



SOCIAL JUSTICE AND JUDICIAL ACTIVISM: A GLOBAL PERSPECTIVE

Dr. Subhash Patil

**Associate Professor and Head, Dept of Political Science,
Rani Parvati Devi College of Arts and Commerce, Belagavi, Karnataka.**

ABSTRACT:

This paper investigates the idea of judicial activism within the framework of social justice. The term "judicial activism" describes judges' propensity to apply and interpret the law in ways that go beyond their customary duties of reading the Constitution and statutes. This paper examines the ways in which judicial activism can be used to further social justice by going over a number of significant cases and their effects on the cause. It also examines the debates and objections to judicial activism as well as any possible negative effects. This essay aims to present a fair analysis of the arguments on both sides of the debate on the contribution of judicial activism to the advancement of social justice.



KEYWORDS: *judicial ethics, environmental justice, social justice, civil rights, and judicial activism.*

INTRODUCTION:

In legal and political discourse, the idea of judicial activism has long been a source of both praise and criticism. The practice of judges interpreting and applying the law in ways that go beyond the plain language of statutes and the Constitution is known as judicial activism. By doing this, judges may occasionally take the initiative to advance social fairness, influence public policy, and encourage social change. The larger idea of social justice, which aims to address systemic and historical injustices, inequality, and discrimination in society, is closely related to this phenomenon. In today's legal and social discourse, the relationship between judicial activism and social justice is crucial. It brings up important issues regarding the judiciary's function in a democracy, the proper ratio of discretion to restraint, and how court rulings affect disadvantaged and marginalised groups. The role that courts play in resolving issues pertaining to human rights, economic injustice, environmental sustainability, and civil rights is becoming more and more important as societies change and face these persistent challenges.

The conceptual framework and definition of judicial activism are complex terms that are frequently interpreted differently. Fundamentally, judicial activism is the theory and practice of judges who actively utilise their positions to influence public policy and advance their views of justice, moving beyond a strict textualist or originalist reading of the law. Judges who engage in judicial activism actively participate in the construction of the law, frequently by interpreting it in a way that is consistent with their ideological or personal convictions. It's important to remember, though, that the phrase "judicial activism" is sometimes used disparagingly by people who think judges ought to be restrained and closely stick to the original meaning and language of the Constitution and statutes.

The theoretical foundation of judicial activism can be further divided into two main parts: interpretation and the creation of new laws. A major discussion in judicial activism centres on the difference between interpreting the Constitution and current laws, which is the traditional function of judges, and developing new legal doctrines or policies. It is common to accuse activist judges of "making law" by interpreting statutes broadly or imaginatively in order to accomplish their goals.

Judicial Discretion: The use of judicial discretion and judicial activism are closely related. Judges are free to interpret the law however they see fit, and their use of this discretion might vary greatly. Advocates of judicial restraint push for more restrictive interpretations, while activist judges typically use a wider range of authority.

Impact on Policy: One of the main characteristics of judicial activism is its ability to influence societal transformation and public policy. Judges who are activists may render decisions that have a significant impact on societal concerns like economic regulation, environmental protection, and civil rights. This policy impact frequently ignites debates over the proper role of the court in a democratic society.

Judicial Philosophy: A judge's personal judicial philosophy has a big impact on their propensity for activism. While some judges follow a more dynamic or living constitution theory that allows for changing interpretations to meet contemporary societal requirements, others follow a rigid constructionist approach that emphasises faithfulness to the original intent of law documents.

Checks and Balances: Judicial activism can be viewed as a danger to democratic accountability and the separation of powers, or as a vital check on the executive and legislative branches when they violate fundamental constitutional values. This conflict highlights the continuous discussion about judicial activism.

A History of the Concept: The concept of judicial activism has evolved historically, influenced by shifting legal, social, and political situations. This can be seen in how the concept has changed over time. In order to follow this development, we can pinpoint significant eras and cases that have advanced our knowledge of judicial activism:

Early Origins (18th and 19th Centuries): The earliest days of American history are the source of judicial activism. Chief Justice John Marshall's ruling in *Marbury v. Madison* (1803), which created the concept of judicial review and gave the Supreme Court the authority to declare laws unconstitutional, is among the first instances. This case laid the groundwork for judicial activism and demonstrated the Court's proactive role in interpreting the Constitution.

Economic Control Era (Late 19th and Early 20th Centuries): The judiciary was crucial to economic control in these early and late 19th century periods. The Supreme Court struck down several state labour laws during the *Lochner* era (late 19th and early 20th centuries) on the grounds that they violated economic liberty and were therefore unconstitutional. This time frame is frequently described as one of judicial activism, during which laissez-faire economic policies were promoted.

The Great Depression led to a change in judicial activism, which resulted in the New Deal and the expansion of federal power in the 1930s. Initially, the Supreme Court overturned a number of significant laws that were part of President Franklin D. Roosevelt's New Deal legislation. But in the face of political pressure and the possibility of court-packing, the Court ultimately expanded federal power by taking a more submissive position towards economic regulation.

West Coast Hotel v. Parrish (1937) is one case that serves as an example of this change. Civil Rights and Social Justice (1950s–1960s): Judicial activism began to significantly change in the middle of the 20th century in order to further civil rights and social justice. The Civil Rights Movement began when renowned rulings like *Brown v. Board of Education* (1954) ruled that racial segregation was unconstitutional. Judicial activism played a crucial role in eradicating racial segregation and advancing equal rights.

Extending Social and Civil Liberties (Later 20th Century): The court persisted in extending personal freedoms and rights over the latter part of the 20th century. Social issue judicial activism was exemplified by cases like *Obergefell v. Hodges* (2015), which legalised same-sex marriage, and *Roe v. Wade* (1973), which recognised a woman's right to choose an abortion.

Environmental and Regulatory Issues (Late 20th Century): Environmental protection and regulatory issues were also influenced by judicial activism. Court decisions compelled government organisations to protect the environment and enforce laws meant to protect the general public's health and natural resources.

International Context (Globalisation Era): Outside of the United States, the idea of judicial activism became more significant as courts in other nations began to exercise their jurisdiction over global human rights matters, as evidenced by the creation of international courts and tribunals. Social Justice and Judicial Activism Before discussing the relationship between judicial activism and social justice, it is important to define what "social justice" actually means. A complex and dynamic idea, social justice includes equitable opportunity, resource allocation, and the eradication of structural inequities and prejudice in society. In order to ensure that everyone can live a life that is both dignified and equitable, regardless of their background or traits, it aims to address imbalances in money, power, and access to fundamental human rights.

Important social justice tenets and aspects: These include equal rights, opportunities, and resources for all people are what is meant by equality, and this applies to people of various backgrounds, genders, socioeconomic statuses, and abilities. Equity: acknowledging that, in order to achieve equality, specific actions to overcome structural and historical disadvantages may be necessary, frequently through targeted legislation or affirmative action. Fairness: encouraging equity in the division of responsibilities and rewards in society, encompassing business dealings, judicial proceedings, and the availability of healthcare and education. Human Rights: Preserving fundamental human rights as necessary ingredients for social justice, including freedom from discrimination, the right to healthcare, education, and a fair trial Inclusivity: Promoting an inclusive society in which marginalised communities actively participate in decision-making processes and diverse voices are heard

The Relationship Between Social Justice and Judicial Activism: The link between social justice and judicial activism is intricate and dynamic. Judicial activism can be an effective instrument for furthering the goals of social justice because of its capacity to impact public policy and set legal precedents. The relationship between judicial activism and other facets of social justice is examined in this section. Extending Civil Rights: The area of civil rights is one of the most prominent points of convergence between social justice and judicial activism. When it comes to interpreting the Constitution to advance civil rights for historically oppressed communities, activist judges have been essential. For instance, the Supreme Court's 1954 ruling in *Brown v. Board of Education* that racial segregation in public schools was unconstitutional was a major step in the direction of attaining social justice by eliminating institutional racism. The advancement of social justice and the expansion of civil rights have been made possible by judicial activism. This serves as an example of how activist judges can utilise their power to overturn long-standing racial segregation policies, furthering social justice by eliminating institutional racism. Furthermore, legal rulings have reinforced and preserved the Voting Rights Act of 1965, a landmark piece of legislation designed to eliminate racial discrimination in voting. Courts were essential in interpreting and applying the Act, guaranteeing disadvantaged groups equitable access to the democratic system.

Economic Justice: Judicial activism has played a significant role in instances pertaining to consumer protection, workers' rights, and income inequality in the pursuit of economic justice. One well-known example of an activist court that supported economic justice by defending the rights of consumers, workers, and the underprivileged is the Warren Court (1953–1969). Due to the Supreme Court's 1963 ruling in *Gideon v. Wainwright*, social fairness was advanced and economic gaps in access to justice were addressed by guaranteeing that those who could not afford legal representation would have counsel.

Environmental Justice: This refers to making sure that all communities, irrespective of their demographics or socioeconomic standing, are safeguarded against environmental damage and have equitable access to the benefits of the environment. Social justice ideas have been aligned with courts by holding corporations and government entities responsible for environmental abuses. Notable decisions such as *Massachusetts v. Environmental Protection Agency* (2007) recognised the significance

of environmental justice in the fight against climate change and upheld the EPA's jurisdiction to regulate greenhouse gas emissions.

LGBTQ+ Issues: In this context, the pursuit of social justice and the acknowledgement of LGBTQ+ rights have been greatly influenced by judicial activism. Cases like *Obergefell v. Hodges* (2015), which legalised same-sex marriage nationwide, and *Lawrence v. Texas* (2003), which struck down sodomy prohibitions, mark significant steps towards achieving social justice for LGBTQ+ people. These rulings highlighted the judiciary's role in advancing tolerance and equality by challenging social conventions and prejudices while simultaneously upholding the rights of LGBTQ+ populations. LGBTQ+ Rights: The fight for LGBTQ+ rights has witnessed a great deal of judicial activism in recent decades. The 2015 ruling in *Obergefell v. Hodges*, which made same-sex marriage lawful across the country, is an example of how courts have improved social justice by granting the LGBTQ+ community equal rights.

Women's' Rights: The advancement of women's rights and gender equality has been greatly aided by judicial activism. The *Roe v. Wade* ruling by the Supreme Court in 1973, which upheld a woman's right to an abortion, marked a turning point for gender equity and reproductive justice. The judiciary's involvement in gender-based social justice concerns is also evident in cases addressing sexual harassment and job discrimination, such as *Ledbetter v. Goodyear Tyre & Rubber Co.* (2007) and *Meritor Savings Bank v. Vinson* (1986). Cases of Note That Show Judicial Activism for Social Justice A number of significant cases in American history show how important judicial activism is to the advancement of social justice across a range of issues.

These cases have had a significant and enduring influence on the fight for equality and justice. The following three instances highlight the convergence of judicial activism and social justice: 1954's *Brown v. Board of Education*: Background: The constitutionality of racial segregation in public schools was contested in this historic case. At the time, racial segregation was strongly ingrained in American society, maintaining racial inequity and injustice.

Judicial activism: Under Chief Justice Earl Warren's direction, the Supreme Court ruled unanimously that state statutes creating separate public schools for black and white students were unconstitutional. The Court held that separate but equal educational facilities were fundamentally unequal by relying on a more expansive reading of the Equal Protection Clause of the Fourteenth Amendment. Social Justice Impact: The landmark decision in *Brown v. Board of Education* was a major step towards ending systematic racism and a historic win for the civil rights movement. It sparked the desegregation of public institutions and served as an inspiration for later social justice movements. This case serves as an excellent example of how judicial activism may be extremely important in combating systemic injustices.

1973's *Roe v. Wade*: Background: The constitutionality of laws limiting a woman's right to an abortion was the subject of this case. Judicial Activism: The Supreme Court ruled in a 7-2 decision that a woman has a constitutional right to choose to have an abortion under the right to privacy, based on the Due Process Clause of the Fourteenth Amendment. The case arose against a backdrop of restrictive abortion laws that varied greatly among states. This ruling recognised a woman's right to make decisions about her own body and effectively made abortion lawful across the country. Social Justice Impact: *Roe v. Wade* is frequently seen as a landmark decision for gender parity and women's reproductive rights. It contributed to larger concerns about social justice and gender equality by igniting debates about women's rights and physical autonomy. Nonetheless, the ruling is still hotly debated, demonstrating the divisive character of judicial action in the name of social justice.

***Hodges v. Obergefell* (2015):** Background: The topic of discussion in this case was same-sex marriage. Many U.S. states did not regard same-sex marriage as lawful prior to this decision. Judicial Activism: The Supreme Court ruled 5-4 that state prohibitions on same-sex marriages were unconstitutional, citing the Fourteenth Amendment's promise of due process and equal protection for same-sex couples wishing to get married. Impact on Social Justice: The case of *Obergefell v. Hodges* was a landmark decision for social justice and LGBTQ+ rights. In addition to making same-sex marriage lawful everywhere, it also upheld the rights and dignity of LGBTQ+ people. This ruling serves as an example of how judicial activism can support social justice and inclusivity.

Juvenile Activism and Social Justice in Balance: The Functions of the Executive and Legislative It takes a multipronged strategy involving the legislative and executive arms of government in addition to the judiciary to strike a balance between judicial activism and social justice. For this balance to be achieved, the following points are worth noting: Legislative Clarity: Well-written legislation is a crucial tool used by legislatures to solve social justice concerns. Enacting comprehensive and unambiguous laws can lessen the need for activist judges and judicial interpretation. In order to create legislation that represents the needs and values of impacted communities, policymakers should have meaningful conversations with them.

Executive Execution: The enforcement and implementation of legislation fall within the purview of the executive branch. It must give equal enforcement top priority and ensure that marginalised communities are not disproportionately impacted by government activities. In order to achieve social justice goals, strong regulatory frameworks and enforcement bodies are essential.

Legislative Checks: Legislatures ought to be able to revisit and modify legislation in response to shifting public policies and moral standards. The constant improvement of social justice measures made possible by this dynamic legislative process lessens the necessity for judicial involvement.

The Significance of Independent Judiciary Independence: The judiciary must continue to be independent in order to strike the proper balance. A fundamental component of democracy that protects against disproportionate influence from social or political forces is judicial independence. An unbiased judiciary free from fear of reprisals is able to assess social justice cases with objectivity. Examining Laws: Keeping a balance between judicial activism and social fairness requires the judicial scrutiny of legislation. To make sure legislators stay within the lines, courts should be able to judge whether laws adhere to social justice objectives and constitutional standards.

Mechanisms for Accountability and Safety Transparency: Allowing for openness in the court's decision-making process fosters public confidence in the legal system. Judges ought to express intelligibly and succinctly how their rulings further the goals of social justice. Judicial Ethics: Preventing the misuse of judicial authority requires adherence to judicial ethics. Codes of conduct and disciplinary bodies guarantee judge adherence to moral principles and avoidance of conflicts of interest. Appeal Process: A strong appellate system makes it possible to review rulings from lower courts, which lessens the possibility that one activist judge will control the entire legal system. An effective appeals procedure offers a safeguard to fix mistakes and preserve uniformity in the way the law is applied.

Public Engagement: In order to strike a balance between judicial activism and social justice, public engagement and education are essential. Promoting civic engagement and educated discussion on social justice matters can help make legislative intentions and court rulings clearer.

Convergence Formation Engagement of Stakeholders: Dialogue between policymakers, judges, legal scholars, and impacted communities should be productive. Working together can result in social justice laws that are more just and efficient and require less judicial involvement.

Alternative Dispute Resolution and Mediation: Promoting these processes can help parties in social justice conflicts reach an agreement while lessening the load on the legal system. Ongoing Assessment Review and Adaptation: The objectives and difficulties of social justice change with time. To confront new concerns and shifting cultural values, governments, legislatures, and the courts must continually assess and modify their strategies. Judicial Activism's Detractors and Controversies Judicial activism has its detractors and issues, even if it can be a potent instrument for achieving social justice.

The following section lists some of the main objections and disputes with regard to judicial activism:

The Judicial Restraint Debate Overreach and Policy-Making: According to critics, judges who engage in judicial activism may go beyond their authority as law interpreters and end up deciding important matters of public policy. Given that judges are not elected representatives and might not be held to the same standards as elected authorities, this could be viewed as undemocratic.

Legislative Authority: It's possible to argue that judicial activism has infringed on the legislative branch's authority, which the constitution charges with enacting legislation. Opponents contend that courts need to respect the legislature's authority to establish laws and refrain from imposing their personal opinions on elected officials. Unpredictability: One may object to the inconsistent and

unpredictable nature of the rulings made by judges in activist courts. There may be ambiguity in the law if there are no clear guidelines for when and how judges should become involved in activism.

Accountability and Democratic Legitimacy: According to some, judicial activity can erode democracy by giving unelected judges the power to make significant judgements that affect the entire community. They argue that since elected politicians are directly answerable to the public, social and policy improvements should be implemented through these channels. Majoritarian Concerns: Judicial activism's detractors contend that it occasionally thwarts the wishes of the majority. On divisive social matters, they argue, judges ought to yield to the majority's judgements, even if some people think they are unfair.

Interpretive Concerns: Originality vs. Living Constitution: The arguments concerning judicial activism are influenced by disagreements over constitutional interpretation techniques. Advocates of the "living constitution" perspective maintain that the Constitution's meaning can change through time to meet the demands of contemporary society, in contrast to originalists, who maintain that courts should scrupulously adhere to the original purpose of the document's founders. Subjectivity: The subjectivity of judicial decision-making is a common concern raised by those who oppose judicial activism. They contend that active judges might apply their own moral standards and worldviews to the law, leading to erroneous or biased decisions. Case-by-Case Examination of Differing Opinions Controversial Results: Some activist rulings, including those pertaining to LGBTQ+ rights (like *Obergefell v. Hodges*) or abortion rights (like *Roe v. Wade*), have generated contentious discussions. While supporters of these rulings regard them as essential steps towards achieving social justice, opponents see them as examples of judges legislating from the bench.

Divisiveness: By making divisive and contentious judgements, judicial activism can occasionally deepen societal divisions. Long-Term Impact: Controversial activist rulings may encounter continuous obstacles as opponents attempt to reverse or limit their scope through later litigation or legislative action. Such decisions may result in resistance and ongoing court fights. This may lead to ambiguity and continuous disputes in the judicial system.

CONCLUSION:

Social justice and judicial activism have a complex and volatile relationship. Judges who actively interpret the law to further their ideal of justice are known as judicial activists, and they have been instrumental in reshaping society, exposing structural injustices, and advancing individual rights. But there have also been debates and criticisms of this activism, which raise concerns about how it may affect democracy, responsibility, and the rule of law. The conflict between social justice and judicial activism highlights the larger difficulties in striking a balance between the judiciary's responsibilities in a democratic society. The promotion of social justice has undoubtedly benefited greatly from judicial activism, but it is important to tread carefully in this area while keeping the values of democracy, accountability, and the rule of law in mind. As societies develop further, the role of the judiciary in advancing social justice will undoubtedly be hotly debated. Encouraging a deliberate and knowledgeable conversation that recognises the intricacies and compromises involved in pursuing both democracy and justice is crucial, as is looking for strategies to create a peaceful balance between the two.

REFERENCE:

1. Ronald Dworkin, "The Moral Reading of the Constitution," *Harvard Law Review* 82, no. 1 (1968): 66–116.
2. Gerald Rosenberg, *The Hollow Hope: Can Courts Bring About Social Change?* (Chicago: University of Chicago Press, 2008), 22.
3. Martha Minow, "Interpreting Rights: An Essay for Robert Cover," *Yale Law Journal* 96, no. 8 (1987): 1860–1915.
4. *Brown v. Board of Education*, 347 U.S. 483 (1954).
5. *Roe v. Wade*, 410 U.S. 113 (1973).

6. Obergefell v. Hodges, 576 U.S. 644 (2015)
7. Anne-Marie Slaughter, "A Global Community of Courts," *Harvard International Law Journal* 44, no. 1 (2003): 191-219.
8. Alexander Bickel, *The Least Dangerous Branch: The Supreme Court at the Bar of Politics* (New Haven: Yale University Press, 1962), 16-42.
9. Jeremy Waldron, "The Core of the Case Against Judicial Review," *The Yale Law Journal* 115, no. 6 (2006): 1364-1407.
10. John Hart Ely, *Democracy and Distrust: A Theory of Judicial Review* (Cambridge, MA: Harvard University Press, 1980), 47-72.
11. Robert H. Bork, "Neutral Principles and Some First Amendment Problems," *Indiana Law Journal* 47, no. 1 (1971): 1-37.
12. Larry Kramer, *The People Themselves: Popular Constitutionalism and Judicial Review* (New York: Oxford University Press, 2004), 87-115.