only unconstitutional portions of a statute restricting trade were struck down while the valid parts survived. The Court also confronted attempts to indirectly bypass constitutional limits and, in *K.C. Gajapati Narayan Deo v. State of Orissa*,³⁹ formulated the **doctrine of colourable legislation**, holding that the legislature cannot do indirectly what it cannot do directly. Questions concerning legislative competence led to the application of the **doctrine of pith and substance** in *State of Bombay v. F.N. Balsara*,⁴⁰ recognised in federal jurisprudence and influenced by *Cushing v. Dupuy*,⁴¹ allowing courts to examine the true nature of legislation rather than its incidental effects.

Fundamental Rights being public guarantees were held incapable of waiver in *Basheshar Nath v. Commissioner of Income Tax*,⁴² where waiver of equality protection was rejected and **doctrine of waiver** was evolved. Constitutional correction without unsettling past transactions was achieved through prospective overruling in *I.C. Golaknath v. State of Punjab*,⁴³ ensuring

³⁶ Keshavan Madhava Menon v. State of Bombay, AIR 1951 SC 128 (India).

³⁷ Bhikaji Narain Dhakras v. State of Madhya Pradesh, AIR 1955 SC 781 (India).

³⁸ State of Bombay v. F.N. Balsara, AIR 1951 SC 318 (India).

³⁹ K.C. Gajapati Narayan Deo v. State of Orissa, AIR 1953 SC 375 (India).

⁴⁰ Supra Note 35.

⁴¹ Cushing v. Dupuy, (1880) 5 App. Cas. 409 (P.C.).

⁴² Basheshar Nath v. Commissioner of Income Tax, AIR 1959 SC 149 (India).

⁴³ I.C. Golaknath v. State of Punjab, AIR 1967 SC 1643 (India).

future compliance while preserving legal stability. This led to the development of another doctrine known as **doctrine of prospective overruling**.

Article 14 generated an independent line of doctrinal development. Initially, equality was tested through the **doctrine of reasonable classification**, which required the presence of an intelligible differentia and a rational nexus between the classification and the legislative objective. However, in *E.P. Royappa v. State of Tamil Nadu*,⁴⁴ Justice Bhagwati departed from this formal approach and articulated the **doctrine of arbitrariness**, holding that arbitrariness is the very antithesis of equality and that equality is a dynamic concept incapable of confinement within rigid classificatory limits. This principle was reaffirmed in *Maneka Gandhi v. Union of India*,⁴⁵ where fairness and non-arbitrariness became essential requirements of State action, and was further applied in administrative law in *Ramana Dayaram Shetty v. International Airport Authority of India*,⁴⁶ subjecting governmental discretion to standards of transparency and fairness. Building upon these developments, courts gradually adopted the **doctrine of proportionality**, examining whether State action imposes excessive or disproportionate restrictions on individual rights. Together, the doctrines of reasonable classification, arbitrariness and proportionality transformed Article 14 from a narrow guarantee against discrimination into a broader constitutional control on misuse of State power.

The culmination of judicial creativity appeared in *Kesavananda Bharati v. State of Kerala*,⁴⁷ where the Court held that amending power of the Parliament cannot destroy the basic structure of the Constitution and therefore, the **doctrine of basic structure** evolved. Subsequent cases identified specific elements of this structure. In *Indira Nehru Gandhi v. Raj Narain*,⁴⁸ rule of law and free and fair elections were recognised as essential features. *Minerva Mills v. Union of India*⁴⁹ reaffirmed harmony between Fundamental Rights and Directive Principles and limited amending power. Judicial review was preserved in *L. Chandra Kumar v. Union of India*.⁵⁰ Secularism and federalism were affirmed as basic features in *S.R. Bommai v. Union of India*,⁵¹ while independence of judiciary and separation of powers were reinforced in

⁴⁴ Supra Note 15.

⁴⁵ Supra Note 6.

⁴⁶ Supra Note 16.

⁴⁷ *Kesavananda Bharati v. State of Kerala*, (1973) 4 S.C.C. 225 (India).

⁴⁸ *Indira Nehru Gandhi v. Raj Narain*, 1975 Supp. S.C.C. 1 (India).

⁴⁹ *Minerva Mills Ltd. v. Union of India*, (1980) 3 S.C.C. 625 (India).

⁵⁰ *L. Chandra Kumar v. Union of India*, (1997) 3 S.C.C. 261 (India).

⁵¹ *S.R. Bommai v. Union of India*, (1994) 3 S.C.C. 1 (India).

Supreme Court Advocates-on-Record Association v. Union of India.⁵² These principles ensure that even constitutional amendments cannot abrogate the identity that sustains Fundamental Rights.

The basic structure doctrine has attracted sustained academic attention as an example of judicial creativity at its most constitutionally consequential. Scholars have observed that the doctrine draws conceptual inspiration from the implied limits theory developed in German constitutional jurisprudence, particularly the work of Dietrich Conrad, who had presented this idea at a seminar in India in 1965. What made the Indian formulation distinctive, however, was its adaptation to a constitutional context in which Parliament had demonstrated a political willingness to use its amending power to override judicially recognised rights, thereby compelling the Court to locate an extra-textual constraint on that power.⁵³

Through these doctrines, the judiciary did not merely enlarge individual liberties but constructed a structural framework protecting them. Together they demonstrate judicial creativity operating at a structural level, transforming Part III from a catalogue of rights into an enforceable constitutional system.

INSTITUTIONAL MECHANISMS THROUGH WHICH JUDICIAL CREATIVITY IS ACTUALISED

In India, judicial creativity has not only operated by using interpretative reasoning but also institutional innovation. The most important tool is judicial review itself. Although it is not expressly detailed in one provision, it flows from Articles 13⁵⁴ and 32⁵⁵ and was declared to be part of the constitutional structure in the case of ***Kesavananda Bharati v. State of Kerala.***⁵⁶ The power to strike down unconstitutional action is reminiscent of the idea previously articulated in ***Marbury v. Madison.***⁵⁷ In India, it became the primary means by which

⁵² Supreme Court Advocates-on-Record Ass'n v. Union of India, (1993) 4 S.C.C. 441 (India).

⁵³ NUJS Law Review, 'Harmonising Constitutional Ideals: A Modern Reassessment of the Basic Structure Doctrine' (2024) NUJS Law Review <<https://nujslawreview.org/2024/02/08/harmonising-constitutional-ideals-a-modern-reassessment-of-the-basic-structure-doctrine/>> accessed 15 January 2024; see also Cyril Amarchand Mangaldas, 'Kesavananda Bharati v State of Kerala and the Basic Structure Doctrine' (India Corporate Law, 28 November 2025) <<https://corporate.cyrilamarchandblogs.com/2017/09/kesavananda-bharati-v-state-kerala-basic-structure-doctrine/>> accessed 15 January 2024.

⁵⁴ INDIA CONSTI, art 13.

⁵⁵ INDIA CONSTI, art 32.

⁵⁶ Supra Note 44.

⁵⁷ Marbury v. Madison, 5 U.S. (1 Cranch) 137 (1803).

Fundamental Rights were transformed from abstract guarantees into enforceable restrictions applied to State power.

Another distinctive contribution of the Indian judiciary was the evolution of Public Interest Litigation under Article 32.⁵⁸ Traditional principles of locus standi required the aggrieved person to approach the Court, but it proved to be unrealistic in a society marked by poverty and illiteracy. The Court thus relaxed hurdles in the procedures and allowed third parties to claim enforcement of rights. In ***Hussainara Khatoon v. State of Bihar***,⁵⁹ the Court accepted petitions based on newspaper reports in which undertrial prisoners came to light and acknowledged the right to speedy trial. Similarly, in ***Sunil Batra v. Delhi Administration***⁶⁰ the court accepted a letter of one of the prisoners who complained that he was being tortured in custody and treated it as a writ petition. *These rulings marked the birth of epistolary jurisdiction, where the letters and informal communications could invoke constitutional remedies.*

The same approach appeared in ***People's Union for Democratic Rights v. Union of India***,⁶¹ where a social organisation invoked constitutional protection of labourers, and in ***Bandhua Mukti Morcha v. Union of India***,⁶² where a letter by an NGO led the court to intervene against bonded labour. A same pattern is followed by environmental litigation. In ***Rural Litigation and Entitlement Kendra v. State of Uttar Pradesh***,⁶³ complaints about the illegal mining in Dehradun were heard as a public interest petition. In the series of ***M.C. Mehta v. Union of India***⁶⁴ cases concerning the Ganga pollution and industrial hazards, the Court issued continuing mandamus and monitored compliance over time.

Through these innovations the Court also took suo motu cognisance of rights infringements. The information received through letters, postcards and media reports were converted into constitutional proceedings. This procedural flexibility changed the Court from a passive adjudicator to an active constitutional protector. Public Interest Litigation therefore became not just a procedural tool but a substantive mechanism that enables a way for access to justice and conforms constitutional law to the present social realities.

⁵⁸ Supra Note 51.

⁵⁹ Supra Note 25.

⁶⁰ Supra Note 26.

⁶¹ Supra Note 30.

⁶² Supra Note 32.

⁶³ Supra Note 12.

⁶⁴ Supra Note 13.

The quantitative growth of Public Interest Litigation demonstrates the institutional transformation that epistolary jurisdiction and relaxed locus standi brought about. Data compiled from Supreme Court records indicates that over nine lakh PILs were filed before the Court between 1985 and 2019, averaging more than 26,000 petitions per year, with the figure rising from approximately 24,000 in 1985 to over 70,000 in 2019. This volume reflects both the genuine expansion of access to justice for marginalised groups and the increasingly broad perception of the Court as a forum for a wide range of public concerns.⁶⁵

LIMITS OF JUDICIAL CREATIVITY: JUDICIAL ACTIVISM AND JUDICIAL RESTRAINT

The expansion of judicial authority inevitably cast doubts regarding institutional boundaries. Although judicial creativity enhanced rights enforcement, the issue arose that excessive intervention could undermine democratic decision-making.⁶⁶ This tension is recognised even by the courts themselves and that is why the principle of **judicial restraint** is developed by the courts as a necessary principle to counter judicial activism. According to judicial restraint, courts should intervene only to the extent required to safeguard constitutional guarantees and to prevent encroaching on the areas that should be left to legislative or executive determination.⁶⁷ In *Divisional Manager, Aravali Golf Club v. Chander Hass*, the Supreme Court expressly warned that courts must not encroach into functions of the executive or the legislature under the name of judicial activism, emphasising the constitutional importance of the separation of powers.⁶⁸

The Court repeatedly warned against misuse and emphasised restraint even in Public Interest Litigation jurisprudence. In *State of Uttaranchal v. Balwant Singh Chaufal*, the Court laid down guidelines to make sure that Public Interest Litigation is not abused and emphasized that PIL should not become a tool for publicity or private interest.⁶⁹ Later in environmental and governance disputes, it acknowledged that not all administrative malpractices necessitate judicial oversight and that courts cannot become continuing administrators of public policy. The balance lies in correcting constitutional violations without presuming executive role.

⁶⁵ Supreme Court Observer, 'On an Average, the Court Receives over 25,000 PILs a Year' (Supreme Court Observer, 9 October 2023) <<https://www.scobserver.in/journal/on-an-average-the-court-receives-over-25000-pils-a-year/>> accessed 15 January 2024.

⁶⁶ Roger J. Traynor, The Limits of Judicial Creativity, 63 Iowa L. Rev. 1, 14–18 (1977).

⁶⁷ M. M. Semwal & Sunil Khosla, Judicial Activism, 69 Indian J. Pol. Sci. 113, 118–20 (2008).

⁶⁸ Divisional Manager, Aravali Golf Club v. Chander Hass, (2008) 1 S.C.C. 683 (India).

⁶⁹ State of Uttaranchal v. Balwant Singh Chaufal, (2010) 3 S.C.C. 402 (India).

Situations involving urban encroachments and land regulation can be used to show how the Court, after clarifying legal principles, deliberately refused to extend innovative remedies further. This demonstrates a deliberate act of judicial restraint and not absence of power. For instance, in *Almitra H. Patel v. Union of India*, the Court noted that it cannot run the administration and that policy implementation is a matter within executive competence.⁷⁰

This approach is strengthened by the doctrine of separation of powers: interpretation should not change itself into governance. Judicial creativity is justified as a way of enforcing constitutional rights but becomes challenging when courts develop regulatory regimes or policy choices.⁷¹ This concern was also expressed in *S.R. Bommai v. Union of India*, where the Court upheld the existence of judicial review but at the same time the court recognised the political nature of certain executive decisions and maintained institutional balance.⁷² Based on this, the judiciary has demanded that Public Interest Litigation must address genuine violations of fundamental rights and not political disputes or private interests presented in constitutional language.

Thus, the history of constitutional adjudication is characterized by a dual movement. On one hand, the Court make Fundamental Rights meaningful for disadvantaged groups through the innovative tools like judicial review, epistolary jurisdiction and continuing mandamus. Conversely, the judiciary has realised the need to restrain itself to maintain institutional legitimacy. Judicial creativity thus is in a dynamic balance, where activism guarantees constitutional protection and restraint guarantees democratic balance.⁷³

CRITICAL APPRAISAL OF JUDICIAL CREATIVITY

Judicial creativity has been central to transforming Part III from a list of liberties into an effective guarantee of constitutional governance. By expanding the scope of rights and innovating the procedures, the judiciary allowed the Constitution to address poverty, environmental degradation, custodial abuse and administrative arbitrariness. The interpretative approach of courts ensured that Fundamental Rights became tools of social justice and not formal declarations, especially benefiting groups that are not able to access traditional legal

⁷⁰ *Almitra H. Patel v. Union of India*, (2000) 2 S.C.C. 679 (India).

⁷¹ John Harrison, Robert Bork, Judicial Creativity, and Judicial Subjectivity, 80 U. Chi. L. Rev. Dialogue 205, 208–12 (2013).

⁷² *Supra* Note 48.

⁷³ Jeffrey M. Shaman, The Constitution, the Supreme Court, and Creativity, 9 Hastings Const. L.Q. 257, 268–72 (1982).

processes.⁷⁴ In that regard, judicial creativity served the transformative purpose of the Constitution and strengthened constitutional supremacy.

Nonetheless, the same expansion raises issues of democratic legitimacy. When courts shift from interpretation to continuous supervision of administration or formulation of regulatory structures, adjudication risks resembling governance. Such intervention may dilute the role of elected institutions and shift accountability away from the political process.⁷⁵ The challenge is not to deny judicial creativity but to put check on its reach through principled judicial restraint.

The boundary between permissible constitutional interpretation and impermissible policy substitution is particularly difficult to draw in the Indian context, where the executive has at times failed to fulfil the social and economic objectives that Directive Principles impose upon it. Commentators have noted that judicial creativity in Part III cases has frequently filled gaps left by legislative inaction, and that the legitimacy of such creativity depends less on abstract separation of powers doctrine than on whether the Court confines itself to constitutional standards rather than substituting its own policy judgments for those of elected institutions.⁷⁶

Constitutional adjudication does not present a choice between creativity and restraint since to some extent judicial law-making is essential because constitutional language is inherently indeterminate.⁷⁷ The real question is with regards to legitimacy, whether judicial innovation implements constitutional values or replaces judicial preferences for democratic choice.⁷⁸

The Indian experience eventually represents a constitutional balance between creativity, which is necessary to keep rights meaningful, and restraint, which is necessary to maintain institutional harmony. Judicial creativity remains legitimate as long as it serves the purpose of applying constitutional limitations but not replace legislative judgment. Its success lies not only in expanding rights but also in maintaining balance between constitutional protection and democratic governance.

⁷⁴ M. M. Semwal & Sunil Khosla, *Judicial Activism*, 69 *Indian J. Pol. Sci.* 113, 118–20 (2008).

⁷⁵ Roger J. Traynor, *The Limits of Judicial Creativity*, 63 *Iowa L. Rev.* 1, 14–18 (1977).

⁷⁶ Record of Law, 'Judicial Activism v Judicial Overreach: A Critical Analysis' (Record of Law, 22 July 2025) <<https://recordoflaw.in/judicial-activism-v-judicial-overreach-a-critical-analysis/>> accessed 15 January 2024.

⁷⁷ John Peck, *Comments on Judicial Creativity*, 69 *Iowa L. Rev.* 1, 4–8 (1983).

⁷⁸ John Harrison, Robert Bork, *Judicial Creativity, and Judicial Subjectivity*, 80 *U. Chi. L. Rev. Dialogue* 205, 208–12 (2013).

CONCLUSION

The development of judicial creativity in India shows how a written constitution itself gains its practical meaning through interpretation. Part III was enacted in broad moral language, but its practical strength evolved only after courts came to think of it as a living guarantee and not a static code. Through joint reading of rights, the derivation of substantive protections from abstract guarantees and the innovations of the judicial process, the judiciary made sure that liberty, equality and dignity operated in everyday life. The shift towards substantive justice from formal legality allowed the constitutional promises to be realised among prisoners, labourers, women, minorities and other vulnerable groups who could not rely solely on political processes to protect them.

Meanwhile, the experience also indicates that creativity cannot exist without limits. Once interpretation enters into policy-making, it tends to disturb democratic accountability and institutional balance. The concept of judicial restraint therefore becomes inseparable from judicial creativity; it legitimises each other. Courts maintain their authority not only by expanding rights but also by exercising their power with discipline.

Ultimately, judicial creativity in India has neither been an encroachment nor an absolute virtue. It has functioned as a constitutional necessity shaped by social conditions and controlled by structural principles. The endurance of Part III lies in this equilibrium: an active judiciary capable of protecting rights, yet conscious of its constitutional boundaries.

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