



INDIAN JOURNAL OF
LEGAL REVIEW

VOLUME 5 AND ISSUE 13 OF 2025

INSTITUTE OF LEGAL EDUCATION



INDIAN JOURNAL OF LEGAL REVIEW

APIS – 3920 – 0001 | ISSN – 2583-2344

(Open Access Journal)

Journal's Home Page – <https://ijlr.iledu.in/>

Journal's Editorial Page – <https://ijlr.iledu.in/editorial-board/>

Volume 5 and Issue 13 of 2025 (Access Full Issue on – <https://ijlr.iledu.in/volume-5-and-issue-13-of-2025/>)

Publisher

Prasanna S,

Chairman of Institute of Legal Education

No. 08, Arul Nagar, Seera Thoppu,

Maudhanda Kurichi, Srirangam,

Tiruchirappalli – 620102

Phone : +91 73059 14348 – info@iledu.in / Chairman@iledu.in



© Institute of Legal Education

Copyright Disclaimer: All rights are reserve with Institute of Legal Education. No part of the material published on this website (Articles or Research Papers including those published in this journal) may be reproduced, distributed, or transmitted in any form or by any means, including photocopying, recording, or other electronic or mechanical methods, without the prior written permission of the publisher. For more details refer <https://ijlr.iledu.in/terms-and-condition/>

JUDICIAL REVIEW AND OVERREACH IN ECONOMIC POLICIES: A CONSTITUTIONAL AND COMPARATIVE STUDY

AUTHOR – DEEPAN SUNIL R, AMITY LAW SCHOOL, AMITY UNIVERSITY UTTAR PRADESH (AUUP)

BEST CITATION – DEEPAN SUNIL R, JUDICIAL REVIEW AND OVERREACH IN ECONOMIC POLICIES: A CONSTITUTIONAL AND COMPARATIVE STUDY, *INDIAN JOURNAL OF LEGAL REVIEW (IJLR)*, 5 (13) OF 2025, PG. 728-737, APIS – 3920 – 0001 & ISSN – 2583-2344

ABSTRACT

This research paper examines the complex interplay between judicial review and economic policymaker in India, with particular focus on judicial overreach. While judicial review serves as a critical constitutional safeguard against arbitrary state action, excessive judicial intervention in economic policies raises concerns about separation of powers, democratic accountability, and economic efficiency. Through analysis of landmark judgments including *R.K. Garg v. Union of India*, *BALCO Employees Union v. Union of India*, and recent cases on spectrum allocation, coal blocks, and the 2024 electoral bonds case, this paper evaluates the evolving role of Indian judiciary in economic governance. The study adopts a comparative approach, examining the American "rational basis test" alongside India's more expansive constitutional jurisprudence. The research concludes that while judicial review remains essential to prevent arbitrariness and protect fundamental rights, courts must exercise restraint in substituting their judgment for democratically elected institutions on matters of economic policy.

1. INTRODUCTION

Economic policies constitute the foundation of national development, encompassing decisions on taxation, resource allocation, industrial regulation, and foreign investment. In democratic governance, formulation and implementation of economic policies primarily rest with the executive and legislature, which derive legitimacy from electoral mandates and possess institutional expertise. However, in constitutional democracies, the judiciary plays an indispensable role in reviewing governmental actions to ensure compliance with constitutional mandates.¹¹⁷¹

The doctrine of judicial review empowers courts to examine the validity of legislative and executive actions. In India, although the Constitution does not explicitly mention "judicial review," the power flows implicitly from

constitutional provisions including Articles 13, 32, 136, 226, and 227, alongside the fundamental structure doctrine established in *Kesavananda Bharati v. State of Kerala*.¹¹⁷²

While judicial review serves as a constitutional safeguard, its application to economic policies generates considerable tension. When courts move beyond reviewing constitutionality and procedural fairness to substituting their judgment on policy wisdom, they risk crossing into **judicial overreach** undermining separation of powers, democratic accountability, and economic efficiency.

This tension intensified in post-liberalization India and reached new heights in 2024. The landmark Electoral Bonds case, where the Supreme Court struck down the electoral bonds scheme as unconstitutional, alongside earlier interventions in 2G spectrum allocation and coal block allocation, have sparked heated

¹¹⁷¹ Lon L. Fuller, "The Forms and Limits of Adjudication," *Harvard Law Review* 92, no. 2 (1978): 353-409

¹¹⁷² *Kesavananda Bharati v. State of Kerala*, AIR 1973 SC 1461

debates.¹¹⁷³ As of 2025, India faces critical questions about the appropriate boundaries of judicial intervention in economic governance.

2. RESEARCH QUESTIONS AND HYPOTHESES

2.1 Primary Research Question

Where should the line be drawn between legitimate judicial review that protects constitutional values and judicial overreach that undermines democratic economic governance?

2.2 Research Hypotheses

Hypothesis 1: Indian courts have progressively expanded their review of economic policies from initial judicial restraint (1950-1980) to aggressive intervention (2010-2025).

Hypothesis 2: The expansion of judicial review correlates with increased policy uncertainty and negative impact on investor confidence, particularly visible in retrospective judgments.

Hypothesis 3: The American "rational basis test" provides excessive deference, while recent Indian jurisprudence provides insufficient deference, with the optimal approach lying between these extremes.

Hypothesis 4: Judicial intervention focusing on procedural transparency (Electoral Bonds case) is more legitimate than intervention dictating specific policy methodologies (2G Spectrum case mandating auctions).

3. RESEARCH METHODOLOGY

3.1 Research Design

This study employs a **doctrinal legal research methodology** combined with **comparative analysis**. The research is qualitative, analyzing constitutional provisions, judicial precedents, and scholarly literature to understand the evolution and appropriate boundaries of judicial review in economic policies.

3.2 Sources of Data

Primary Sources: Constitutional provisions, Supreme Court judgments (1950-2025), statutory provisions, government policy documents

Secondary Sources: Academic books, law journal articles, comparative constitutional materials from the United States, reports from CAG and Law Commission

3.3 Method of Analysis

Chronological Analysis: Categorizing cases into distinct periods to identify evolutionary trends

Comparative Analysis: Juxtaposing Indian and American approaches

Critical Analysis: Evaluating judgments against theoretical frameworks of judicial restraint and separation of powers

4. CONCEPTUAL FRAMEWORK

4.1 Nature of Judicial Review

Judicial review represents the power of courts to examine the constitutionality of legislative enactments and executive actions.¹¹⁷⁴ The scope encompasses: review of legislative competence, review of substantive constitutionality, and review of procedural compliance. judicial review extends to the examination of administrative decisions and quasi-judicial bodies. Courts possess the authority to scrutinize whether administrative authorities have acted within their delegated powers, followed principles of natural justice, and avoided arbitrary or unreasonable exercise of discretion. This supervisory jurisdiction ensures that administrative actions conform to statutory mandates and constitutional principles, thereby maintaining the rule of law and protecting citizens' rights against potential abuse of administrative power.

¹¹⁷³ : Electoral bonds scheme allowed anonymous political donations. Between 2018-2024, over ₹16,500 crore was donated before Supreme Court struck it down in February 2024.

¹¹⁷⁴ *Marbury v. Madison*, 5 U.S. 137, 177 (1803)

4.2 Judicial Review versus Judicial Overreach

Judicial review is the legitimate exercise of constitutional authority to ensure governmental actions comply with constitutional mandates. Through this power, courts examine whether legislative enactments, executive actions, and administrative decisions conform to constitutional provisions. This mechanism serves as a vital check against potential abuse of power by ensuring that all governmental actions remain within constitutional boundaries. The exercise of judicial review thus reinforces democratic governance by protecting individual liberties, upholding the rule of law, and maintaining the supremacy of the constitution.

Judicial overreach occurs when courts exceed their constitutional role through: (1) Substitution of policy judgment, (2) Lack of institutional competence, (3) Micro-management, (4) Disregard for separation of powers. When courts transgress their legitimate boundaries, they undermine the delicate balance of constitutional governance. Judicial overreach manifests when courts venture beyond interpreting laws and constitutional provisions to making policy choices that rightfully belong to elected representatives. This phenomenon is particularly problematic when courts issue directions on matters requiring technical expertise, specialized knowledge, or resource allocation decisions that fall within the executive's domain. Such overreach not only compromises the separation of powers but also diminishes the judiciary's institutional credibility and effectiveness.

5. CONSTITUTIONAL BASIS IN INDIA

5.1 Constitutional Provisions

Article 13 declares laws inconsistent with fundamental rights void.¹¹⁷⁵ **Article 32** guarantees the right to constitutional remedies, empowering the Supreme Court to issue writs called "**the soul of the Constitution**" by Dr. B.R.

Ambedkar.¹¹⁷⁶ **Articles 226 and 227** vest High Courts with writ jurisdiction. **Article 136** grants the Supreme Court special leave jurisdiction.

5.2 Basic Structure Doctrine

Kesavananda Bharati v. State of Kerala (1973) established that certain fundamental features form the Constitution's "basic structure," which even Parliament cannot amend.¹¹⁷⁷ These include supremacy of the Constitution, separation of powers, judicial review, and rule of law.

5.3 Fundamental Rights and Economic Policies

Article 14 (Equality) requires reasonable classification with rational nexus to objectives. **Article 19(1)(g)** protects economic freedom. **Article 21** has been expansively interpreted to include livelihood rights.¹¹⁷⁸ **Articles 39(b) and (c)** provide constitutional basis for reviewing economic policies from social justice perspectives.

6. EVOLUTION OF JUDICIAL APPROACH

6.1 Early Phase: Judicial Deference (1950–1980)

Early decades witnessed considerable judicial restraint in economic matters. Courts applied the "**manifest arbitrariness**" test legislation invalidated only if manifestly arbitrary, giving substantial deference to legislative judgment.

6.2 Activist Phase: Expanding Review (1980–2000)

R.K. Garg v. Union of India (1981) established that courts should not strike down economic legislation because better policies are conceivable.¹¹⁷⁹ However, manifest arbitrariness vitiates legislation. *Minerva Mills* (1980) balanced fundamental rights with Directive Principles.¹¹⁸⁰

¹¹⁷⁵ Article 13(2), The Constitution of India

¹¹⁷⁶ Constituent Assembly Debates, Volume VII (December 9, 1948)

¹¹⁷⁷ *Kesavananda Bharati v. State of Kerala*, AIR 1973 SC 1461

¹¹⁷⁸ *Olga Tellis v. Bombay Municipal Corporation*, AIR 1986 SC 180.

¹¹⁷⁹ *R.K. Garg v. Union of India*, AIR 1981 SC 2138, para 7

¹¹⁸⁰ *Minerva Mills Ltd. v. Union of India*, AIR 1980 SC 1789

6.3 Liberalization Era: Increased Scrutiny (Post-1991)

BALCO Employees Union v. Union of India (2002) upheld privatization, emphasizing: "Economic policies are matters of policy for the government to decide in consultation with experts. Courts should not ordinarily interfere unless they violate statutory provisions or the Constitution."¹¹⁸¹

6.4 Contemporary Phase: Aggressive Intervention (2010-2025)

2G Spectrum Case (2012): The Supreme Court cancelled 122 telecom licenses, mandating auction as the allocation method.¹¹⁸² The 2G Spectrum case represented a watershed moment in judicial intervention in economic policy. The Court's decision to invalidate the first come first served allocation method and declare auction as the constitutionally mandated approach for distributing natural resources had far reaching implications. This judgment was premised on the principle that natural resources belong to the public and must be allocated through transparent mechanisms that maximize public benefit. While the decision was hailed for combating corruption and ensuring transparency, it also raised questions about whether courts should prescribe specific allocation methodologies, a domain traditionally reserved for executive policy-making.

Coal Block Allocation Case (2014): The Court cancelled allocation of 214 coal blocks.¹¹⁸³ The Coal Block Allocation case witnessed the Supreme Court cancelling the allocation of 214 coal blocks made over nearly two decades. The Court found the allocation process to be arbitrary, non transparent, and tainted by irregularities. This massive cancellation had unprecedented economic ramifications, affecting power generation, steel production, and employment across multiple sectors. The judgment underscored the judiciary's

determination to ensure that public resources are allocated fairly and transparently, but it also highlighted concerns about retrospective judicial intervention in completed transactions and the economic disruption caused by such wholesale cancellations.

AGR Case (2020): The Court ordered telecom companies to pay ₹1.47 lakh crore in dues.¹¹⁸⁴ The Adjusted Gross Revenue (AGR) case demonstrated the Court's strict approach to contractual and regulatory compliance. By adopting a broad interpretation of AGR and rejecting the telecom companies' contentions, the Supreme Court's order for payment of ₹1.47 lakh crore in dues pushed several telecom operators to the brink of financial collapse. The judgment emphasized that license conditions must be strictly adhered to and that statutory dues cannot be evaded through narrow interpretations. However, the decision also raised concerns about the financial viability of the telecom sector and whether judicial interpretation of technical regulatory matters should account for broader economic consequences.

Electoral Bonds Case (2024): The Supreme Court struck down the Electoral Bonds Scheme as unconstitutional for violating citizens' right to information.¹¹⁸⁵ The Electoral Bonds case marked a significant assertion of constitutional values over legislative policy in the realm of political financing. The Supreme Court's unanimous decision to strike down the Electoral Bonds Scheme emphasized that electoral transparency is fundamental to democratic accountability and that citizens possess a constitutional right to know about political funding sources. The judgment invalidated legislative amendments made to multiple statutes and directed disclosure of all donor information, demonstrating the Court's willingness to scrutinize even politically sensitive legislative choices.

¹¹⁸¹ *BALCO Employees Union v. Union of India*, (2002) 2 SCC 333

¹¹⁸² *Centre for Public Interest Litigation v. Union of India*, (2012) 3 SCC 1

¹¹⁸³ *Manohar Lal Sharma v. Principal Secretary*, (2014) 9 SCC 516

¹¹⁸⁴ *Union of India v. Association of Unified Telecom Service Providers* (2020) 15 SCC 1

¹¹⁸⁵ *Association for Democratic Reforms v. Union of India*, (2024) SCC OnLine SC 168

7. LANDMARK CASES ANALYSIS

7.1 R.K. Garg v. Union of India (1981)

The Supreme Court upheld the Special Bearer Bonds Act, establishing that courts should not question wisdom of economic policy. Justice Bhagwati held: "The court must show great deference to the legislative judgment."¹¹⁸⁶ This represents the high-water mark of judicial restraint.

7.2 BALCO Employees Union v. Union of India (2002)

The Supreme Court rejected challenges to BALCO privatization, holding disinvestment constitutes policy decision within executive domain. The judgment reaffirmed that courts lack expertise to evaluate economic policy.¹¹⁸⁷

7.3 2G Spectrum Case (2012)

The Court cancelled 122 telecom licenses, declaring: "Natural resources are public property and the doctrine of equality mandates their distribution must be fair, just, and transparent."¹¹⁸⁸

Criticisms: Retrospectively invalidated settled commercial expectations, dictated specific allocation methodology, created massive policy uncertainty, questioned auction as universally optimal.

8. CURRENT DEVELOPMENTS (2020-2025)

8.1 AGR Case (2020)

The Supreme Court interpreted "Adjusted Gross Revenue" expansively, requiring telecom companies to include all revenues for calculating license fees.¹¹⁸⁹ Impact: ₹1.47 lakh crore liability, Vodafone Idea faced potential collapse. Critics argued the interpretation failed to consider economic viability.

8.2 Electoral Bonds Case (2024)

In *Association for Democratic Reforms v. Union of India* (2024), a five-judge Constitution Bench

unanimously struck down the Electoral Bonds Scheme, 2018.¹¹⁹⁰

Key Holdings:

- Electoral bonds violated citizens' right to information under Article 19(1)(a)
- The scheme enabled quid pro quo corruption
- Anonymity provisions were disproportionate restrictions

Chief Justice Chandrachud held that "the right to information about funding of political parties is part of freedom of speech and expression." The Court ordered disclosure of all electoral bond purchasers and recipients since 2018.

Significance: Unlike 2G/Coal cases, focused on constitutional rights rather than policy methodology. Represents judicial intervention protecting democratic transparency without policy overreach.

Current Status (2025): Election Commission published data revealing ₹16,518 crore in electoral bonds purchased between 2018-2024. The ruling Bharatiya Janata Party received approximately 55%. The judgment is widely praised for enhancing electoral transparency.

9. COMPARATIVE PERSPECTIVE: UNITED STATES

9.1 American Rational Basis Test

American constitutional jurisprudence applies the "**rational basis test**" to economic legislation, requiring only that government has legitimate interest and means chosen is rationally related.

This highly deferential standard reflects lessons from the *Lochner* era (1905-1937), when the Court aggressively struck down economic regulations.¹¹⁹¹ *West Coast Hotel Co. v. Parrish* (1937) repudiated *Lochner*, upholding minimum wage legislation.¹¹⁹²

¹¹⁸⁶ R.K. Garg v. Union of India, AIR 1981 SC 2138

¹¹⁸⁷ BALCO Employees Union v. Union of India, (2002) 2 SCC 333

¹¹⁸⁸ Centre for Public Interest Litigation v. Union of India, (2012) 3 SCC 1

¹¹⁸⁹ Union of India v. Association of Unified Telecom Service Providers, (2020) 15 SCC 1

¹¹⁹⁰ Association for Democratic Reforms v. Union of India, (2024) SCC OnLine SC 168

¹¹⁹¹ Lochner v. New York, 198 U.S. 45 (1905)

¹¹⁹² West Coast Hotel Co. v. Parrish, 300 U.S. 379 (1937)

9.2 India's Broader Review

Indian judicial review is more expansive because the Constitution explicitly recognizes socio-economic rights through Directive Principles; Article 14's equality guarantee requires more stringent "reasonable classification" with "rational nexus"; Article 21's interpretation includes livelihood; PIL mechanisms enable broader access; corruption concerns create perceived need for judicial oversight.

9.3 Lessons from Comparison

The American experience demonstrates dangers of excessive judicial intervention. The post *Lochner* retreat reflects recognition that economic policymaker requires political accountability and technical expertise courts lack.

However, India faces different institutional context endemic corruption, weaker administrative accountability, and constitutional commitment to socio-economic justice. These may justify greater scrutiny than American rational basis test. However, recent aggressive intervention risks replicating *Lochner*'s problems. The optimal approach lies between American extreme deference and recent Indian aggressive intervention.

10. CHALLENGES OF JUDICIAL INTERVENTION

10.1 Undermining Democratic Accountability

When courts make economic policy choices, democratic accountability is undermined. Judges are unelected, enjoy tenure until retirement, and cannot be removed for unpopular decisions.

10.2 Lack of Institutional Expertise

Courts lack economic expertise, comprehensive data gathering mechanisms, predictive capacity for forecasting consequences, and implementation knowledge of practical constraints. The *AGR* case exemplifies the Court's interpretation, while legally defensible, failed to consider industry sustainability.

10.3 Policy Uncertainty and Investment Climate

Retrospective cancellation in 2G Spectrum and coal block cases sent negative signals about reliability of government commitments. Consequences include reduced foreign direct investment, higher risk premiums, reluctance to participate in government contracts, and prolonged litigation delaying projects.

11. SEPARATION OF POWERS

11.1 Constitutional Framework

The separation of powers doctrine, though not explicitly mentioned in the constitutional text, forms an integral part of the Constitution's basic structure and serves as a foundational principle for democratic governance. This doctrine ensures that legislative, executive, and judicial powers remain distributed among distinct institutions, preventing concentration of authority and safeguarding against tyranny. The Supreme Court, through landmark judgments, has recognized that while these powers are separated, they are not isolated in watertight compartments but operate through a system of checks and balances. Each organ of the state possesses primary authority within its designated sphere, and encroachment by one branch into another's core domain threatens constitutional equilibrium.

11.2 Limits of Judicial Review

Judicial review should focus on legality, procedural fairness, rationality, and rights protection, which constitute the legitimate scope of constitutional adjudication. Courts must examine whether governmental actions conform to statutory provisions and constitutional mandates, ensuring that public authorities operate within their legal boundaries. Procedural fairness requires scrutiny of whether decisions follow prescribed processes and respect principles of natural justice, including the right to be heard and freedom from bias. The rationality test enables courts to strike down arbitrary, unreasonable, or discriminatory actions that lack rational nexus

to legitimate objectives. Most fundamentally, judicial review serves as the bulwark for rights protection, empowering courts to safeguard fundamental freedoms against legislative encroachment or executive excess. Within this framework, judicial review operates as a corrective mechanism that ensures governmental actions remain constitutionally valid, procedurally sound, rationally justified, and rights respecting without displacing the policy making prerogatives of elected institutions.

11.3 Minerva Mills Balance

Minerva Mills articulated: "The Indian Constitution is founded on balance between fundamental rights and directive principles."¹¹⁹³ This requires judicial review neither abdicate constitutional duty nor exceed institutional role.

12. BALANCING LEGITIMATE REVIEW AND OVERREACH

12.1 Principles for Appropriate Review

1. Focus on Constitutionality, Not Wisdom:

Courts should examine whether policies violate constitutional provisions, not whether they represent optimal choices.

2. Apply Manifest Arbitrariness Standard:

Economic legislation should be invalidated only when manifestly arbitrary.

3. Require Procedural Fairness, Not Specific Methodologies:

The Electoral Bonds judgment exemplifies this it mandated transparency but didn't prescribe specific electoral funding mechanisms.

4. Protect Fundamental Rights Vigorously:

When economic policies directly violate fundamental rights, courts must intervene decisively.

5. Respect Prospectivity: Judicial intervention should generally operate prospectively.

6. Exercise Self-Restraint on Technical Matters:

Courts should acknowledge limitations in economic expertise.

7. Issue Constitutional Guidelines, Not Detailed

Directives: Articulate broad constitutional principles rather than micro-managing implementation.

12.2 Distinguishing Electoral Bonds Case from 2G/Coal Cases

The Electoral Bonds judgment (2024) represents more defensible judicial intervention:

Electoral Bonds – Legitimate Review:

- Focused on constitutional rights (right to information)
- Did not dictate specific policy alternative
- Addressed transparency in democratic process
- Applied prospectively regarding disclosure
- No retrospective financial penalties

2G/Coal Cases – Potential Overreach:

- Dictated specific methodology (mandatory auctions)
- Retrospectively cancelled valid licenses/allocations
- Substituted policy judgment on allocation methods
- Created massive economic disruption
- Went beyond constitutional compliance to policy prescription

13. CONCLUSION

13.1 Validation of Hypotheses

The research hypotheses examining judicial review in economic policy present nuanced findings. Hypothesis 1 regarding evolutionary expansion stands fully validated, as the historical trajectory demonstrates clear progression from initial judicial restraint during early post-independence decades to increasingly assertive intervention in contemporary times. This evolution reflects changing judicial philosophies, growing public expectations, and the Court's expanding conception of its constitutional role.

¹¹⁹³ *Minerva Mills Ltd. v. Union of India*, AIR 1980 SC 1789

Hypothesis 2 concerning investment impact receives partial validation, revealing differentiated consequences of various interventions. Retrospective judgments in the 2G Spectrum and Coal Block Allocation cases created substantial policy uncertainty and disrupted economic planning by invalidating completed transactions. However, transparency focused judgments like the Electoral Bonds case have been better received, suggesting that the nature and focus of judicial intervention significantly determines its economic impact.

Hypothesis 3 proposing optimal balance finds strong support in comparative analysis. American extreme deference proves insufficient for India's context characterized by weaker accountability mechanisms and higher corruption risks. Conversely, recent Indian interventions frequently exceed appropriate bounds by venturing into policy formulation and technical determinations. The optimal approach lies in robust procedural review and rights protection without substituting judicial judgment for democratically accountable policy choices.

Hypothesis 4 distinguishing procedural from methodological intervention stands validated and offers crucial guidance. Judicial intervention ensuring procedural transparency and legal compliance represents legitimate constitutional oversight. However, prescribing specific methodologies such as mandating auctions exclusively—transgresses into policy-making territory requiring specialized expertise and political accountability. Courts should rigorously enforce procedural propriety while exercising restraint regarding substantive policy methodologies, thereby maintaining constitutional balance between oversight and executive autonomy

13.2 Answering the Central Question

The line lies in distinguishing **constitutionality from wisdom, procedural fairness from methodological prescription, and rights protection from policy substitution.**

Legitimate judicial review includes: Striking down manifestly arbitrary policies, invalidating discriminatory policies, protecting fundamental rights (Electoral Bonds protecting right to information), ensuring procedural fairness, preventing corruption-motivated policies.

Judicial overreach occurs when courts: Substitute policy preferences, dictate specific methodologies (2G auctions mandate), make technical economic judgments lacking competence (AGR), retrospectively invalidate settled transactions, micro-manage implementation, ignore separation of powers.

14. RECOMMENDATIONS

For the Judiciary:

1. Reaffirm the Restraint Principle from R.K. Garg and BALCO

The judiciary should explicitly reaffirm and consistently apply the principles of judicial restraint articulated in R.K. Garg v. Union of India and BALCO v. Union of India. These precedents recognized that economic policy making involves complex assessments requiring technical expertise and balancing of competing interests functions inherently suited to the executive and legislature. Courts should acknowledge that policy choices by democratically accountable institutions deserve deference unless they violate constitutional provisions or exhibit manifest arbitrariness. The judiciary must resist substituting its economic judgment for that of expert bodies and elected representatives, recognizing that policy failures are better addressed through democratic accountability mechanisms than judicial intervention.

2. Apply the Manifest Arbitrariness Standard Consistently

The judiciary must develop and apply a consistent, stringent framework for assessing manifest arbitrariness in economic policy matters. The standard should require demonstration that governmental action is patently unreasonable, wholly unrelated to legitimate objectives, or demonstrates clear

abuse of power. Courts should avoid conflating disagreement with policy wisdom with constitutional arbitrariness. The judiciary should clearly articulate factors constituting manifest arbitrariness including lack of rational nexus, discriminatory treatment, and violation of natural justice while explicitly distinguishing these from mere policy or alternative approaches that courts might prefer.

3. Follow the Electoral Bonds Model Focus on Constitutional Violations Rather Than Prescribing Policy Alternatives

The Electoral Bonds judgment provides an exemplary model where the Court identified constitutional violations without prescribing detailed policy alternatives. The judiciary should adopt this approach consistently: invalidate governmental actions violating constitutional provisions while leaving formulation of alternative policies to competent authorities. Courts should resist issuing extensive directions that effectively legislate or administrate, instead confining their role to declaring unconstitutionality and providing general guidance on constitutional requirements. This approach respects separation of powers by acknowledging that while courts identify constitutional breaches, crafting compliant policy solutions remains an executive and legislative function.

4. Exercise Prospectivity in Relief

The judiciary should adopt prospective or partly prospective relief as the default approach when invalidating economic policies, particularly those involving completed transactions. Retrospective annulment creates severe policy uncertainty, disrupts legitimate expectations, and imposes disproportionate costs on economic stability. Courts should balance constitutional enforcement against economic disruption and third party interests. Where past actions involve clear fraud or corruption, targeted remedies against culpable parties are preferable to blanket cancellations affecting innocent stakeholders. The judiciary must explicitly weigh competing interests

constitutional vindication, policy certainty, and stakeholder rights when fashioning appropriate relief.

5. Acknowledge Institutional Limitations Explicitly

The judiciary should candidly acknowledge its institutional limitations in economic policy matters, including limited access to comprehensive data, absence of specialized economic expertise, and inability to conduct extensive stakeholder consultations. Courts should explicitly recognize these constraints in judgments, explaining why deference to executive and legislative determinations is constitutionally warranted in technical matters. This acknowledgment enhances institutional credibility by demonstrating self-awareness and respect for functional specialization. The judiciary should distinguish between matters suitable for judicial determination legal interpretation, procedural compliance, rights protection and those requiring technical expertise and democratic accountability, thereby strengthening both judicial legitimacy and the constitutional framework governing

14. REFERENCES

BOOKS

1. Jain, M.P. *Indian Constitutional Law*. 8th ed. New Delhi: LexisNexis, 2018.
2. Seervai, H.M. *Constitutional Law of India*. 4th ed. Bombay: Universal Law Publishing, 1991.

JOURNAL ARTICLES

1. Sunstein, Cass R. "Lochner's Legacy." *Columbia Law Review* 87, no. 5 (1987): 873-919.
2. Sathe, S.P. "Judicial Activism: The Indian Experience." *Washington University Journal of Law & Policy* 6 (2001): 29-108.

WEBLIOGRAPHY

1. Supreme Court of India: <https://main.sci.gov.in>

2. Indian Kanoon: <https://indiankanoon.org>
3. LiveLaw: <https://www.livelaw.in>
4. Election Commission of India:
<https://eci.gov.in>
5. Bar & Bench:
<https://www.barandbench.com>

LIST OF CASE LAWS

Historical Cases

1. *R.K. Garg v. Union of India*, AIR 1981 SC 2138
2. *BALCO Employees Union v. Union of India*, (2002) 2 SCC 333
3. *Centre for Public Interest Litigation v. Union of India* (2G Spectrum), (2012) 3 SCC 1
4. *Manohar Lal Sharma v. Principal Secretary* (Coal Block), (2014) 9 SCC 516
5. *Kesavananda Bharati v. State of Kerala*, AIR 1973 SC 1461
6. *Minerva Mills Ltd. v. Union of India*, AIR 1980 SC 1789

Recent Cases (2020–2025)

1. *Association for Democratic Reforms v. Union of India* (Electoral Bonds), (2024) SCC Online SC 168
2. *Union of India v. Association of Unified Telecom Service Providers* (AGR), (2020) 15 SCC 1
3. *Lochner v. New York*, 198 U.S. 45 (1905) [USA]
4. *West Coast Hotel Co. v. Parrish*, 300 U.S. 379 (1937) [USA]