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JUDICIAL ACTIVISM- THE GUARDIAN OF CONSTITUTIONAL MORALITY

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ABSTRACT

Constitutional law is the core of India's legal framework, which defines the structure, powers, and functions of various organs of government while protecting the fundamental rights of citizens. It shows the principles of democracy, rule of law and separation of powers. Within this framework, judicial activism has also emerged as a significant doctrine that highlights the important role of the judiciary in enforcing constitutional rights. It denotes a dynamic approach where courts go beyond the literal interpretation of statutes to uphold justice, liberty, and equality in our country. The scope of judicial activism is not limited. The word "justice" has no end, it is for all whether he would be rich or poor, strong or weak. The judicial activism in India has touched every aspect of life to provide justice. Many a times right to judicial review or which is known as judicial activism has provided a boon to the weaker section of society by protecting their rights with help of public interest litigation and many a times judicial intervention has provided society with upper hand in getting justice in matter related to executive and the legislature. Judicial system is a means through which judiciary protects the interest of people by delivering "JUSTICE to all".

Keywords: Judicial Activism, Separation of Powers, Constitutional, Justice, Legislature.

INTRODUCTION

A democratic government is founded on three essential elements: the legislature, the executive, and the judiciary. These three components form the framework of the government. The Constitution of India delineates the powers and functions of these bodies, establishing itself as the supreme law in the nation. The legislature's primary role is to create laws, while the executive's is to implement those laws, and the judiciary's role is to uphold the law and ensure justice is delivered.

The Indian Constitution outlines three key responsibilities for the highest judicial system:

1. To interpret the Constitution to clarify any ambiguities in its language and to offer interpretations of various statutes.
2. To act as the guardian of the fundamental rights guaranteed to citizens under the Constitution.
3. To adjudicate matters arising from subordinate courts, including appeals, etc.

Judicial activism can be described as judicial rulings suspected of being based on personal or political considerations rather than on existing law.

According to Black's Law Dictionary, judicial activism is a "philosophy of judicial decision-making in which judges allow their personal views on public policy, among other considerations, to influence their rulings." Judicial activism is synonymous with the proactive role of the judiciary in furthering justice. Broadly defined, judicial activism refers to the judiciary's assumption of an active role.

Ronald Dworkin contends that a "strict interpretation" of the constitutional text is inadequate since it confines constitutional rights "to those recognized by a limited group of people at a specific point in history."

Justice J.S. Verma describes judicial activism as "the proactive process of enforcing the rule of law, crucial for maintaining a functional democracy."

In today's democratic context, judicial activism is viewed as a tool to address legislative shortcomings and to prevent the executive from misusing its powers by upholding

constitutional boundaries. When the executive and legislature neglect their duties, the Constitution of India functions effectively alongside the mechanisms of these branches. However, for the judiciary to be truly impactful in exercising democratic authority, it must possess a high degree of independence. Yet, such independence can pose risks and become undemocratic if not coupled with constitutional discipline and established principles of good conduct and accountability; without these, the judges may become arrogant. The belief underlying judicial activism is that judges serve as independent "trustees" or as autonomous policy makers. Judicial activism holds that judges take on the role of independent policy makers or "trustees" on behalf of society, extending beyond their conventional function as interpreters of the Constitution and laws. This concept of judicial activism stands in stark contrast to judicial restraint. When the legislative and executive branches of government fail to deliver "good governance," judicial activism becomes necessary. Mr. Storable indicated that public interest litigation (PIL) has helped to make "fundamental rights a tangible reality for certain groups within society." However, the senior Supreme Court attorney warned that PIL "should not be seen as a solution for every problem" and noted that some individuals have attempted to use it as a means of coercion and mistreatment of prisoners. In straightforward terms, judicial activism is a practice carried out by judges that disregards the balance of law; instead, it disrupts it. In judicial activism, the judge ultimately bases their decision on personal judgment, which is emotionally influenced.

EVOLUTION OF JUDICIAL ACTIVISM

The roots of judicial activism, in relation to judicial review, can be traced back to the unwritten constitution of Britain during the Stuart period (1603-1688). In 1610, the power of judicial review was first asserted in Britain through the activism of Justice Coke. Chief Justice Coke proclaimed that if a law enacted by Parliament contradicted the principles of 'common law' and 'reason,' the courts had the authority to review and deem it void. Coke's theory of judicial review was reiterated by Sir Henry Hobart in 1615 and again in 1702 by Sir John Holt. In **Marbury v. Madison**, the US Supreme Court was the first to invalidate an Act of Congress as unconstitutional. Since that landmark case, the federal courts have consistently exercised the power of judicial review. The US Supreme Court determined that federal courts have the obligation to assess the constitutionality of Acts of Congress and to declare them void when they conflict with the Constitution.

In India, judicial activism refers to the authority that is granted to the Supreme Court and the high courts, but not to the subordinate courts, to declare laws unconstitutional and void if they violate or are inconsistent with one or more provisions of the Constitution. According to SP Sathe, a court that reinterprets a provision to align with evolving social or economic conditions or broadens the scope of individual rights is considered an activist court.

The origins of judicial activism in India can be traced back to 1893, when Justice Mehmood of the Allahabad High Court issued a dissenting judgment for an under-trial who lacked the funds to hire a lawyer, signaling the beginnings of activism in the country.

The Supreme Court began to assert itself in the 1950s, gradually gaining more authority through its constitutional interpretations. The court's evolution into an activist body has been slow and not always apparent. In fact, the early expressions of judicial activism can be seen in the court's initial assertions about the nature of judicial review.

The Supreme Court reached the peak of its powers in 1973 by claiming the right to nullify even constitutional amendments on substantive grounds. As noted by a distinguished lawyer, since around 1974, the court's focus has shifted towards rectifying unreasonable executive actions of the government, particularly in administrative issues.

Landmark Cases:

- In the case of **Kesavananda Bharati v. State of Kerala**, Justice Khanna stated that judicial review has become an essential component of our constitutional framework, and if any statutes violate the Constitution's articles, which serve as the benchmark for all laws' validity, the Supreme Court and High Courts are authorized to annul those statutory provisions.
- During the **Sajjan Singh v. State of Rajasthan**, case, two dissenting judges questioned whether the fundamental rights of individuals could merely be toys for the ruling party in Parliament. They expressed the view that legislation passed by the Legislature could be declared void if it infringes upon fundamental rights.
- In his minority opinion in **Minerva Mills v. Union of India**, Justice Bhagwati remarked: "It is the judiciary's duty to uphold constitutional values and enforce constitutional limitations. This upholding is essential to the rule of law, which, among other things, mandates that government powers, whether executed by the legislature, executive, or any other authority, must conform to these limits."

"Authority must be governed by the constitution and the law." The capacity for Judicial Review is a fundamental component of the constitutional framework. The authority of judicial review forms part of the essential structure of the Constitution."

SEPARATION OF POWER AND JUDICIAL ACTIVISM

The Principle of Separation of Powers addresses the interconnected roles of the three branches of government: legislature, executive, and judiciary. This concept dates back to the time of Plato and Aristotle. Aristotle was the first to categorize governmental functions into three areas: deliberative, magisterial, and judicial. Locke divided governmental powers into three distinct parts: continuous executive power, discontinuous legislative power, and federative power.

MONTESQUIEU For the first time in his work, *L'Esprit des Lois* (Spirit of Laws), published in 1748, articulated the principle of separation of powers. In its strict interpretation, the doctrine of separation of powers is often considered too rigid, which is why it is not embraced by many countries worldwide. According to Montesquieu, the primary aim of the Separation of Powers Doctrine is to ensure governance by law rather than the whims of officials. Another significant aspect of this doctrine is the independence of the judiciary, meaning it must remain free from the influence of other state organs; if this independence is upheld, justice will be effectively administered. While the strict interpretation of the doctrine of separation of powers does not explicitly exist within the Indian Constitution, the roles of the various governmental branches are sufficiently distinguished to prevent one branch from overstepping its bounds.

The judiciary's first major ruling regarding the Doctrine of Separation of Powers was in **Ram Jawaya v. State of Punjab**. The court concluded in that case that the Doctrine of Separation of Powers was not entirely accepted in India. Subsequently, in **I.C.Golaknath v. State of Punjab**, Chief Justice Subha Rao stated that —"The constitution establishes distinct constitutional entities, including the union, the state, and the union territories. It creates three primary instruments of power: the Legislature, the Executive, and the Judiciary. It meticulously delineates their jurisdictions and anticipates that each will exercise its designated powers without exceeding their boundaries. They are expected to operate within the scopes assigned to them."

JUDICIAL REVIEW AND THE DOCTRINE OF SEPARATION OF POWERS

There have been instances when the judiciary encountered difficulties in upholding and safeguarding the Doctrine of Separation of Powers. In its efforts to maintain this balance, it has rendered landmark rulings that clearly emphasize the independence of the judiciary and its achievements in India over the past sixty years. It can be argued that the current implementation of the separation of powers does not function effectively. There is a growing need for a revised and improved application of this doctrine that aligns with contemporary democratic requirements, whether in a parliamentary or presidential government. Analyzing major nations such as the U.S., U.K., India, Russia, France, Germany, Spain, and the U.A.E., it becomes evident that a complete separation of powers—as promoted by Montesquieu—is often not realized. All branches of government are subject to mutual oversight through checks and balances. Therefore, it is more accurate to assert that all government branches should operate in a manner that respects the fundamental law or the rule of law of the nation, which must be maintained under all circumstances to protect the rights, liberties, and freedoms of citizens. This concept of Self-Restraint implies that all branches strive to meet national aspirations and uphold the rule of law without intruding on one another's areas of authority. The Constitution should always be regarded as supreme, and laws enacted by the legislature must meet standards of reasonableness and align with the constitutional objectives.

The separation of powers is a crucial aspect of the Democratic Republic established by our Constitution, which divides powers among the three main branches of government: the Parliament and State Legislatures, the Executive, and the Judiciary. It has been noted that the Constitution lacks specific provisions that grant legislative power exclusively to the legislature and judicial authority exclusively to the judiciary, as observed in the Delhi Laws case in 1951. However, the essence of the separation of powers doctrine and constitutional limitations was recognized as part of Constitution's basic structure in the **Indira Gandhi v. Raj Narain** case. Judicial review and activism are vital components of our justice system, serving to monitor the legislature—the law-making body—to ensure they do not exceed their authority and operate within the constitutional limits set for them. The separation of the judiciary from other branches is treated with great seriousness, ensuring that the liberties of ordinary citizens cannot be compromised and that fair remedies are accessible to every individual. Consequently, the Indian Constitution is a meticulously crafted document designed to uphold every citizen's

integrity and freedom; it does not wholly incorporate the separation of powers doctrine but has significantly drawn from the concept as a guiding principle. Nonetheless, the doctrine of Separation of Powers has been recognized within the basic structure doctrine, as affirmed by the Supreme Court in several rulings. Thus, it occupies a critical position, though it has been adapted to meet the demands of a modern, all-encompassing state.

There is a concerning trend in judicial activism. Judicial activism is a concept that is challenging to define. It carries various interpretations depending on the individual. Detractors label judicial decisions as activist when they disagree with them. In India, the judiciary's initiative to allow access to courts for the impoverished, neglected, and marginalized members of society through Public Interest Litigation (PIL) is undeniably a form of judicial activism. Since 1979, the Supreme Court of India has played a significant role in the country in ways that the Constitution's creators never envisioned, becoming actively involved in ensuring social justice for the populace. It raises concerns that over time, the Court's original, beneficial, and commendable role in PIL has increasingly transformed into a broad oversight authority tasked with correcting actions and policies undertaken by the government, public entities, and authorities. This type of judicial activism is unprecedented in any other judicial system.

The PIL jurisdiction began cautiously, with little grasp of its potential when the Supreme Court, in 1979, considered petitions from social activists drawing attention to the plight of certain societal groups or institutions deprived of their fundamental rights. In 1979, advocate Kapila Hingorani alerted the Court to a series of newspaper articles revealing that undertrial prisoners in Bihar had spent more time in pretrial detention than they would have faced if convicted. Sunil Batra, an inmate, penned a letter to Justice Krishna Iyer of the Supreme Court, highlighting maltreatment by prison officials and the dire conditions faced by prisoners in jails. This matter was taken as a petition, leading the Court to issue orders for humane treatment within jails. In 1980, two law professors wrote a letter to a newspaper editor describing the extremely poor detention conditions at the Agra Protective Home for Women, which became the foundation for a writ petition in the Supreme Court. A letter addressing the exploitation of laborers at construction sites, violating labor laws, was sent to the Supreme Court. The appalling circumstances of bonded laborers working in quarries were brought to the Court's attention by a social activist group. Additionally, a journalist filed a case against the eviction of pavement dwellers in Bombay.

In addressing these matters, the Court developed a new framework for citizens' rights and State obligations, creating innovative measures for accountability. In 1982, Justice P.N. Bhagwati aptly articulated the intent behind PIL as it was initially formed. He stated that PIL "serves as a strategic arm of the legal aid movement aimed at making justice accessible to the underprivileged masses, who represent the low visibility area of humanity, and it fundamentally differs from conventional litigation. "No longer were the Court's principles sourced solely from landlords, businesses, corporations, and wealthy individuals. Through PIL, ordinary citizens, as well as disadvantaged and marginalized groups, gained easier access to the Court aided by social activists.

The social action aspect of Public Interest Litigation (PIL) has been diminished and overshadowed by a different form of "public cause litigation" within the courts. This alternative litigation does not seek the court's intervention to uphold the rights of marginalized or impoverished groups in society; instead, it aims to rectify the actions or failures of executive officials, government departments, or public entities. There are countless examples of such judicial intervention. To combat pollution, the Supreme Court mandated regulations on automobile emissions, air and noise pollution, and traffic controls. It issued directives for parking fees, mandatory helmet use in urban areas, cleanliness in housing communities, proper garbage disposal, traffic management in New Delhi, compulsory seat belt use, and measures to reduce the monkey nuisance in urban spaces. Additionally, it ordered actions to prevent accidents at unmonitored railway crossings, curb ragging of college newcomers, ensure the collection and storage of blood in banks, control the volume of loudspeakers, and prohibit firecrackers.

Recently, the Supreme Court has called for the intricate engineering of river interlinking across India. The Court has prohibited the application of black film on car windows. It independently addressed the forceful eviction of Baba Ramdev from Ramlila grounds by the Delhi Administration, expressing condemnation. The Court has also mandated the exclusion of tourists from the core regions of tiger reserves. All these managerial decisions by the Court are based on the somewhat questionable jurisdictional argument of enforcing fundamental rights under Article 32 of the Constitution. In truth, no individual fundamental rights or legal questions are relevant in such matters. The Court is petitioned solely for improved governance and administration, which does not truly engage in legitimate judicial functions.

In its most assertive and contentious reading of the Constitution, the Supreme Court usurped the constitutionally granted authority of the President of India to appoint judges in consultation with the Chief Justice, transferring this power to the Chief Justice of India and a panel of four judges. No other Constitution globally gives judges the authority to select their own successors.

The Court has been tasked with overseeing the actions of investigating and prosecuting bodies that are seen to have failed in their duties to investigate and prosecute government ministers and officials. High-profile cases of this nature include the investigation and prosecution of ministers and officials linked to the Jain Hawala case, the fodder scam involving Lalu Prasad Yadav, the Taj Corridor case tied to former Uttar Pradesh Chief Minister Mayawati, and the recent prosecution of the Telecom Minister and officials in the 2G Telecom scandal by the Supreme Court.

Moreover, legislative proceedings are now regulated by the Court. In the case involving the Jharkhand Legislative Assembly, the Supreme Court instructed the Assembly to carry out a Motion of Confidence and ordered the Speaker to follow a specific agenda, disallowing any other business. The Court mandated that the proceedings be documented for reporting back to it, despite Article 212 of the Constitution stating that Courts should not interfere in legislative proceedings.

Judicial activism is becoming increasingly significant in today's society. Through Public Interest Litigation (PIL), citizens are gaining access to justice. Recently, the judiciary has been at the center of controversy due to its increased level of intervention. The scope of judicial intervention has been gradually expanding through public interest litigation. The judiciary has moved away from a pro-status-quo stance and has taken on the responsibility of upholding the fundamental rights of the marginalized and vulnerable groups in society through progressive interpretation and proactive measures. The Supreme Court has innovated ways to deliver justice to the public via public interest litigation. Former Chief Justice PN. Bhagwati, under whose guidance public interest litigation gained new significance, remarked that "the supreme court has undertaken several new commitments." The term 'judicial activism' describes the actions of the judiciary that exceed the bounds of judicial review. From one perspective, it is viewed as an action taken without appropriate jurisdiction. The Constitution does not explicitly grant any authority or jurisdiction for 'activism' to the Court. Judicial activism involves the judiciary's interference in the legislative and executive domains. This typically occurs due to

the inaction of the other branches of government. In summary, judicial activism signifies a shift from judicial restraint to a scenario where the Supreme Court and other lower courts take on an active role, prompting authorities to take action and sometimes directing the government regarding policies and administrative issues.

FACTORS OF JUDICIAL ACTIVISM

Judicial activism has emerged mainly due to the following reasons:

- It has arisen primarily from the inaction of the executive and legislative branches.
- It has also stemmed from widespread skepticism about the ability of the legislature and executive to fulfill their responsibilities.
- It occurs because the overall system has been plagued by inefficiency and ineffectiveness.

The infringement of fundamental human rights has prompted an increase in judicial activism. Ultimately, the distortion and exploitation of certain constitutional provisions have made judicial activism more prominent.

RIGHT TO LIFE AND JUDICIAL ACTIVISM

The evaluation of judges and their approach to transforming the aspects of Article 21 was greatly influenced by the concept of Due Process found in the American Constitution, summarized in the phrase "procedure established by law." This topic will focus on the evolution of this provision following the landmark Maneka Gandhi judgment. The notion of Public Interest Litigation (PIL) began to emerge, led by the esteemed Justice P.N. Bhagwati, who recognized that under certain circumstances, a PIL could be initiated by the court itself (suo motu), rather than being filed by the aggrieved party or another third party. After the Maneka Gandhi case, the Supreme Court determined that to uphold an important fundamental right, it is not necessary for it to be explicitly mentioned in the Constitution as a fundamental right. Political, social, and economic transformations within the country necessitate the acknowledgment of new rights. The law evolves to address the needs of a constantly changing society. Consequently, the Supreme Court identified Article 21 as encompassing substantive freedoms that aim to eliminate serious issues such as poverty, inadequate economic opportunities, and systemic social deprivation. A key aspect of the expansion of Article 21 is that several Non-Justiciable Directive Principles have been transformed into enforceable

Fundamental Rights through the efforts of judges. The assurances of economic rights and protection against social deprivations were established through various rulings:

- Quality of life
- Right to livelihood
- Right to healthcare
- Right to Die
- Sexual Harassment
- Ecology and Environment
- Right to Privacy

The constitution does not specifically and explicitly grant any privilege of protection; however, the Right to Privacy is not obstructed as a Fundamental Right within the Constitution. Nevertheless, the Supreme Court has derived such a right from Article 21 and several other provisions of the Constitution, interpreted in conjunction with the Directive Principles of State Policy. As mentioned earlier, **Kharak Singh** was the first case to introduce the concept of "security," raising issues related to the suggestion of the right to privacy drawn from existing fundamental rights, such as Article 19(1)(d), 19(1)(e), and 21. During that period, J Subba Rao remarked, "The right to personal liberty encompasses not only a right to be free from constraints but also freedom from intrusions into one's private life."

In 1965, the Supreme Court of India heard and chose **State of Uttar Pradesh v. Kaushaliyaa** case which included the topic of whether ladies who are occupied with prostitution can be coercively expelled from their homes and places of occupation, or whether they were entitled, alongside different natives of India, to the major ideal to move uninhibitedly all through the region of India, and to dwell and settle in any part of the domain of India. In its choice, the Supreme Court denied them this correct holding that "the exercises of a whore in a specific region are so subversive of open ethics thus dangerous of general wellbeing that it is essential in broad daylight enthusiasm to extradite her from that place. The statutory confinements forced by the Suppression of Immoral Traffic Act on whores, were maintained by the Court as naturally passable "sensible limitations" on their developments. A fascinating point was achieved in the renowned NAZ FOUNDATION CASE. The applicants contended 'such that the restriction of certain private, consensual sexual relations (gay person) gave by Section 377 IPC preposterously abbreviates the privilege of protection and pride inside the ambit of ideal

to life and freedom under Article 21 [which] can be condensed just for a convincing state intrigue which, in its accommodation, is out of order here' An intriguing point was accomplished in the prestigious **NAZ FOUNDATION CASE**. The candidates battled 'with the end goal that the confinement of certain private, consensual sexual relations (gay individual) gave by Section 377 IPC outrageously curtails the benefit of assurance and pride inside the ambit of perfect to life and opportunity under Article 21 [which] can be dense only for a persuading state interest which, in its convenience, is out of request here' However this case endured an enormous difficulty when Supreme Court upset the decision of the Delhi High Court censuring homosexuality by holding Section 377 of the Indian Penal Code legitimate and requesting the law making body to make proper move relating to the abolishment of this specific arrangement. Ideal to protection has been henceforth denied to any individual who confers the offense under Section 377. Justice Patanjali Shastri held that Article 21 is not defined to afford protection against infringements by the executive or individuals.

Judicial activism has significant effects on the dynamics between the executive and the judiciary.

1. It aims to limit the excesses of the executive by upholding constitutional constraints when the executive neglects its duties.
2. While it effectively addresses the public's concerns through a compassionate approach, it often undermines established laws and introduces unnecessary legal ambiguities.
3. It may lead to judicial overreach, where judges base their rulings on personal biases or political feelings.
4. It can redirect institutional resources toward activities that are outside of their constitutionally designated roles.

IMPACT OF JUDICIAL REVIEW ON GOVERNMENTAL BRANCHES:

Judicial activism significantly influences the relationship between the executive and the judiciary.

1. It aims to curb excessive power of the executive by enforcing constitutional boundaries when the executive fails in its duties.
2. Though it effectively meets public concerns through a doctrine of compassion, it often displaces existing laws, leading to increased legal uncertainty.
3. This can result in judicial overreach, where judges make decisions driven by personal

or political sentiments.

4. It results in a misallocation of institutional resources for functions beyond their constitutionally assigned roles.
5. It would bolster the efforts of diverse groups by enhancing governmental accountability to the citizenry.

Positive effects of judicial activism: Promoting social and economic justice as outlined in the Preamble and Directive Principles of State Policy—expanding the definition of justice.

- 1) The 2G corruption case
- 2) The allocation of coal blocks
- 3) The establishment of separate prisons for female inmates
- 4) Addressing pollution in the Ganges, the implementation of CNG, and the creation of green benches
- 5) Electoral reforms

Negative effects of judicial activism:

- 1) Interference with legislative operations, as seen in the Jharkhand case, despite Article 212 explicitly prohibiting such intervention.
- 2) Even involving military combat operations in 1993 in J&K.

Conclusion:-

The philosophy of judicial activism suggests that courts should take a proactive stance in addressing social, economic, and political issues. Courts ought to adhere to the "guardian ethic," serving as protectors of the populace.

Examples of judicial activism:

1. Mandating that states offer legal assistance to those in need.
2. Insisting on the modernization of prisons.
3. Requiring states to provide education for undocumented immigrants.
4. Instituting the "one man, one vote" principle for reapportionment.

The matter of judicial activism is intricately connected to the interpretation of the constitution, the construction of statutes, and the separation of powers. A delicate balance exists between activism and overreach. While judicial activism is viewed positively as a means to address the

shortcomings of the executive branch, overreach into the domain of the executive is seen as an infringement on the essential functions of democracy.

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