

Judicial Abdication in a Rights-Based Constitution: Scrutinising the Indian Supreme Court's Approach to Reasonable Restrictions on Trade and Business

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Abstract

Despite the Indian Constitution's rights-based architecture, the Supreme Court has long declined, in a subset of cases, to rigorously test legislative constraints on economic liberty. This article recovers that under-examined doctrinal history and shows that what recent commentary decries as new-found 'judicial abdication' is in fact a recurring mode of review rooted in Article 19(1)(g) jurisprudence. Blending close doctrinal analysis with a descriptive survey of 187 reported Supreme Court decisions between 1950 and 2015 that substantively engage Article 19(1)(g), it demonstrates that the Court expressly avoided applying the governing proportionality or reasonableness framework in approximately 9.6 per cent of cases.

Crucially, clearly identifiable instances of abdication increase from about five per cent before *Garg* (1981) to roughly thirteen per cent thereafter, with around eight per cent of post-*Garg* Article 19(1)(g) decisions explicitly relying on *Garg*'s 'greater latitude' formulation.

The article first reconstructs the genealogy of abdication, moving from early instances in *Khyerbari Tea* and *Pyarali Tejani* through *Srinivasa Enterprises* to Bhagwati J's majority in *Garg*, which transposed a U.S. dissent into Indian economic rights adjudication. It then traces how

later benches—*Peerless*, *Dalmia Cement*, *SIEL* and others—invoked this rationale to justify reduced scrutiny.

Normatively, the article argues that judicial acceptance of rights-restrictive measures without applying the governing justificatory standard violates Article 32, distorts the separation of powers, and erodes citizens' economic freedom. It contends that the textual parity of Article 19(1)(g) with classic civil liberties leaves no room for a categorically diluted standard of review. The piece therefore urges a return to the *Chintaman Rao–Faruk* line, treating proportionality and less restrictive alternative analysis as the default mode of review, and calls on courts and scholars alike to abandon constitutionally unwarranted economic exceptionalism.

Introduction

Scholars have criticised judicial abdication on the issue of internet shutdowns in Jammu and Kashmir in *Anuradha Bhasin v Union of India* and the constitutional validity of the criminalisation of homosexuality under Section 377 of the Indian Penal Code (IPC) in the case of *Suresh Kumar Koushal v Naz Foundation*.¹ However, most scholars have overlooked judicial abdication in the context of economic restrictions,

¹ *Anuradha Bhasin v Union of India* [2020] 1 SCR 812; *Suresh Kumar Koushal v Naz Foundation* [2013] 17 SCR 116.; N Shrikhande and S Banerjee, 'The Supreme Court's Order in the Jammu & Kashmir 4G Case: Judicial Abdication?' *Bar & Bench* (3 June 2020) <https://www.barandbench.com/columns/jk-4g-order-supreme-court> accessed 16 July 2025; S Subramanian, 'The Indian Supreme Court Ruling in *Koushal v Naz*: Judicial Deference or Judicial Abdication?' (2015) 47 *George Washington International Law Review* 711; C Chandrachud, 'Proportionality, Judicial Reasoning, and the Indian Supreme Court' (2017) 1 *Anti-Discrimination Law Review* 87.

particularly restrictions curbing Article 19(1)(g) of the Indian Constitution which guarantees the right to practise any profession, or to carry on any occupation, trade, or business. When courts abdicate review here, they deny meaningful protection to occupational freedom and blunt the remedial promise of Article 32. In *Vivek Narayan Sharma* (demonetisation), for instance, the Court reiterated that judges are not to sit in judgment over the merits of economic or financial policy, thereby narrowing the scope of scrutiny.² A similar posture is evident in *Akshay N. Patel* under Article 19(1)(g) and in repeated invocations of ‘greater latitude’ for economic regulation.³

In *R.K. Garg v Union of India*, Bhagwati J, writing for the majority, relied on Frankfurter J’s dissent in the decision of the United States’ Supreme Court in *Morey v. Doud* (1957) to articulate a vocabulary of ‘greater latitude’ for economic regulation.⁴ This language was later used to justify test-avoidance in some Article 19(1)(g) cases. Originally a caution about judicial intensity under Article 14, the idiom migrated into Article 19(1)(g) review. It became a vehicle for courts to avoid applying the structured reasonableness or proportionality tests mandated by earlier precedents. This article argues that *Garg*’s ‘greater latitude’ dictum has exerted a uniquely amplifying influence: it is cited roughly twice as often as all other abdication precedents combined in post-1981 Article 19(1)(g) decisions that exhibit abdication.

² *Vivek Narayan Sharma v Union of India* [2023] 1 SCR 1.

³ *Akshay N Patel v RBI* [2021] 13 SCR 231; *State of TN v National South Indian River Interlinking Agriculturist Assn* [2021] 7 SCR 479.

⁴ *R.K. Garg v Union of India* [1982] 1 SCR 947.

Drawing on a pre-existing corpus of reported Supreme Court judgments (1950–2015), the analysis identifies approximately five per cent of pre-*Garg* and approximately 13 per cent of post-*Garg* Article 19(1)(g) decisions in which abdication reasoning appears with a clear textual marker. Of the 109 post-*Garg* Article 19(1)(g) decisions, nine (approximately 8.3 per cent) invoke *Garg*’s ‘greater latitude’ reasoning as a basis for attenuated scrutiny, while the remaining five abdication decisions (approximately 4.6 per cent) rely on other precedents. These figures are illustrative rather than probative. They indicate *Garg*’s disproportionate doctrinal footprint rather than demonstrate causal change. The dataset is confined to reported Supreme Court judgments exhibiting express abdication, and excludes High Court practice as well as implicit abdication.

Despite rich accounts of ‘reasonableness’ and proportionality, there is no focused map of how *Garg*’s ‘greater latitude’ migrated into Article 19(6) review and, in a subset of cases, enabled courts to avoid applying the controlling reasonableness/proportionality framework. When the intensity of review approaches zero in economic-rights cases, regulatory burdens on livelihood and enterprise escape reasoned justification, weakening Article 32’s remedial promise and displacing a justification-oriented approach. Doctrinally, the Article identifies and labels express abdication in 19(1)(g) cases, traces its post-*Garg* pathway, and distinguishes it from *permissible deference* (reasoned, standard-governed review) and *post-violation remedial restraint*. Normatively, it recommends a calibrated approach. Proportionality, including less restrictive alternatives (or less drastic restraint), should apply as the

default; deference should be reserved for demonstrated, evidence-based expertise within the proportionality analysis; and abdication, that is, the refusal to apply the governing test, should be treated as inconsistent with the design of Articles 19 and 32.

Following this introductory Part, Part II reconstructs the baseline for Article 19(6) review from earlier precedents, and situates later proportionality. Part III defines abdication and distinguishes it from deference with operational criteria. Part IV surveys Article 19(1)(g) case law before 1981 to establish the pre-*Garg* baseline. Part V analyses *Garg*, explaining its reasoning and doctrinal reach. Part VI examines judicial abdication in the period after *Garg*, identifying the mechanisms through which its dictum influenced later decisions. Part VII details the search method, operational coding, and dataset used to trace *Garg*'s comparative footprint. Part VIII states the study's limitations; Part IX discusses the findings in light of the doctrinal argument; and Part X concludes by proposing a calibrated model of review and outlining its implications for judicial reasoning and remedies under Articles 19 and 32.

A Restriction Curbing Article 19(1)(g) Must be Reasonable

Article 19(6) allows the State to impose reasonable restrictions in the interests of the general public. The Constitution (First Amendment) Act, 1951 amended clause (6) of Article 19 to permit the creation of State monopolies. From the outset, reasonableness has meant more than a bare nexus; it has required narrow tailoring and balance.

Chintaman Rao v State of Madhya Pradesh was the first Article 19(1)(g) decision to give that requirement concrete shape.⁵ Reviewing a seasonal prohibition on bidi-making said to secure agricultural labour, the Court condemned the law as ‘so drastic... in excess of [its] object,’ faulted its overbreadth, noting that it swept in persons ‘incapable of being used for agricultural labour’.⁶ The Court also identified less restrictive alternatives such as regulating working hours in the bidi industry or confining any prohibition to those actually required for agriculture.⁷ In doing so, the Court operationalised necessity (minimal impairment) well before modern proportionality vocabulary took hold.⁸ It then balanced the State’s objective against livelihood harms to those with ‘no connection... to agricultural operations’, holding that such sweeping deprivations ‘cannot be said to amount to reasonable restrictions’.⁹ In short, *Chintaman Rao* embeds three elements: (i) purpose and rational relation; (ii) necessity in the form of no more than what is required, including the availability of less restrictive alternatives; and (iii) overall balancing between freedom and social control. The template was later synthesised in *State of Madras v V.G. Row* and carried forward through *Faruk* to contemporary proportionality cases.¹⁰

⁵ *Chintaman Rao and Ram Krishna v State of Madhya Pradesh* [1950] 1 SCR 759.

⁶ *ibid* 764.

⁷ *ibid* 764 (identification of less restrictive alternatives, including regulation of working hours or limiting prohibition to those actually required for agriculture).

⁸ *ibid* 700-701.

⁹ *ibid*.

¹⁰ *State of Madras v V.G. Row* [1952] 1 SCR 597; *Mohd Faruk v State of Madhya Pradesh* [1970] 1 SCR 156; *Om Kumar v Union of India* [2000] 4 Supp. SCR 693; *Modern Dental College and Research Centre v State of Madhya Pradesh* [2016] 3 SCR 579; *Justice KS Puttaswamy (Retd) v*

Although decided under Article 19(1)(c), *V.G. Row* laid down the general method for Article 19 reasonableness review requiring courts to assess the nature of the right infringed, the purpose of the restriction, the extent and urgency of the social evil sought to be remedied, the proportionality of the imposition, and the prevailing conditions at the time.¹¹ Crucially, *V.G. Row* places the burden on the State to affirmatively justify the restriction; the inquiry is substantive and contextual rather than perfunctory.

‘Beyond what is required’, excessiveness, or the availability of a less restrictive alternative indicates the disproportionality of the restriction. The Supreme Court has invalidated restrictions on that ground in multiple settings. Later decisions oscillate as to how explicitly they incorporate a ‘less restrictive alternative’ (LRA) inquiry within Article 19(6). In *State of Maharashtra v Himmatbhai Narbheram Rao*, Shah J rejected the comparison with alternative measures as a standard of review.¹² He observed:

*[t]he legislature has designed a scheme by which reasonable restrictions are placed upon the right of a citizen to dispose of his property; possibility of an alternative scheme which might have been but has not been designed, will not justifiably expose the first scheme to the attack that it imposes unreasonable restrictions.*¹³

Union of India [2017] 10 SCR 569 (Chandrachud J).

¹¹ *V.G. Row* (n 10), 598-599.

¹² *State of Maharashtra v Himmatbhai Narbheram Rao* (same as *State of Maharashtra v Mumbai Upnagar Gramodyog Sangh*) [1969] 2 SCR 392.

¹³ *ibid* 401.

This reasoning effectively assumes the reasonableness of the impugned measure in question before applying the test of less drastic restraint. Nor does Shah J offer an explanation as to why the availability of a less restrictive alternative should not expose the vulnerability of the measure in question.

Although *Himmatbhai* was a four-judge bench decision delivered on 15 October 1968, Shah J, speaking for a five-judge bench in *Mohd Faruk v State of Madhya Pradesh* on 1 April 1969, articulated a more demanding standard of review. He used the phrase ‘less drastic restraint’ three times in a single paragraph as a standard for scrutinising the regulation:

[t]he impugned notification, ... may be upheld only if it be established that ... a less drastic restriction will not ensure the interest of the general public.’¹⁴

The Court emphasised an evaluation based on the ‘direct and immediate’ impact of the restriction upon the fundamental rights of affected citizens, the necessity of restricting the fundamental right, and the possibility of achieving the object through a less restrictive alternative.¹⁵

In *Laxmi Khandsari v State of Uttar Pradesh*, the Court followed *Himmatbhai* rather than *Faruk* and reproduced the same passage:

[t]he legislature has designed a scheme by which reasonable restrictions are placed upon the right of a citizen to dispose of his property: possibility of an alternative scheme which might have been but has not been designed, will not

¹⁴ *Faruk* (n 10), 161.

¹⁵ *ibid.*

*justifiably expose the first scheme to the attack that it imposes unreasonable restrictions.*¹⁶

Laxmi Khandsari simply agreed with *Himmatbhai* and did not engage with or overrule either *Chintaman Rao* or *Faruk*.

Recently, in the landmark case of *Internet and Mobile Association of India (IMAI) v The Reserve Bank Of India (RBI)*, Ramasubramanian J applied the test of reasonableness.¹⁷ Relying on *Faruk*, the Court included ‘less drastic restraint’ among the parameters for assessing reasonableness. Applying those parameters, the Court set aside the RBI circular on the ground that the RBI had not considered the availability of alternatives before issuing the impugned circular.¹⁸

This trajectory intersects with the Court’s consolidation of proportionality as the controlling standard where fundamental rights are restricted. In *Om Kumar v Union of India*, the Court distinguished between Wednesbury review for ordinary administrative action and proportionality where fundamental rights are directly limited; in the latter setting, the State must justify the measure in terms of its ends and means.¹⁹ *Modern Dental College v State of Madhya Pradesh* crystallised a four-stage proportionality test (legitimate aim, rational connection, necessity, and overall balancing), explicitly aligning Indian doctrine

¹⁶ *Laxmi Khandsari v State of UP* [1981] 3 SCR 92, 106.

¹⁷ *Internet and Mobile Association of India v Reserve Bank of India* [2020] 2 SCR 297.

¹⁸ *ibid* 430-442 (Ramasubramanian J); 442 (invalidating the RBI circular for failure to consider less restrictive alternatives).

¹⁹ *Om Kumar* (n 10).

with contemporary comparative practice.²⁰ *K.S. Puttaswamy v Union of India* reaffirmed and deepened this structure, emphasising that the State bears the burden to demonstrate not only that the measure pursues a proper purpose and is suitable, but also that no equally effective, less rights-restrictive alternative is available, and that the benefits justify the rights-burdens imposed.²¹

Taken together, these strands yield a coherent baseline for Article 19(6) review of economic restrictions. The State may pursue broad economic and regulatory aims, including monopolies where authorised by the Constitution, but it must justify any curtailment of Article 19(1)(g) by proportionate reasons responsive to those aims. The inquiry is not deferential by default: courts ask whether the objective is legitimate; whether the means are rationally connected to that objective; whether the measure minimally impairs the freedom when compared to feasible alternatives; and whether the aggregate rights-burden is justified by the public interest advanced. The dominant line, from *V.G. Row* and *Chintaman Rao* through *Faruk, Modern Dental, Puttaswamy*, and *IMAI*, tethers Article 19(6) reasonableness to a proportionality discipline in which less-drastic-means analysis and justificatory evidence are central rather than incidental. This is the baseline against which claims of judicial deference, and, in the extreme, abdication, in the economic-regulation docket must be measured.

²⁰ *Modern Dental College*, (n 10).

²¹ *Puttaswamy* (n 10) 838-840 (Chandrachud J). Also see *Justice KS Puttaswamy (retired) v Union of India* [2018] 8 SCR 1, 917-923.

Defining Judicial Abdication

The constitutional guarantee of judicial review under Articles 32 and 226 secures the *existence* of review but not its *intensity*. As discussed above, Indian courts have developed a structured proportionality model. Under the model, the State must justify rights-restrictions through legitimate aim, rational connection, minimal impairment, and proportional balance. These tests operationalise a *culture of justification* (a term coined by Étienne Mureinik and subsequently elaborated by David Dyzenhaus) in which all exercises of public power must be supported by reasons that are legally intelligible to those subject to them.²² Judicial review remains legitimate only when courts insist that coercive state action be justified through reasons accessible to those governed.²³

Within this justificatory culture, courts may vary the intensity of review without abandoning legality. Judicial deference in this sense is not the absence of review but a structured technique for calibrating scrutiny to institutional context. Cora Chan's account treats deference as a toolkit. This toolkit includes the allocation of burdens and standards of proof, standards of review, interpretive choices, the attribution of weight to legislative or expert judgments, and remedial calibration, through which courts acknowledge epistemic expertise and democratic legitimacy while still requiring the State to justify rights-infringing

²² David Dyzenhaus, 'Dignity in Administrative Law: Judicial Deference in a Culture of Justification' (2012) 17(1) *Review of Constitutional Studies* 87, 109.

²³ David Dyzenhaus, 'The Politics of Deference: Judicial Review and Democracy' in Michael Taggart (ed), *The Province of Administrative Law* (Hart Publishing 1997) 279, 305.

action.²⁴ Even when deferring, courts remain inside the culture of justification because it applies normative standards (proportionality or reasonableness) and demands State reasons that are rational and evidence-based.²⁵

Eric Berger refines when deference is normatively permissible: only when the political branch can claim both democratic pedigree and relevant expertise.²⁶ Where either foundation is absent (when decision-makers lack genuine accountability or epistemic credibility), judicial deference loses legitimacy and degenerates into abdication. On this view, abdication is not defined by the sheer degree of scrutiny but by the absence of a justificatory relationship that transforms judicial restraint into constitutional dialogue.

T.R.S. Allan reaches a similar distinction from the rule-of-law side. Courts have an essential role in safeguarding legality against arbitrary power because the rule of law requires that governmental action be capable of rational and moral justification consistent with the equal status of citizens.²⁷ Judicial restraint, understood as ordinary deference within a reasonable range of legislative discretion and a reluctance to

²⁴ Cora Chan, *Deference in Human Rights Adjudication* (Oxford University Press 2024) ch 3; Cora Chan, 'Deference, Expertise and Information-Gathering Powers' (2013) 33 *Legal Studies* 598.

²⁵ David Dyzenhaus, 'Proportionality and Deference in a Culture of Justification' in Grant Huscroft, Bradley W Miller and Grégoire Webber (eds), *Proportionality and the Rule of Law* (CUP 2014) ch 11.

²⁶ Eric Berger, 'Individual Rights, Judicial Deference, and Administrative Law Norms in Constitutional Decision Making' (2011) 91 *Boston University Law Review* 2029, 2058–77.

²⁷ F C DeCoste, 'Redeeming the Rule of Law' (2002) 39(4) *Alberta Law Review* 1007, 1011, 1014, 1015, 1016.

impute illegitimate purposes where a reasonable basis exists, remains legitimate only within that justificatory discipline.²⁸ Restraint is prudence, not surrender; it cannot license outcomes that conflict with constitutional fundamentals.²⁹ Courts therefore cannot treat deference as a licence to uphold measures that citizens, as independent moral agents, have good reason to repudiate as illegitimate.³⁰ Abdication, by contrast, occurs when courts disclaim their responsibility to test whether State power rests on defensible grounds.³¹

A useful comparative gloss comes from Canada's administrative-law setting. Under *Doré v Barreau du Québec* and *Loyola*, when an administrative decision burdens rights, courts ask whether the *decision-maker's reasons* show a proportionate balance between statutory objectives and the implicated right, reviewing for reasonableness in a constitutional context.³² *Vavilov* later tightened what *reasonableness* demands (responsive, coherent reasons tied to the legal and factual matrix), thereby disciplining proportionate-reasoning review and guarding against vacuity.³³ This is deference through justification: the

²⁸ *ibid* 1018.

²⁹ *ibid* 1014.

³⁰ T R S Allan, 'In Defence of the Common Law Constitution: Unwritten Rights as Fundamental Law' (LSE Law, Society and Economy Working Paper 5/2009, 2009) 1; see also T R S Allan, 'The Moral Unity of Public Law' (2017) (Cambridge repository PDF) 29.

³¹ DeCoste (n 27) 1013, 1015.

³² *Doré v Barreau du Québec* 2012 SCC 12, [55–58] (requiring administrative decision-makers to proportionately balance statutory objectives with Charter values); *Loyola High School v Québec (Attorney General)* 2015 SCC 12, [2015] 1 SCR 613, [39–41] (confirming that this proportional balancing is assessed on reasonableness review in a constitutional context).

³³ *Canada (Minister of Citizenship and Immigration) v Vavilov* 2019 SCC 65, [85–91] (requiring reasons that are responsive to the parties' submissions and justified in light of the legal

State must reason proportionately and courts respect a bounded range of constitutionally adequate outcomes.

Transposed to the Indian setting, the line between deference and abdication is crossed when courts cease to ask the questions that proportionality requires. Courts may accept that they cannot themselves generate or weigh complex technical data; what they cannot do is treat a bare showing of empirical nexus as sufficient. Where an expert committee or regulator has considered only non-legal factors, such as identifying a social ill and positing a ban, without grappling with alternatives, burdens, or rights-impact, the resulting decision lacks constitutional justification. A court that nonetheless upholds the measure without insisting on minimal impairment and proportional balance abandons the justificatory culture. That is abdication, not deference. By contrast, a court remains deferential yet faithful to legality when it credits expertise on facts while independently verifying that the record engages the full proportionality discipline (legitimacy, connection, necessity, and overall balance) and when it withholds validation or remits the matter if those justificatory steps are missing.

Read together, Mureinik, Dyzenhaus, Chan, Berger, and Allan furnish a coherent continuum. At one end lies full proportionality review, where courts both demand and evaluate justification in depth. Mid-spectrum lies structured deference, where courts accept a *range* of

and factual constraints); [102–106] (insisting on coherence, internal rationality, and justification tied to the statutory and evidentiary matrix).

proportionate, reason-based conclusions because of demonstrated expertise or democratic pedigree. At the other end stands abdication, either explicit, when courts disclaim competence and refuse to apply the governing standard, or disguised, when they recite proportionality yet fail to examine reasons (offering slogans, circularity, or fact-free assertions). Only the first two positions remain within the culture of justification; abdication marks an exit from it, producing authority without reasons and legality without justification.

Judicial deference presupposes a demonstrable constitutional deliberation by the primary decision-maker. The court may respect the outcome of that deliberation without re-performing proportionality or balancing itself. However, where no such deliberation has occurred, or where the reasoning is conclusory and unsupported by evaluative analysis, judicial acceptance cannot be characterised as deference; it constitutes abdication.

This formulation preserves the legitimacy of institutional deference while demanding a minimum threshold of constitutional justification. That threshold ensures that expertise operates within, rather than above, the constitutional order. It also offers a workable standard for evaluating Indian precedents where courts have uncritically relied on committee reports. Unless those reports themselves exhibit proportionality reasoning and consideration of less restrictive alternatives, the Court's reliance on them fails the test of deference and slides into abdication.

Judicial Abdication before 1981

Although isolated instances of judicial abdication can be traced to the Court's early Article 19(1)(g) jurisprudence, these decisions were context-specific and rarely cited in later doctrine. This Part surveys those sporadic cases solely to establish a baseline.

In *T.B. Ibrahim v Regional Transport Authority, Tanjore*, the Court squarely entertained an Article 19(1)(g) challenge but upheld the restriction barring outward-journey pickups from the petitioner's private stand on the ground of 'public convenience', explicitly relocating the decisional question to the administrator: whether abolition of the stand served that aim was 'entirely for the transport authority to judge', and 'it is not open to the court to substitute its own opinion'.³⁴ On the baseline developed in Part III, the Court identified a legitimate aim and assumed suitability. However, it neither examined necessity nor less restrictive alternatives such as regulating conditions of use instead of eliminating outward pickups. Nor did the Court ask whether the authority had considered such alternatives or recorded reasons addressing necessity in its order. Instead, by treating power and local knowledge as dispositive and dispensing with reasoned justification, including analysis of less restrictive alternative, the judgment exemplifies *abdication* rather than standard-governed deference under Article 19(6).

³⁴ *TB Ibrahim v Regional Transport Authority, Tanjore* [1953] 1 SCR 290, 299-300.

In *Khyerbari Tea Co. Ltd v State of Assam*, parallel Article 19(1)(g) and Part XIII challenges were mounted against a levy on tea and jute.³⁵ The Court affirmed reviewability and discussed reasonableness in general terms. However, when it came to specific design choices, such as a flat, weight-based rate and the selection of particular goods, it upheld the scheme on the footing that the legislature ‘may have considered the requirements of the trade’ and may have thought a flat rate ‘just and fair’, adding that such questions ‘must normally be left to the legislature’.³⁶

The Court did not require the State to produce reasons demonstrating that the chosen design was necessary or that less restrictive alternatives had been considered and rejected. The speculative standard that the legislature ‘may have considered’ these matters was treated as sufficient. On the framework developed here, this is not an instance of deference which presupposes reasoned justification but an instance of abdication at the necessity stage. The Court substituted hypothetical legislative reasoning for demonstrated State justification.

In *Pyarali K. Tejani v Mahadeo Ramchandra Dange*, a dealer in scented supari challenged the prohibition on adding saccharin or cyclamate to supari, even as saccharin remained permitted in carbonated water.³⁷ The record noted that expert committees abroad and in India had contemplated restricted use such as ppm limits and that Bombay’s

³⁵ *Khyerbari Tea Co Ltd v State of Assam* [1964] 5 SCR 975.

³⁶ *ibid* 1007-1008.

³⁷ *Pyarali K Tejani v Mahadeo Ramchandra Dange* [1974] 2 SCR 154.

municipal circular had paused prosecutions while the Central Committee for Food Standards considered permitting saccharin in supari at 100 ppm with labelling.³⁸ Yet the Court declined to test necessity or less restrictive alternatives, such as ppm ceilings and disclosure requirements.³⁹ Instead, it relocated judgment to expert assessment, observing that ‘it is not the judicial function to enter the thicket of research controversy’ and that, where rule-making follows ‘technical counselling’, the measure is ‘presumed to be valid’, with judicial review halting ‘at the frontiers’.⁴⁰ The Court added that the inquiry concerned ‘Constitutionality, not chemistry’, and that it could not ‘re-weigh and substitute its notion of expedient solution’.⁴¹

The judgment itself quantified why saccharin was permitted in carbonated drinks, noting an intake of approximately 50 mg from four bottles against a recommended limit of 350 mg. However, it does not require comparable quantification or reason-giving in relation to supari, nor did it ask the Government whether less restrictive alternatives were considered and rejected. On the baseline developed here, this amounts to abdication: a refusal to apply the necessity or less restrictive alternative stage of review, coupled with a presumption of validity grounded in committee views rather than constitutionally adequate justification offered by the State.

³⁸ *ibid* 160-161.

³⁹ *ibid* 164-165.

⁴⁰ *ibid* 165.

⁴¹ *ibid*.

This is a borderline case. The Court recites scientific material and the committee's evolving stance, including the prospect of permitting saccharin in supari at low ppm with disclosure. This makes the posture appear akin to structured deference. However, it stops short of asking the State why those less restrictive alternatives were rejected or not considered, and instead erects a presumption grounded in expert authority, captured in formulations such as 'Constitutionality, not chemistry' and 'judicial review must halt at the frontiers'. On the baseline developed here, this omission on the necessity or less restrictive alternative stage converts what appears to be deference into abdication.

In *Srinivasa Enterprises v Union of India*, a total ban on prize-chit schemes was challenged under Article 19(1)(g).⁴² Krishna Iyer J acknowledged the less drastic-restraint principle—'no ban can be glibly imposed unless effective alternatives are unavailable'—but then upheld the prohibition by leaning on the Raj Report and the notion that in economics and sociology, 'courts should not embark upon views of half-lit infallibility', and that 'judges hesitate to "rush in" where even specialists "fear to tread"'.⁴³ The Court did not ask the State to show why tighter regulation would fail or why a total ban was necessary, dismissing the petitioners' alternative proposals. On our baseline, that is abdication. Although the Court articulates less drastic restraint in

⁴² *Srinivasa Enterprises v Union of India* [1981] 1 SCR 801.

⁴³ *ibid* 810 (Krishna Iyer J) (acknowledging the 'less drastic restraint' principle); 811 (upholding a total ban on prize-chit schemes by relying on the Raj Committee Report and cautioning that in economic and sociological matters courts should not embark upon 'half-lit infallibility' or 'rush in where even specialists fear to tread').

theory, it declines to apply it in practice. It relied instead on committee reports and rhetorical claims about judicial incompetence in economic and sociological matters, without requiring the State to justify why regulation would be ineffective or why a total ban was necessary. *Srinivasa* performs a rhetorical bow to necessity but, by presuming expert correctness and declining to test alternatives, crosses from structured deference into abdication.

Although *Shriram Chits and Investment Pvt. Ltd. v Union of India* came after *Garg*, it cites the above paragraph from *Srinivasa enterprises* and the committee reports to dismiss the challenge to the Chit Funds Act 1982.⁴⁴

The limited doctrinal footprint of these pre-1981 cases underscores why *Garg*, with its express endorsement of legislative wisdom, became the fulcrum for systematic judicial abdication.

A Misleading Precedent with Dubious Reasoning: *R.K. Garg v Union of India*

A judgment that significantly influenced the jurisprudence on Article 19(1)(g) and encouraged judicial abdication in economic matters was *R.K. Garg v Union of India*.⁴⁵ The case did not directly involve Article 19 at all. The petitioner challenged the validity of the Special Bearer Bonds (Immunities and Exemptions) Ordinance, 1981 and the Special Bearer Bonds (Immunities and Exemptions) Act, 1981, primarily under

⁴⁴ *Shriram Chits and Investment Pvt Ltd v Union of India* [1993] Supp 1 SCR 54, 91.

⁴⁵ *Garg* (n 4).

Article 14. The Ordinance and the Act introduced the special bearer bonds with certain benefits and immunities for the bearers, including: (i) an exemption from disclosure of the nature and source of funds; (ii) immunity from inquiry or investigation under any law into the acquisition of the bonds; and (iii) inadmissibility of evidence relating to the acquisition of the bonds.⁴⁶

Gupta J, in dissent, found the rational nexus between the provisions and the object lacking.⁴⁷ He observed that the Act went overboard in rewarding the tax evaders as compared with honest taxpayers.⁴⁸ The Act ensured ‘anonymity and security for tax evaders’, allowed for the free transfer of bonds, offered two per cent interest and immunity from several taxes. Gupta J emphasised that free transferability would make these bonds as a parallel currency, and on maturity, the money might again go underground.⁴⁹ The Act did nothing to prevent black money and tax evasion; rather, it incentivised tax evasion.

However, Bhagwati J, writing for the majority, advocated for a ‘restrained’ approach:

[a]nother rule of equal importance is that laws relating to economic activities should be viewed with greater latitude than laws touching civil rights such as freedom of speech, religion, etc. It has been said by no less a person than Holmes, J., that the legislature should be allowed some play in the joints, because it has to deal with complex problems which do not admit of solution

⁴⁶ ibid 989-996.

⁴⁷ ibid 989-1002 (A C Gupta J, dissenting).

⁴⁸ ibid 1001.

⁴⁹ ibid 999-1000.

*through any doctrinaire or strait-jacket formula and this is particularly true in case of legislation dealing with economic matters, where, having regard to the nature of the problems required to be dealt with, greater play in the joints has to be allowed to the legislature. The court should feel more inclined to give judicial deference to legislative judgment in the field of economic regulation than in other areas where fundamental human rights are involved.*⁵⁰ [sic]

The Court has quoted these lines in many subsequent judgments dealing with Article 19(1)(g).⁵¹ It is essential to critically examine this reasoning. Bhagwati J's passage drew on Frankfurter J's dissent in *Morey v Doud*,⁵² a U.S. equal protection case operating under a rational-basis review. Transplanting that caution to India cannot, by itself, dilute Article 19(1)(g)'s proportionality requirements. At most, it can justify moderated intensity of review when courts assess predictive judgments within those requirements, particularly when the State has engaged with alternatives and addressed the distribution and magnitude of burdens).

Before grafting foreign notions of judicial restraint onto Article 19(1)(g), two structural features of the Indian Constitution must be kept firmly in view. First, the freedom 'to practise any profession, or to carry on any occupation, trade or business' is itself a fundamental right entrenched in Part III. Second, this freedom sits within the

⁵⁰ *ibid* 969.

⁵¹ *Peerless General Finance and Investment Co Ltd v Reserve Bank of India* [1992] 1 SCR 406; *T Velayudhan Achari v Union of India* [1993] 1 SCR 832; *Dalmia Cement (Bharat) Ltd v Union of India* (1996) 10 SCC 104; *Bhavesh D Parish v Union of India* [2000] Supp 1 SCR 291; *State of UP v Sukhpal Singh Bal* [2005] Supp 2 SCR 1135; *Southern Technologies Ltd v Joint Commissioner of Income Tax, Coimbatore* [2010] 1 SCR 380.

⁵² *Morey v Doud* 354 US 457, 472 (1957) (Frankfurter J, dissenting).

broader constitutional cluster titled ‘*Right to Freedom*’ (Articles 19–22) alongside speech, movement, assembly and association. Textually, therefore, Article 19(1)(g) stands on the same constitutional footing as those companion liberties, and nothing in the Constitution licenses a category-wide diluted standard of review for economic freedoms as compared with other civil rights. The American and Indian constitutional schemes are fundamentally different in this respect.

Wherever the Constitution intends to shield a competing public interest, whether reservations, price control, or a State monopoly, from the operation of a fundamental right such as Article 19(1)(g), it does so through express saving clauses. Thus Article 31B and the Ninth Schedule protect designated statutes, Article 19(6)(ii) immunises *legislatively created* monopolies, and Article 15(5) safeguards affirmative action measures in education. In this way, the Constitution carves out discrete zones of immunity instead of diluting the general standard of review applicable to Article 19(1)(g). Subsequent benches quoted Bhagwati J’s opinion in *Garg* without critically analysing his view. The holding was about equality review of a tax instrument; the portable part was the standard-of-review dictum.

From *Chintaman Rao* and *V.G. Row* onward, ‘reasonableness’ under Article 19 is a method. Later, *Om Kumar*, *Modern Dental College*, and *Puttaswamy* made the method explicit: legitimate aim, rational connection, minimal impairment, and overall balancing. In that grammar, *Garg* can at most modulate intensity inside steps (iii) and (iv); courts may credit legislative predictions and expert assessments after the State has discharged its justificatory burden on connection,

alternatives, and balance. What *Garg* cannot do is supply a warrant to bypass minimal impairment or balancing. When a bench cites ‘greater latitude’ yet declines to ask those questions, the review exits the culture of justification: that is abdication, not deference.

From deference to abdication, the fault line is simple to state. Deference remains legitimate when the Court does the work of proportionality. It asks all four questions: aim, connection, minimal impairment, and overall balance. Within this framework, the Court may recognise the legislature’s democratic pedigree and the epistemic authority of experts on contested facts and forecasts, and accept a range of constitutionally adequate answers. Abdication begins when *Garg*’s ‘greater latitude’ is treated as a substitute for that analysis: an economic policy label, a bare empirical nexus, or a committee report that never engages with alternatives and burdens is taken as enough, and the Court thereby skips minimal impairment or balancing.

Read narrowly, *Garg* counsels caution in second-guessing macroeconomic design under Article 14. Read as it has often been quoted, it supplies a shortcut which later benches have used to downshift or bypass the proportionality discipline in Article 19(1)(g) cases. That is why *Garg* is a misleading precedent for Article 19(1)(g) because its dictum has been deployed to legitimate outcomes without reasons, converting deference into abdication.

Judicial Abdication after *R.K. Garg*

Garg continues to expand its footprint in Article 19(1)(g) jurisprudence. Some cases cite *Garg* directly,⁵³ while others rely on it indirectly by citing precedents that relied on *Garg*.⁵⁴ Few cases use similar reasoning without relying on *Garg* or other precedents.⁵⁵

In *Peerless General Finance and Investment Co. Ltd v Reserve Bank of India*, Residuary Non-Banking Companies (RNBCs) attacked the Residuary Non-Banking Companies (Reserve Bank of India) Directions, 1987, focusing on para 6 (the asset-maintenance mandate) and para 12 (the liability-recognition rule).⁵⁶ Para 6 required RNBCs, at specified half-yearly cut-offs, to maintain a portion of their deployable funds in approved securities and bank deposits.⁵⁷ The amount was keyed to their aggregate liabilities to depositors. Para 12 required them to recognise as liabilities not only principal but also interest, bonus, premia, and all other promised advantages.⁵⁸ The companies argued that taken together these directions siphoned off working capital, making it impossible to continue business. The Court acknowledged that compliance would severely constrain day-to-day operations, but nonetheless upheld the regime, locating RBI's power in Chapter II-B

⁵³ *Peerless* (n 51); *Achari* (n 51); *Dalmia Cement* (n 51); *Parish* (n 51); *Sukhpal Singh Bal* (n 51).

⁵⁴ *SIEL Ltd v Union of India* [1998] Supp 1 SCR 560; *Southern Technologies Ltd* (n 51).

⁵⁵ *Sadiq Bakery v State of AP* [1988] 2 SCR 7; *Elel Hotels and Investments Limited v Union of India* [1989] 2 SCR 880; *Shri Krishna Das v Town Area Committee, Chirgaon* [1990] 2 SCR 13.

⁵⁶ *Peerless* (n 51) 425.

⁵⁷ *ibid* 426-427.

⁵⁸ *ibid* 427.

(notably s.45K(3) and s.45L) and, crucially, adopting a posture of institutional deference.⁵⁹ The Court held that:

*[t]he function of the Court is not to advise in matters relating to financial and economic policies for which bodies like Reserve Bank are fully competent... It would be hazardous and risky for the courts to tread an unknown path and should leave such task to the expert bodies.*⁶⁰

The judgment does identify a legitimate aim (systemic safety and depositor protection) and accepts a rational connection between stricter asset-maintenance/liability-recognition and that aim. But when it comes to minimal impairment and overall balance, the Court treats RBI's predictive judgments and committee material as effectively dispositive, without requiring a reasoned engagement with alternatives. For example, the Court did not consider phased ratios, carve-outs for operating float, or differentiated buckets for maturities nor did it engage with the quantified burdens on the Article 19(1)(g) interest in conducting business. In doctrinal terms, *Garg's* 'greater latitude' dictum is used not to modulate intensity within those steps but to avoid them: once the label 'economic policy' appears and RBI's expertise is invoked, the analysis stops short of testing necessity and balance. On the framework developed here, this crosses the line from structured deference to abdication. The Court credited expertise but did not insist that the record show proportionate reasoning responsive to less-restrictive means and burden distribution.

⁵⁹ ibid 461-462.

⁶⁰ ibid 445.

In *Bhavesb D. Parish v Union of India*, the Court upheld the 1997 amendment to Section 45-S, RBI Act, which categorically prohibited individuals, firms, and unincorporated associations from accepting public deposits if they were engaged in specified ‘financial activity’ or if their principal business was taking deposits/lending, with a narrow carve-out for loans from relatives.⁶¹ The petitioners (notably traditional *shroffs*) argued violation of Articles 14 and 19(1)(g) because the ban extinguished their business model.⁶² The Court framed the review under the Article 19 reasonableness template (citing *Papnasam Labour Union* (1994) factors) and then located the statute’s aim in depositor protection and macro-prudential control.⁶³ It relied on RBI affidavits and committee materials narrating evasion under the earlier partial regime, the growth of ‘blade companies’, high-rate arbitrage, and widespread depositor losses (especially in Kerala and Tamil Nadu).⁶⁴ The judgment emphasised that earlier less restrictive measures (caps and partial limits) had proved inadequate due to circumvention by splitting firms; hence a shift from regulation to prohibition was justified.⁶⁵ It also noted that actors could reorganise as corporate NBFCs and operate within Chapter III-B’s discipline.⁶⁶

⁶¹ *Parish* (n 51).

⁶² *ibid* 301.

⁶³ *ibid* 301-303.

⁶⁴ *ibid* 303-304.

⁶⁵ *ibid* 303.

⁶⁶ *ibid* 305.

At the level of proportionality's steps, *Bhavesh* is not a clear instance of abdication. The Court identifies a legitimate aim and accepts a rational connection between cutting unregulated access to public deposits and protecting depositors/monetary policy. On minimal impairment, it records that a graduated, partial regime failed (and was gamed), and that prohibition was adopted only after committee study and field experience. On balancing, the Court briefly acknowledges the value of the informal sector but then pivots to strong deference in economic policy, warning that judicial interference can have 'large-scale ramifications' and should be confined to cases where the legislative view is 'not possible to be taken at all'.

Bhavesh is best coded as structured deference (thin but present) rather than abdication. The Court does ask the proportionality questions, though it answers steps (iii) and (iv) with sparse engagement and heavy reliance on RBI's predictive expertise and committee reports. The opinion uses *Garg*-style latitude language, yet not as a substitute for the method; it operates as an intensity modulator within the method. What is missing is a granular alternatives analysis and an express balancing of burdens on livelihood against depositor risk. That thinness is a vulnerability, but it does not cross the abdication line because the Court does not skip minimal-impairment or balancing outright.

In *Dalmia Cement (Bharat) Ltd. v Union of India*,⁶⁷ the Court upheld the compulsory packaging of finished products with jute bags. Petitioners

⁶⁷ *Dalmia Cement* (n 51).

argued that the measure intended to benefit only the jute mill owners at the cost of cement producers. The Court identifies a legitimate aim (support to the jute sector and associated livelihoods) and infers a rational connection between compulsory jute use and that aim. But when it reaches minimal impairment and overall balance, the analysis gives way to slogans and citations: having invoked *Garg/Morey/Peerless*, the Court does not require the State to engage with alternatives or to quantify burdens on rival industries, consumers, and trade. The committee material urging time-bound dilution/rescission by 1994–95 is acknowledged in the record placed by petitioners but not used to discipline necessity analysis. The result is validation on the strength of policy labels and social-justice rhetoric, not proportionate justification. The Court credits expertise and macro-aims, yet skips the minimal-impairment and balancing inquiries, so the review exits the culture of justification.

In *Sukhpal Singh*, the judgment clears aim and connection comfortably (revenue protection; strong penalties reduce evasion), but it does not do the work at minimal impairment or overall balance.⁶⁸ The respondents' core alternative, i.e. to make the penalty 'up to ten times' with calibrated discretion for genuine cases, is recorded by the Court yet never evaluated on the merits as a narrower, equally effective means.⁶⁹ Nor does the Court weigh burdens on livelihood/operation against the deterrent objective; instead, it treats the label of deterrence

⁶⁸ *Sukhpal Singh Bal* (n 51).

⁶⁹ *ibid* 1142.

plus post-facto refund/appeal as sufficient cure-alls, and leans on familiar ‘latitude in economic/tax policy’ rhetoric.⁷⁰ That bypasses the necessity/balancing inquiries and turns expertise/deterrence into a substitute for justification. *Sukhpal Singh* therefore sits on the abdication side of the line: the Court credits the objective and accepts a nexus, but declines to test why a flat ten times penalty, without any tailoring, was required, or whether structured discretion or phased scales could have achieved deterrence with less rights-cost.

Some cases cite *Garg* indirectly by relying on later judgments that adopted its reasoning. For instance, in *SIEL Ltd. v Union of India*, involving the issue of the control on sale and supply of molasses by the government, the Court cited *Dalmia* to avoid substantial judicial review without undertaking any less restrictive analysis or balance analysis.⁷¹

The decision in *Garg* led to a pattern wherein the Court often showed ‘deference’ to the legislature and the Reserve Bank of India or experts in economic matters. These decisions illustrate how *Garg* has been invoked, directly and indirectly, to justify reduced scrutiny in Article 19(1)(g) cases involving economic regulation.

In a few tax matters, the Court did not cite *Garg* directly or indirectly but adopted a similar deferential posture. In *Sadiq Bakery v State of Andhra Pradesh*, the issue was differential taxation on bread and

⁷⁰ *ibid* 1145.

⁷¹ *SIEL Ltd* (n 51).

biscuits.⁷² The Court held the action unsustainable without engaging with alternatives or balancing and upheld the differential tax by saying- ‘We reiterate that the economic wisdom of a tax or lack of it are within the exclusive domain of the legislature.’⁷³

In another taxation matter, *Elel Hotels and Investments Limited v Union of India*, a special tax of 15 per cent on the receipts of certain hotels under the Hotel Receipts Tax Act, 1980 was in question.⁷⁴ The Court leaned on strong fiscal deference, i.e. ‘very wide latitude’ in tax policy and a heavy presumption of constitutionality.⁷⁵ It treated revenue design as a legislative prerogative.⁷⁶ While aim and rational connection were assumed (raising revenue and targeting higher-end hotels), the judgment did not test minimal impairment or overall balance.⁷⁷ It never asked whether other alternatives could achieve the goal with fewer burdens on business, making it an act of abdication.

Mapping the Doctrinal Footprints of Key Precedents

Per Krishnaswamy and Khosla, an assertion of a change in judicial behaviour with respect to a right requires evidence indicating a systematic doctrinal shift. The shift must be cognisant of the bench-strength and ratio of the cases.⁷⁸

⁷² *Sadiq Bakery* (n 55).

⁷³ *ibid* 9.

⁷⁴ *Elel Hotels and Investments Limited* (n 55).

⁷⁵ *ibid* 891-892.

⁷⁶ *ibid*.

⁷⁷ *ibid*.

⁷⁸ S Krishnaswamy and M Khosla, ‘Social Justice and the Supreme Court’ in Mayur Suresh and Siddharth Narrain (eds), *The Shifting Scales of Justice: The Supreme Court in Neo-liberal*

This Article adopts a mixed doctrinal–descriptive methodology to examine judicial abdication in Article 19(1)(g) cases and to trace the doctrinal influence of *Garg*. The aim is to map how abdication appears and travels within Supreme Court jurisprudence on economic restrictions. The methodology combines three elements: (i) doctrinal reconstruction of Article 19(6) reasonableness as a proportionality-based standard; (ii) conceptual operationalisation of ‘judicial abdication’ as a distinct mode of review; and (iii) a conservative, text-based coding exercise to descriptively trace the relative doctrinal footprint of *Garg* before and after 1981.

All quantitative claims in this Part are derived from a pre-existing corpus of Article 19(1)(g) decisions, together with fresh coding and targeted searches focused on abdication as defined now.⁷⁹ The search window therefore captures every Supreme Court decision reported between 26 January 1950 and 30 June 2015 involving an Article 19(1)(g) challenge because that is the period covered by the earlier corpus.

India (Orient BlackSwan 2014) 111–12.

⁷⁹ P Narang, 'The Supreme Court and Article 19(6) of the Indian Constitution: A Study of Judicial Behaviour' (PhD thesis, Jawaharlal Nehru University 2019) <http://hdl.handle.net/10603/515694> accessed 16 July 2025. This earlier work from which the Article 19(1)(g) corpus is drawn coded individual constitutional challenges, such that a single judgment could generate multiple data points. For the purposes of this study, the corpus has been converted to a decision-level dataset, with each reported Supreme Court judgment counted once, regardless of the number of Article 19(1)(g) challenges it contained. This aligns the unit of analysis with the focus of the present Article on judicial reasoning in judgments rather than on the number of rights-claims raised.

Step 1 — Defining the corpus (denominator).

This paper does not reconstruct the Article 19(1)(g) docket from scratch. It relies on the background corpus assembled in an earlier work. That work had identified all reported Supreme Court judgments between 26 January 1950 and 30 June 2015 in which Article 19(1)(g) received substantive treatment.

That corpus contains 187 decisions and is used here in a limited way, as a mechanical denominator: a rough measure of the size of the Article 19(1)(g) docket.

This study does not import the typology of deference or abdication, nor any prior classification of individual cases, from the earlier work. Data is recoded in this Article under the operational definition of judicial abdication developed here.

Step 2 — Identifying precedents on abdication

Drawing on the typology developed here in this study, eight Supreme Court decisions are treated as abdication precedents: four pre-*Garg* cases (*T.B. Ibrahim*; *Khyerbari*; *Pyarali Tejani*; *Srinivasa Enterprises*) and three post-*Garg* tax decisions (*Sadiq Bakery*; *Elel Hotels*; *Sri Krishna Das*), and *Garg* itself. These eight decisions are the source precedents whose later footprints this Part seeks to measure.

Step 3 — Constructing the candidate numerator

To trace the downstream use of abdication reasoning, the study identified candidate judgments using a citation-guided approach. For each abdication source precedent identified in Step 2, the study used IndianKanoon's citation network to locate subsequent Supreme Court

decisions citing that precedent. These results were filtered to Supreme Court cases and further refined by searching within them for Article 19(1)(g).

Step 4 — Manual screening and aggregation (numerator).

All candidate judgments identified in Step 3 are then manually screened against the operational definition of abdication. A candidate decision is coded as an instance of abdication only if:

1. the characteristic phrase appears in the Court's own reasoning (not merely in an advocate's submissions or in a quotation later distinguished); and
2. the reasoning, read as a whole, uses that phrase to avoid applying the proportionality/*Row* framework—for example, by treating the existence of a committee report, expert opinion, or economic-policy label as sufficient for validation, without examining less-restrictive alternatives, burdens on livelihood, or overall balance.

Judgments that merely cite a source precedent, reproduce an abdication phrase as part of a longer doctrinal survey, or go on to perform proportionality analysis, however thinly, are excluded. So too are cases of purely implicit abdication that leave no clear textual marker of the kind used in Step 3. The focus here is deliberately conservative: I count only those decisions in which abdication, as defined earlier in this paper, is reasonably clear on the face of the reasons.

The resulting set of coded judgments constitutes the numerator. These instances are aggregated in pre- versus post-*Garg*: the primary

comparison in this Part contrasts the frequency of abdication before *Garg* with the frequency afterward, using the 187-case corpus as a denominator.

Garg was decided on 16 December 1981. For the purposes of this study, ‘post-*Garg*’ refers to all Supreme Court decisions decided after the pronouncement of *Garg* and in which *Garg* was doctrinally available for citation or reliance, as indicated by temporal sequence or express citation.

The coding was conducted by the author using a single-coder qualitative classification, applied conservatively and consistently across the dataset.

Limitations

First, this quantitative exercise is intentionally modest: it tracks only those instances of judicial abdication that leave a clear textual trace in the form of characteristic phrases drawn from source precedents. It does not seek to capture forms of implicit abdication that are not signalled in this way.

Second, the temporal scope of the analysis spans from 26 January 1950 to 30 June 2015 and reflects the coverage of the underlying Article 19(1)(g) corpus on which this study builds. The analysis does not extend to decisions decided after that date.

Third, the classification of judgments as exhibiting abdication involves interpretive discretion. The coding was conducted by a single researcher and applied conservatively. While reasonable readers may

disagree with some classifications, the criteria used are explicit and grounded in the doctrinal baseline reconstructed in the Article. The aim is not to eliminate interpretive disagreement but to make the grounds of classification transparent and contestable. Fourth, the quantitative component of the analysis is descriptive rather than inferential. The numerator (the set of coded abdication decisions) is small, and the Article does not control for alternative explanations such as bench composition or changes in the Court's docket. The counts and proportions reported are not intended to measure prevalence or to establish causal relationships. They function instead as cartographic aids, indicating the relative doctrinal salience of particular precedents, most notably *Garg*, within the Article 19(1)(g) jurisprudence.

Finally, the study is confined to Supreme Court practice. High Court decisions are excluded for reasons of manageability rather than conceptual irrelevance. Extending the analysis to High Courts, as well as examining temporal patterns in the use of *Garg*-style reasoning beyond 2015, would be valuable directions for future research.

Findings and discussion

Within the corpus of reported Supreme Court decisions under Article 19(1)(g) decisions between 1950 and 2015, there are 78 pre-*Garg* decisions and 109 post-*Garg* decisions. Using the search-and-screen method described above, this study identifies four pre-*Garg* and 14 post-*Garg* decisions in which abdication reasoning, as defined here in this Article, appears with a clear textual marker (see Table 1). These

figures correspond to approximately 5.1 per cent of pre-*Garg* Article 19(1)(g) decisions and 13 per cent of post-*Garg* decisions. These proportions are descriptive and orienting: they do not estimate prevalence or support causal inference, but situate clearly identifiable abdication reasoning within the Article 19(1)(g) docket.

Within the post-*Garg* period, nine of the 14 identified abdication decisions (roughly two-thirds of the post-*Garg* abdication set and about 8.3 per cent of all post-*Garg* Article 19(1)(g) cases) explicitly invoke *Garg*'s 'greater latitude' reasoning as a justificatory basis for attenuated scrutiny.⁸⁰ Of the remaining five abdication decisions, three rely on *Srinivasa Enterprises* (two of them without citing *Garg*, and one alongside *Garg*), a pre-*Garg* authority that similarly relocates evaluative judgment to expert committees and judicial restraint in economic matters. None of the other source precedents identified in this study exhibits a comparably meaningful downstream footprint as a template for abdication-style reasoning.

This distribution is doctrinally significant. It suggests that the post-1981 abdication in Article 19(1)(g) adjudication is not doctrinally diffuse, but instead channelled through a small number of precedents. *Srinivasa Enterprises* functions as a residual pre-*Garg* template, while *Garg* emerges as the dominant post-1981 doctrinal hub. The importance of *Garg* lies in its role in reshaping the justificatory grammar of economic rights adjudication. When the Court chooses to

⁸⁰ One decision, T. Velayudhan Achari, cites both *Garg* and *Srinivasa Enterprises*. Citation counts are therefore not mutually exclusive. The total number of post-*Garg* abdication decisions remains fourteen.

downshift scrutiny in this way, it does so more often through *Garg*'s vocabulary of institutional restraint and 'greater latitude', rather than through any of the earlier context-bound abdication templates.⁸¹

Table 1: Supreme Court decisions classified as exhibiting judicial abdication under Article 19(1)(g)

	Case Title	Citation
1	<i>T.B. Ibrahim v RTA Tanjore</i>	[1953] SCR 290
2	<i>Khyerbari Tea Co. Ltd v State of Assam</i>	[1964] 5 SCR 975
3	<i>Pyarali K. Tejani v Mahadeo Ramchandra Dange</i>	[1974] 2 SCR 154
4	<i>Srinivasa Enterprises v Union of India</i>	[1981] 1 SCR 801
5	<i>Sadiq Bakery v State of AP</i>	[1988] 2 SCR 7
6	<i>Elel Hotels and Investments Ltd v Union of India</i>	[1989] 2 SCR 880
7	<i>Sri Krishna Das v TAC, Chirgaon</i>	[1990] 2 SCR 13
8	<i>Peerless General Finance and Investment Co Ltd v Reserve Bank of India*</i>	[1992] 1 SCR 406
9	<i>T. Velayudhan Achari v Union of India†</i>	[1993] 1 SCR 832
10	<i>Shriram Chits and Investment Pvt Ltd v Union of India‡</i>	[1993] Supp 1 SCR 54
11	<i>Reserve Bank of India v Peerless General Finance and Investment Company Ltd§</i>	[1996] 1 SCR 58
12	<i>Dalmia Cement (Bharat) Ltd. v Union of India*</i>	[1996] 10 SCC 104

⁸¹ For context, and without forming part of the dataset analysed here, *Garg* has been cited in approximately 28 subsequent Supreme Court decisions across a range of constitutional contexts, while *Srinivasa Enterprises* has been cited in approximately seven. These figures are not analysed in this Article, which is confined to Article 19(1)(g) adjudication, but they underscore the broader availability of *Garg* as a general-purpose standard-of-review authority.

13	<i>SIEL Ltd. v Union of India</i> *	[1998] Supp 1 SCR 560
14	<i>Union of India v Elphinstone Spinning and Weaving Co. Ltd.</i> *	[2001] 1 SCR 221
15	<i>State of U.P. v Sukhpal Singh Bal</i> *	[2005] Supp 2 SCR 1135
16	<i>Southern Technologies Ltd v Joint Commissioner of Income Tax, Coimbatore</i> *	[2010] 1 SCR 380
17	<i>The Kerala Bar Hotels Association v State of Kerala</i> *	[2015] 11 SCR 256
18	<i>Shree Bhagwati Steel Rolling Mills v Commissioner of Central Excise</i> *	[2015] 12 SCR 332

Note: Cases marked with an asterisk (*) cite *Garg*; those marked with a dagger (†) cite *Srinivasa Enterprises* without citing *Garg*; cases marked with a double dagger (‡) cite both *Garg* and *Srinivasa*. Unmarked cases adopt comparable reasoning without relying on either precedent. *Garg* is not itself an Article 19(1)(g) decision and is therefore not included in the table as a data point.

Table 2: Distribution of Abdication in Article 19(1)(g) Decisions (1950–2015)

Period	Total Cases	Abdication Cases	% Abdication	<i>Garg</i> -citing (Post only)
Pre- <i>Garg</i>	78	4	5.1%	—

Post- <i>Garg</i>	109	14	12.8%	9 (8.3%)
Total	187	18	9.6%	—

Note: Percentages are calculated relative to the total number of Article 19(1)(g) decisions in the relevant period.

Conclusion

This article has argued that, in a non-trivial subset of Article 19(1)(g) cases, the Supreme Court moved from structured deference to judicial abdication. Deference, as used here, remains within a culture of justification: the Court applies the proportionality framework and allows the legislature limited discretion among proportionate options. Abdication begins when the Court stops asking the questions that proportionality requires and upholds restrictions on occupational freedom on the bare authority of ‘economic policy’, ‘expert bodies’, or ‘legislative wisdom’.

Doctrinally, the article reconstructs Article 19(6) ‘reasonableness’ as proportionality: a legitimate aim, a rational connection between the measure and the aim, serious consideration of less restrictive means, and an overall balance between regulatory benefits and the burden on the freedom under Article 19(1)(g). Against that baseline, *Garg* occupies an uneasy position. Its ‘greater latitude’ dictum borrowed from Frankfurter J’s dissent in *Morey v Doud*. That dissent was crafted for rational basis review in a Constitution without an analogue to Article 19(1)(g). Although the dictum speaks the language of judicial

deference, it does not require minimal impairment or balancing. In its original tax-equality setting, *Garg* can be read as a caution about intensity of scrutiny. Once transplanted into Article 19(1)(g), the dictum has often been used to end the inquiry after a bare nexus is shown. In such cases, it functions as a vehicle for abdication rather than deference.

Normatively, the article proposes a three-point spectrum for economic rights adjudication. At one end lies full proportionality review, appropriate where livelihood and small-scale enterprise are heavily burdened or the record is thin. In the middle lies structured deference, where courts acknowledge expertise and complexity but still require recorded reasons, engagement with alternatives, and an explicit weighing of the rights impact. At the far end lies abdication, where *Garg*-style vocabulary is used to avoid proportionality altogether. In a rights-based Constitution, only the first two positions are constitutionally legitimate: deference presupposes justification; when justification is absent and the Court nonetheless upholds a restriction, the result is abdication by another name.

This framework has concrete implications. Benches hearing Article 19(1)(g) challenges should insist that the State provide a reasoned justification for its measures: it should identify the aim, explain how the measure is meant to achieve it, address less restrictive options, and confront the burden on occupational freedom. *Garg*'s 'greater latitude' should be treated, at most, as a reason to moderate the *intensity* of review at the necessity and balancing stages, never as a licence to skip those stages. Articles 32 and 226 support more than a strike-down-or-

uphold binary: courts can remit the matter for reconsideration, require fuller reasons, and calibrate prospective or transitional relief so as to foster a culture of justification rather than a veto on policy.

The study has clear limits. It is confined to Supreme Court practice, reported cases, and express, text-visible forms of abdication. These limits are deliberate and they point to future work on High Court practice, temporal patterns in the use of *Garg*-style language, and on the conditions under which benches slide from deference into abdication.

What the analysis already shows is that abdication in the name of deference is a constitutional choice, not an inevitability. Requiring justification for interferences with the freedom under Article 19(1)(g) is integral to the separation of powers, to the Court's role under Articles 32 and 226, and to the idea of the Indian Constitution as a rights-based constitutional order rather than one grounded in authority. If occupational freedom is to stand alongside the freedoms of speech, association, and movement as a genuinely protected right, the Court must keep deference and abdication conceptually distinct, and treat the latter as beyond the bounds of legitimate constitutional adjudication.