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Role of Judicial Activism in Societal Change: A Comprehensive Analysis

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ABSTRACT

Judicial activism, an evolving phenomenon within the realm of constitutional law, has garnered substantial attention due to its potential to reshape legal interpretations, influence policy decisions, and address pressing societal issues. Judicial activism, a concept deeply embedded in the legal and political discourse, refers to the tendency of judges to interpret the law in a way that promotes their own vision of justice and societal progress. This research paper delves into the multifaceted nature of judicial activism, discussing its various dimensions, implications, criticisms, and benefits. It also examines several landmark cases Judgements different jurisdictions that have exemplified instances of judicial activism, shaping legal and societal landscapes.

Keywords: *Judicial Activism , Judicial Power , Constitution , Article 21.*

I. INTRODUCTION

The traditional view about the function of the judiciary was that judges can only declare the law and it was unimaginable that judges can amend and bring changes in the existing laws . The necessity of Judicial activism arose due to the lack of legislation on some contemporary issues and the violation of basic human rights . The inefficiency of state and legislature who vested with the power to enact the law for the society gives birth to the judicial activism .

Judicial activism is a concept that has sparked extensive debates and discussions within legal and political circles. At its core, it is an act by the judiciary in excess to the power they are vested by the constitution of India . It signifies an approach by judges to interpret the law in a manner that goes beyond the literal text and actively addresses broader social issues. While judicial activism is often seen as a means to address societal injustices and promote progress, critics argue that it undermines the separation of powers and encroaches upon the legislative and executive branches. This paper aims to provide a comprehensive overview of judicial activism, exploring its dimensions, implications, criticisms, and benefits, through the analysis of landmark cases that have shaped legal interpretations.

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II. DIMENSIONS OF JUDICIAL ACTIVISM

- **Interpretation of Laws**

One dimension of judicial activism revolves around the interpretation of laws. Activist judges tend to read legal texts in a dynamic and flexible manner, allowing for adaptability to changing societal norms. This contrasts with a more strict constructionist approach, which emphasizes adhering to the original intent of the legislature. A famous example is the **Brown v. Board of Education**² (1954) in the United States, where the Supreme Court ruled that segregated public schools were unconstitutional, basing its decision on the Equal Protection Clause of the Fourteenth Amendment.

- **Filling Legal Gaps**

Judicial activism can also manifest in the filling of legal gaps left by the legislature. In situations where the law is silent or unclear on a particular matter, activist judges may step in to establish precedent through their interpretations. In **Plessy v. Ferguson**³ (1896), the U.S. Supreme Court's "separate but equal" doctrine was established, permitting racial segregation in public facilities. Later, in **Brown v. Board of Education**, the Court overturned this precedent, showcasing the potential evolution of judicial activism in response to societal changes.

- **Protection of Fundamental Rights**

Another dimension involves the protection of fundamental rights. Activist judges often play a crucial role in safeguarding individual rights from potential infringement by the government. In India, the **AK Gopalan v. Union of India**⁴ narrowed down the scope of Article 21 and misinterpreted the "procedure established by the law"⁵ that the Right To Life and personal Liberty Can be restricted by the procedure established by the statute

Thereafter the Apex Court in **Maneka Gandhi v. Union of India**⁶ (1978) expanded the scope of Article 21 of the Indian Constitution, which guarantees the right to life and personal liberty. The court said that section 10(3)(c) of passport act, 1967⁷ which is void because it violates Article 14 of Indian constitution and it confers arbitrary, vague and undefined power to the passport authority. The unanimous judgement passed by the 7 judge bench widened Article 21's scope immensely. The Phrase used in Article 21 is "procedure established by law"⁸ must project

² 347 U.S. 483 (1954)

³ 163 U.S. 537 (1896)

⁴ AIR 1950 SC 27

⁵ Article 21, The Constitution of India

⁶ AIR 1978 SC 597

⁷ Section 10(3)(c), Passport Act 1967

⁸ Article 21, The Constitution of India

the reasonableness, Justice and fairness This case exemplifies how judicial activism can broaden the horizons of individual liberties.

- **Advancing Social Justice**

Judicial activism can serve as a tool for advancing social justice by addressing systemic inequalities. In South Africa, the **Minister of Health v. Treatment Action Campaign**⁹ (2002) case compelled the government to provide antiretroviral treatment to pregnant women with HIV, showcasing the judiciary's proactive role in ensuring access to healthcare and combating discrimination.

Similarly In India in the matter of **Kharak Singh v. State of Uttar Pradesh**¹⁰ ,where the Constitutional validity of the U. P. Police Regulations which provided for surveillance by way of domiciliary visits and secret picketing was challenged .The Court observed that the right to personal liberty in the Indian Constitution is the right of an individual to be free from restrictions or encroachments, whether they are directly imposed or indirectly .

III. IMPLICATIONS OF JUDICIAL ACTIVISM

- **Strengthening Democracy**

Proponents argue that judicial activism contributes to the vitality of democracy by ensuring a check on the other branches of government. It allows the judiciary to act as a counterbalance to potential abuses of power, especially in situations where the legislative and executive branches fail to address pressing issues. This ensures that the principles of Natural justice and fairness are upheld.

- **Erosion of Separation of Powers**

Critics, however, highlight that excessive judicial activism can erode the separation of powers, a foundational principle of democratic governance. When judges engage in policy-making through their decisions, they encroach upon the domain of the legislative branch. This raises concerns about democratic accountability, as judges are not elected representatives and may not be directly accountable to the people.

- **Political Backlash**

Judicial activism can also lead to political backlash, especially when the judiciary's decisions clash with public opinion or the policy preferences of elected officials. Such backlash can undermine the perceived legitimacy of the judiciary and create tensions between the different

⁹ (2002) 5 SA 721 (CC)

¹⁰ AIR 1963 SC 1295

branches of government. The **Roe v. Wade**¹¹ (1973) case in the U.S., legalizing abortion, led to intense political debates and has remained a contentious issue for decades.

- **Inconsistency and Uncertainty**

Another implication of judicial activism is the potential for inconsistency in legal decisions. When judges rely on their personal interpretations and beliefs, it can result in varying rulings on similar issues. This inconsistency can lead to uncertainty in the legal system and diminish public trust in the judiciary's impartiality.

IV. LANDMARK JUDGEMENT: RESULT OF JUDICIAL ACTIVISM

- **Marbury v. Madison**¹² (1803)

The **Marbury v. Madison** case in the U.S. is often cited as a foundational case illustrating judicial activism. Chief Justice John Marshall's decision established the principle of judicial review, empowering the judiciary to declare laws unconstitutional. This landmark decision showcased the judiciary's willingness to interpret and shape the Constitution's meaning, thus asserting its role as a coequal branch of government.

- **Kesavananda Bharati v. State of Kerala**¹³ (1973)

In India, the **Kesavananda Bharati v. State of Kerala** case marked a pivotal moment for judicial activism. The Supreme Court of India asserted the doctrine of basic structure, holding that certain fundamental features of the Constitution cannot be amended. This decision curtailed the power of the Indian Parliament to alter the Constitution in ways that could undermine its essential principles, thereby preserving the integrity of the constitutional framework.

- **Serrano v. Priest**¹⁴ (1971)

The **Serrano v. Priest** case in California exemplifies judicial activism's role in education equity. The California Supreme Court held that the state's school financing system, which relied heavily on local property taxes, violated the equal protection clause of the state constitution. This decision compelled the state to reform its education funding, emphasizing a more equitable distribution of resources among school districts.

- **Prem Shankar Shukla v. Delhi Administration**¹⁵ (1980)

The Supreme Court while dealing with the rules of handcuffing and prisoners right ruled that

¹¹ 410 U.S. 113 (1973)

¹² 5 U.S. (1 Cranch) 137 (1803)

¹³ AIR 1973 SC 1461

¹⁴ 487 P.2d 1241 (Cal. 1971)

¹⁵ AIR 1980 SC 1535

handcuffing of prisoners and other humiliations is inhuman, unreasonable, and arbitrary. The court emphasized the importance of personal liberty and dignity of prisoners and under trials. In *Citizens for Democracy v. State of Assam*¹⁶, Kuldip Nayar a journalist reported seven TADA detainees being handcuffed and tied to a hospital bed, despite iron bars and armed police guards. Court further says that Handcuffs or chains must not be used without the authorization of a magistrate, even in cases where police or jail authorities have a strong inference that a particular prisoner is likely to escape.

In Hussainara Khatoon's case¹⁷ the apex court played the role of judicial activism declared the right to speedy trial as part of Article 21, leading to prison reforms and ensuring no under-trials were imprisoned for longer than the maximum punishment

- **D.K. Basu v. State of West Bengal**¹⁸(1997)

The issues of custodial violence and death have long plagued our justice system. In order to address this issue the Hon'ble court gave Guidelines for the procedure to be followed during arrest of persons.

- **Vishaka v. State of Rajasthan**¹⁹(1997)

The **Vishaka v. State of Rajasthan** case is a landmark judgment by the Supreme Court of India that addressed the issue of sexual harassment of women at the workplace. The case played a crucial role in establishing guidelines and principles to combat sexual harassment in the absence of specific legislation at the time. The judgment not only highlighted the constitutional rights of women but also emphasized the importance of a safe and dignified work environment for all.

The Vishaka judgment had a significant impact on addressing sexual harassment in the workplace. While it was not a law, its guidelines served as the basis for later legislation in India, Finally this instance of Judicial Activism has borne a fruit in the form of the enactment of the **Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act, 2013**²⁰. This act further solidified the legal framework for addressing workplace sexual harassment and incorporated many of the principles outlined in the Vishaka judgment. This is the best example of use of judicial activism in the absence of any legislation for sexual harassment of women at workplace .It is the judgement of the apex Court which gave the vision and necessity to the policy makers to make the act which was passed in 2013.

¹⁶ (1995) 3 SCC 743

¹⁷ AIR 1979 SC 1369

¹⁸ AIR 1997 SC 610

¹⁹ AIR 1997 SC 3011

²⁰ Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act, 2013

- **Sheela Barse v. State of Maharashtra**²¹

This case is another fruit of Judicial Activism and has a significant legal landmark in India that played a crucial role in protecting the rights of prisoners and advocating for humane treatment within the criminal justice system. This case revolved around the conditions of women prisoners in various prisons in the state of Maharashtra. The judgment in this case helped establish important principles regarding the rights of prisoners and highlighted the need for prison reform and safeguarding the rights of those incarcerated.

The case also played a role in raising awareness about the conditions in Indian prisons and initiating conversations about the larger issue of criminal justice reform. It demonstrated the judiciary's role in safeguarding the rights of marginalized and vulnerable groups, even within the confines of the criminal justice system.

- **Mohini Jain v. State of Karnataka**²²(1992)

Another right added to the wide ambit of **Article 21** by the virtue of Judicial Activism was the right to education. This case has a significant legal milestone in India that addressed the issue of access to education as a fundamental right. Mohini Jain, a student who had secured a seat for the Bachelor of Medicine and Bachelor of Surgery (MBBS) course at a medical college in Karnataka, was denied admission due to her inability to pay the steep tuition fees demanded by the college. This case highlighted the tension between the right to education and the implications of commercialization in the educational sector, ultimately leading to an important decision regarding the right to education for all, especially those from economically disadvantaged backgrounds.

The court ruled that educational institutions, whether aided by the state or not, cannot deny admission to students solely on the grounds of their inability to pay excessive fees. The court held that educational institutions cannot be run as profit-making ventures and that access to education must be provided to all sections of society, including those from economically weaker backgrounds.

This resulted in the **Right to Education Act of 2013**²³ where **21A** was added stating that:

*“The State shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the State may, by law, determine.”*²⁴

²¹ 1983 (SC) 378

²² AIR 1992 SC 1858

²³ Right to Education Act of 2013

²⁴ Article 21A, The Constitution of India

- **Parmanand Katara v. Union of India²⁵ (1989)**

The primary issue in the case was whether hospitals and medical professionals had a legal and ethical duty to provide immediate medical treatment to injured individuals, especially in emergency situations, regardless of their financial or legal status.

The court upheld the right to emergency medical treatment as an integral part of the right to life under Article 21 of the Indian Constitution. The court emphasized that medical assistance is not just a moral duty but also a constitutional obligation of hospitals and medical professionals.

The court ruled that hospitals and doctors have a duty to provide immediate medical aid to injured individuals, regardless of the circumstances or the payment of fees. The court further held that hospitals cannot deny treatment to accident victims on the ground that the victims' condition is critical or that they require police formalities before treatment.

- **Environmental Cases (e.g., MC Mehta cases):**

Various environmental cases, including the Oleum Gas Leak case and the Taj Trapezium case, reflect judicial activism in India. The courts took measures to protect the environment and public health, including ordering the closure of polluting industries, regulating vehicular emissions, and promoting conservation efforts

V. CRITICISM OF JUDICIAL ACTIVISM

While judicial activism has its merits and has played a significant role in shaping legal interpretations and addressing societal issues, it has also been subject to criticism on several grounds. Critics of judicial activism argue that it can undermine the principles of separation of powers, democratic legitimacy, and the role of elected representatives. Here are some key criticisms of judicial activism:

- **Erosion of Separation of Powers:** One of the primary criticisms of judicial activism is that it can blur the lines of separation between the three branches of government – legislative, executive, and judiciary. Activist judges, by actively shaping policy and making decisions that essentially function as laws, may encroach upon the domain of the legislature. This raises concerns about the principle of checks and balances, as unelected judges may be perceived as overstepping their constitutional role.
- **Democratic Deficit:** Critics argue that judicial activism may lead to a democratic deficit by giving judges significant policymaking power without direct democratic

²⁵ AIR 1989 SC 2039

accountability. Judges are not elected officials and are not directly accountable to the people. This can raise questions about the legitimacy of decisions that have far-reaching implications for society.

- **Inconsistency and Uncertainty:** Judicial activism can result in varying interpretations of the law by different judges, leading to inconsistency in legal decisions. This can create uncertainty in the legal system and diminish public trust in the judiciary's ability to provide consistent and predictable outcomes.
- **Delay in Legislative Action:** By taking the initiative to address issues through judicial decisions, there is a risk that the legislature might delay or avoid taking necessary actions on important matters, assuming that the judiciary will step in to resolve the issue.

VI. SUGGESTIONS

Implementing judicial activism effectively requires careful consideration to ensure that the principles of democracy, separation of powers, and accountability are upheld. Here are some suggestions for the responsible implementation of judicial activism:

- **Clear Legal Framework:** To mitigate concerns of overreach, judicial activism should be guided by a clear legal framework that defines the limits and scope of judicial interpretation. This can help judges make decisions that are firmly grounded in the existing legal principles and avoid arbitrary policymaking.
- **Adherence to Constitution:** Judicial activism should always be in alignment with the constitutional values and principles. Judges should prioritize upholding the rights and freedoms enshrined in the constitution while interpreting laws and addressing societal issues.
- **Focus on Remedies:** Judicial activism should primarily focus on providing remedies and directions for addressing gaps in the law or in policy implementation. Instead of imposing extensive policy changes, courts can guide the legislative and executive branches to take necessary actions.
- **Monitoring and Review:** After implementing activist interventions, courts should monitor and review the outcomes to ensure that the intended objectives are being achieved. Adjustments can be made based on the feedback received and the impact observed.

VII. CONCLUSION

Judicial activism remains a dynamic and complex concept that continues to shape legal landscapes around the world. While it has the potential to address societal injustices, promote progress, and protect fundamental rights, it also raises concerns about democratic legitimacy and separation of powers. The analysis of landmark cases underscores the transformative power of the judiciary in interpreting and shaping the law. As legal systems evolve and societies change, the role of judicial activism will undoubtedly remain a subject of ongoing debate and exploration

In the end, the true measure of the success of judicial activism lies not only in the transformative decisions it renders but also in its capacity to uphold the integrity of the legal system, safeguard democratic principles, and serve as a beacon of justice for generations to come. As we continue to grapple with complex legal and societal challenges, the responsible exercise of judicial activism remains a crucial component in the pursuit of a just, equitable, and thriving society.
