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**COMPARATIVE STUDY OF JUDICIAL ACTIVISM IN INDIA AND
THE USA**

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ABSTRACT

Judicial activism, a term attributed to American historian Arthur Schlesinger Jr. in 1947, finds its roots in Chief Justice Coke's landmark pronouncement in Dr. Bonham's case. The judiciary's pivotal role in safeguarding citizens' rights and preserving the constitutional and legal framework is known as judicial activism, sometimes involving encroachment into executive domains. Noteworthy instances include the contributions of Justices V R Krishna Ayer and P N Bhagwati, who have successfully advanced liberal access to justice and provided relief to marginalised groups.

When the legislative branch fails to adapt laws to changing times and administrative agencies fall short in fulfilling their responsibilities, citizens' confidence in constitutional values and democracy can erode. In such instances, the judiciary steps in, often venturing into areas earmarked for the legislature and executive, resulting in judicial legislation and a form of governance by the judiciary.

This paper aims to compare judicial activism in India and the USA through various Supreme Court judgments. Emphasis will be placed on the interconnectedness of judicial review and activism, with the former empowering the court to uphold the Constitution and invalidate inconsistent laws and actions.

Additionally, the paper will explore the dichotomy between judicial activism and restraint as two distinct judicial philosophies in the USA. Through an analysis of Supreme Court decisions, the study seeks to provide a comprehensive understanding of the nuances and implications of these judicial approaches.

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HISTORICAL BACKGROUND

The roots of judicial activism in India can be traced back to the adoption of its Constitution in 1950. The Constitution of India, affected by principles of justice, independence, and equality, established the system for democratic governance and enshrined an inclusive set of fundamental rights.

The Indian Constitution vests significant powers in the judiciary to perform as the guardian and interpreter of the Constitution. Articles 32 and 226 give for the right to constitutional remedies, allowing individuals to directly approach the Supreme Court and High Courts, respectively, to enforce fundamental rights.³

In the 1970s, the Supreme Court of India recognised the pressing need to ensure that all members of society, especially those who are marginalised or disadvantaged, have access to justice. To address this, the concept of Public Interest Litigation (PIL) was broadened, allowing individuals and organisations to represent the interests of those who might not be able to approach the court on their own.

Over the years, several landmark judgments have underscored the judiciary's proactive stance in safeguarding rights and addressing social issues. For instance, in the case of *Maneka Gandhi v. Union of India* (1978), the court significantly expanded the interpretation of personal liberty. Similarly, in the *Vishaka v. State of Rajasthan* (1997) case, the judiciary took a decisive stand against workplace sexual harassment. These cases exemplify the judiciary's compassionate and proactive approach to championing justice and addressing societal concerns.

While judicial activism in India has led to positive outcomes, it has also faced criticism. Critics argue that judicial overreach, judicial populism, and the lack of accountability undermine the separation of powers and democratic governance. There are concerns about the judiciary assuming roles traditionally reserved for the executive and legislature, leading to questions about the appropriate limits of judicial intervention.⁴

³Lokendra Malik (editor), *Judicial Activism in India: A Festschrift in Honor of Justice V.R. Krishna Iyer*. Universal Law Publishing Co., 2013 (Ed)

⁴Lokendra Malik (editor), *Judicial Activism in India: A Festschrift in Honor of Justice V.R. Krishna Iyer*. Universal Law Publishing Co., 2013 (Ed)

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India:

Colonial Legacy: The roots of India's legal system can be traced back to British colonial rule, during which the British established a hierarchical judicial system to administer their empire. While the British legal framework laid the groundwork for the Indian judiciary, it also perpetuated disparities and injustices within Indian society.

Constitutional Framing: Following independence in 1947, India embarked on the arduous task of drafting a constitution that would reflect the aspirations of its diverse populace. The Constituent Assembly, chaired by Dr. B.R. Ambedkar, meticulously deliberated over the constitutional provisions related to the judiciary. Influenced by various legal systems, including British common law and American constitutionalism, the framers crafted a robust framework for judicial independence and judicial review.

Role of the Judiciary Post-Independence: In the early years of independence, the Indian judiciary faced the monumental task of interpreting and applying the newly enacted Constitution. The Supreme Court, under the leadership of Chief Justice Harilal J. Kania, began to assert its authority as the guardian of fundamental rights and the rule of law. Landmark cases such as *A.K. Gopalan v. State of Madras* (1950) laid the groundwork for the judiciary's role in protecting civil liberties.

Expansion of Judicial Review: The doctrine of judicial review, implicit in the Indian Constitution, gained explicit recognition through judicial pronouncements. The Supreme Court's rulings in cases like *Shankari Prasad Singh Deo v. Union of India* (1951) and *Sajjan Singh v. State of Rajasthan* (1965) affirmed the judiciary's authority to strike down laws inconsistent with fundamental rights.

Emergence of Judicial Activism: The seeds of judicial activism in India were sown in the 1960s and 1970s, a period marked by socio-political upheavals and challenges to democratic governance. The Supreme Court, led by Chief Justices like P.B. Gajendragadkar and Hidayatullah, adopted an expansive interpretation of fundamental rights and expanded the scope of judicial review. Landmark cases such as *Golaknath v. State of Punjab* (1967) and *Kesavananda Bharati v. State of Kerala* (1973) exemplified the judiciary's proactive stance in safeguarding constitutional values.

Public Interest Litigation (PIL): The advent of PIL in the 1980s revolutionised the Indian legal landscape by empowering citizens to seek judicial redress for violations of public rights.

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Through PIL, the judiciary became a potent instrument for social reform, addressing issues ranging from environmental degradation to gender equality.

Judicial activism in India checks the powers of the legislative and executive branches of government. The judiciary is a guardian of the Constitution, guaranteeing that laws and government actions comply with constitutional principles and do not infringe upon fundamental rights.⁵

The Golak Nath case⁶ showcases judicial activism concerning the interpretation of fundamental rights guaranteed by the Constitution of India, particularly regarding Parliament's authority to amend the Constitution. Originating from a dispute over land reform legislation in Punjab, the case centred on laws passed by the Punjab State Legislature that imposed restrictions on agricultural land holdings. These laws were challenged by several landowners, including Sri Sardar Golak Nath, raising the critical question of whether the Punjab Security of Land Tenures Act, 1953 violated the fundamental rights enshrined in Part III of the Constitution.

United States:

Founding Principles: The legal system of the United States finds its roots in English common law and the Enlightenment ideals of freedom and fairness. The Founding Fathers, aware of the dangers of unchecked authority, designed a constitution aimed at creating a government governed by laws, not individuals.

Framing of the Constitution: The drafting of the US Constitution in 1787 set the stage for the American judiciary's responsibility in interpreting and defending the rule of law. Inspired by thinkers like John Locke and Montesquieu, the Constitution established a system of checks and balances, with the judiciary entrusted with the duty of judicial review.

Marshall Court and Reviewing Laws: In the early years of the nation, Chief Justice John Marshall played a crucial role in centralising judicial power. Through the influential *Marbury v. Madison* case (1803), Marshall articulated the idea of judicial review, confirming the Supreme Court's authority to strike down laws that contradict the Constitution.

Antebellum Era and State Sovereignty: The period before the Civil War was marked by debates over states' rights, federalism, and the issue of slavery. Rulings such as those in

⁵<http://news.oneindia.in/2008/11/15/sorabjee-defends-judicial-activism-1226761401.html>

⁶DR. BHURE LAL, "Judicial Activism and Accountability", Siddharth Publications (2018)

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McCulloch v. Maryland (1819) and Gibbons v. Ogden (1824) upheld the supremacy of federal laws and expanded the reach of congressional power.

Civil War and Reconstruction: The Civil War and the subsequent Reconstruction era significantly changed American society and law. The adoption of the Fourteenth Amendment in 1868 introduced principles of equal treatment and fair process, laying the groundwork for safeguarding civil rights.

Progressive Era and Judicial Activism: The late 19th and early 20th centuries saw the rise of the Progressive movement, advocating for social and political reforms. The judiciary, led by Chief Justices such as Oliver Wendell Holmes Jr. and Earl Warren, played a vital role in championing progressive causes like workers' rights, consumer safety, and individual freedoms.

Constitutional Framework

The constitutional framework serves as the foundation for the judiciary's functioning in both India and the USA. It outlines the judiciary's powers and duties, establishes the principles of judicial independence and review, and sets out the mechanisms for upholding the rule of law and safeguarding individual rights.

India:

Preamble: The Preamble to the Indian Constitution reflects the hopes and aspirations of the Indian people, declaring India as a sovereign, socialist, secular, and democratic republic committed to justice, liberty, equality, and fraternity. It sets the tone for the constitutional values and guides how the Constitution is understood and applied.

Fundamental Rights: Part III of the Indian Constitution guarantees basic rights to all citizens, including equality, freedom, protection against exploitation, religious freedom, cultural and educational rights, and access to legal remedies. These rights can be enforced through the judiciary if they are violated.

Directive Principles of State Policy: Part IV of the Indian Constitution outlines Directive Principles of State Policy, which express the social and economic goals of the Indian state. While not enforceable by courts, these principles guide the legislature and executive in crafting policies to achieve social justice, economic welfare, and the common good.

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Judiciary: Chapter IV of the Indian Constitution establishes an independent judiciary led by the Supreme Court. It grants the Supreme Court the authority of judicial review to ensure the Constitution's supremacy and protect fundamental rights. Articles 32 and 226 empower the Supreme Court and High Courts to issue writs for enforcing fundamental rights.

Article 32: Writ Jurisdiction of Supreme Court.

Article 32⁷ confers upon the Supreme Court the power to issue writs, primarily writs of habeas corpus, mandamus, prohibition, quo warranto, and certiorari, for the enforcement of fundamental rights. This article is often called the "heart and soul" of the Constitution as it gives individuals an effective remedy to seek justice against violations of their fundamental rights.

Separation of Powers: The Indian Constitution upholds the separation of powers principle, assigning distinct roles to the legislature, executive, and judiciary. While the judiciary interprets the law and ensures its alignment with the Constitution, the legislature enacts laws, and the executive executes them. This separation helps maintain checks and balances and prevents the concentration of power in any one branch.

Amendment Procedure: The Indian Constitution outlines a flexible yet robust amendment procedure under Article 368. While the Constitution's basic structure remains unalterable, other provisions can be amended through a defined legislative process involving both Houses of Parliament and, in some instances, state ratification.

United States:

Preamble: The opening of the United States Constitution, known as the Preamble, lays out the goals of the Constitution, such as establishing fairness, maintaining peace at home, defending the nation, promoting well-being for everyone, and securing freedom for future generations. It's like a mission statement reflecting the core values and aims of American society.

Bill of Rights: The first ten changes to the United States Constitution, collectively called the Bill of Rights, list different fundamental freedoms and rights, like freedom of speech, religion, and the press; the right to own guns; protections against unfair searches and seizures; and the right to a fair trial. These rights act as important protections against government overreach and ensure that individuals have their freedoms.

⁷Article 32 of the Indian Constitution

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Separation of Powers: The US Constitution creates a setup where the legislative, executive, and judicial branches have responsibilities. The Congress gets its powers from Article I, the President from Article II, and the Supreme Court and lower federal courts from Article III. This way, energy isn't concentrated in one area, which helps keep things balanced and everyone accountable.

Judicial Review: Though it's not directly written in the Constitution, the idea of judicial review was established through the famous case of *Marbury v. Madison* (1803). The Supreme Court clarified its role in interpreting the Constitution and cancelling laws that don't match it. This review process is crucial for making sure the Constitution stays at the top and stays relevant.

Legitimacy of Judicial Activism

The acceptance of judicial activism gained momentum when courts began to take up public interest petitions against governmental misconduct. Although the court's involvement in organising the Vigilance Commission or appointing vigilance commissioners exceeded its authority, the executive failed to question these actions. Similarly, when the court directed the Central Bureau of Investigation to report directly to itself on the progress of investigations into Havana cases rather than to the relevant minister, it surpassed its jurisdiction. However, the public welcomed such interventions, and the government lacked the moral courage to oppose them.

Previously, when the court criticised a minister for favouring specific individuals in the allocation of petrol pumps or providing preferential accommodation to relatives of staff members, the public viewed judicial intervention positively. Faced with rampant corruption and abuse of power by those in authority, people saw the courts as a beacon of hope. The Court gained respect because it was perceived as an institution capable of shielding them from the erosion of democracy.

Earlier, when the court had lambasted a minister for having distributed largesse of monopoly of petrol pumps or for given out-of-turn accommodation to a near relation of her staff members⁸, the people had welcomed judicial intervention.

An examination of various public interest petitions reveals that people resorted to the courts because they had no other recourse. Judges were seen as mere technical experts during the

⁸*Shiv Sagar Tiwari v. Union of India*. (1996) 6SCC558.

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Nehru era of independent India. Unlike politicians who had actively participated in the national movement and endured hardships, judges had led relatively sheltered lives. With the decline of the aura surrounding politicians' sacrifices after Nehru's death, people felt abandoned. Through their post-emergency activism, they sought support elsewhere, and the courts filled this void. The judicial process instilled confidence due to its apparent objectivity and reasoned approach.

Role of Judiciary

The judiciary holds a pivotal role in any democratic society, serving as the guardian of the Constitution, protector of individual rights, and resolver of disputes. Its duties encompass interpreting laws, ensuring the checks and balances among branches of government, and safeguarding personal freedoms. Let's delve into the multifaceted responsibilities of the judiciary:

Interpreting Laws and the Constitution:Courts decipher and apply laws passed by the legislature and regulations set by the executive. They also interpret the Constitution, ensuring that laws and government actions align with its provisions. Through judicial review, courts uphold fundamental rights and democratic principles by assessing the constitutionality of legislative and executive actions.

Ensuring Checks and Balances:As part of the system of checks and balances, the judiciary oversees the actions of other branches of government to prevent overreach. Judicial independence ensures impartiality, allowing courts to review laws and executive decisions without outside influence fairly.

Protecting Individual Rights and Liberties:A vital function of the judiciary is safeguarding individual rights guaranteed by the Constitution, including freedom of speech, religion, and due process. Through legal precedents, courts establish principles that protect everyone's rights, particularly marginalised groups, from discrimination.

Adjudicating Disputes and Dispensing Justice:Courts resolve disputes by applying relevant laws and ensuring fair procedures. Through an impartial process, they strive to reach just outcomes that balance the interests of all parties involved.

Judicial Activism and Policy Making:At times, courts engage in judicial activism to effect social change or protect individual rights by interpreting laws expansively. While

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controversial, this approach can lead to significant advancements in civil rights and social justice.

Preserving Judicial Independence and Integrity: Judicial independence is vital for ensuring fair and impartial justice, free from external pressures. Upholding ethical standards and impartiality is essential for maintaining public trust in the judiciary and ensuring its integrity.

Critiques and Challenges:

Critiques and challenges confronting the judiciary are varied and often mirror broader societal issues, legal intricacies, and institutional dynamics. These critiques and challenges can differ based on the legal system, political environment, and cultural norms. Here, I'll elaborate on some of the critical critiques and challenges faced by judiciaries:

Balancing Judicial Activism and Restraint:

Critique: The ongoing debate over judicial activism versus judicial restraint questions the extent to which judges should intervene in policymaking. Critics of judicial activism argue that unelected judges should show restraint and defer to elected officials on matters of policy, as excessive activism may undermine democratic principles.

Challenge: Striking the right balance between judicial activism and restraint is complex. Courts must navigate intricate legal and social issues while respecting the separation of powers and democratic legitimacy. Achieving this balance necessitates careful consideration of constitutional principles, legal precedent, and societal values.

Ensuring Judicial Independence and Accountability:

Critique: While judicial independence is vital for upholding the rule of law and guaranteeing impartial justice, concerns arise about accountability. Critics argue that excessive judicial autonomy may lead to a lack of accountability, enabling judges to act without consequence or pursue personal agendas.

Challenge: Maintaining a balance between judicial independence and accountability is essential for fostering public trust in the judiciary. Implementing robust mechanisms for judicial review, ethical oversight, and transparency can address concerns about accountability without compromising judicial independence.

Tackling Case Backlogs and Delays:

Critique: Many courts grapple with significant backlogs of cases, resulting in delays in resolving disputes and administering justice. These delays can erode public confidence in the legal system, deny litigants timely access to justice, and escalate legal costs.

Challenge: Addressing case backlogs and reducing judicial delays requires systemic reforms, including enhancing judicial capacity, streamlining court procedures, and investing in technology and infrastructure. Additionally, alternative dispute resolution methods, such as mediation and arbitration, can alleviate pressure on courts and expedite case resolution.

Improving Judicial Transparency and Access to Justice:

Critique: Concerns often arise regarding the transparency of judicial proceedings and the accessibility of justice, particularly for marginalised populations. Limited access to legal representation, complex procedures, and financial barriers can impede individuals' ability to seek redress in court.

Challenge: Enhancing judicial transparency and expanding access to justice are critical for promoting fairness and equity in the legal system. Measures like providing legal aid, simplifying court procedures, and increasing public awareness of legal rights and resources can help address these challenges.

Guarding Against Judicial Politicization:

Critique: Politicising judicial appointments and decisions can compromise the judiciary's independence and impartiality. Partisan politics, ideological biases, and special interests may influence judicial selection processes and decisions, undermining the integrity of the judiciary.

Challenge: Safeguarding the judiciary from undue political influence necessitates reforms to depoliticise judicial appointments, strengthen ethical standards, and foster a culture of independence. Promoting merit-based selection criteria, transparent nomination processes, and bipartisan oversight can mitigate concerns about judicial politicisation.

Adapting to Globalization and Legal Pluralism:

Critique: In an era of globalisation and legal pluralism, judiciaries face challenges navigating diverse legal systems, cultural norms, and transnational issues. The proliferation of

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international law and cross-border disputes can strain traditional legal frameworks and raise questions about judicial sovereignty and legitimacy.

Challenge: Adapting to the complexities of globalisation and legal pluralism requires judiciaries to embrace interdisciplinary approaches, engage in comparative law studies, and collaborate with international legal institutions. Strengthening cross-border cooperation, harmonising legal standards, and promoting dialogue among diverse legal traditions can help address these challenges.

Conclusion:

The judiciary stands as the cornerstone of democratic governance and the custodian of the rule of law, holding a pivotal position in safeguarding constitutional principles, defending individual rights, and ensuring justice for all citizens. Through its interpretation of laws, resolution of disputes, and protection of fundamental freedoms, the judiciary shapes the legal framework, preserves democratic values, and fosters societal stability. This concluding section revisits the main points discussed in this research paper, emphasising the significance of the judiciary in democratic societies.

- **Role in Upholding the Rule of Law:**

The judiciary acts as the guardian of the rule of law, ensuring impartial application of laws, protection of rights, and adherence to constitutional principles. By interpreting laws and settling disputes, the judiciary promotes legal certainty, encourages compliance with legal norms, and maintains social order.

- **Safeguarding Constitutional Values:**

Through judicial review and interpretation of the constitution, the judiciary safeguards constitutional values such as fundamental rights, separation of powers, and checks and balances among governmental branches. By holding government actions to constitutional standards, the judiciary shields citizens from arbitrary power and preserves democratic institutions.

- **Promoting Access to Justice and Equality:**

The judiciary plays a vital role in promoting access to justice and equality by resolving disputes, settling conflicts, and upholding individual rights. Through avenues like public interest litigation, alternative dispute resolution, and legal aid

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services, the judiciary ensures equitable access to legal remedies and fosters inclusivity in the legal system.

- Addressing Societal Challenges:

Judicial activism empowers the judiciary to confront pressing societal challenges like discrimination, social injustice, and human rights violations. By participating in policy debates, expanding legal protections, and effecting social change, the judiciary contributes to the advancement of justice, equity, and human dignity.

- Ensuring Judicial Independence and Accountability:

Maintaining judicial independence is crucial for upholding the integrity and impartiality of the judiciary. While judicial independence shields the judiciary from undue political influence, accountability mechanisms ensure transparency, ethical conduct, and responsiveness to societal needs. Striking a balance between autonomy and accountability is essential for fostering public trust in the judiciary.

- Addressing Critiques and Challenges:

Recognising critiques and challenges confronting the judiciary, including concerns about activism, delays, politicisation, and access to justice, highlights the necessity for continual reforms and enhancements. By addressing these challenges through systemic improvements, capacity-building efforts, and stakeholder involvement, the judiciary can enhance its effectiveness, legitimacy, and public confidence.

In conclusion, the judiciary's role as the guardian of the rule of law and defender of individual rights is indispensable for sustaining democratic governance and promoting societal welfare. Through its commitment to constitutional principles, pursuit of justice, and response to societal issues, the judiciary remains a vital institution in safeguarding democracy, advancing human rights, and ensuring justice for all.