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“ROLE OF JUDGES IN DEVELOPMENT OF LAW WITH REFERENCE TO REALIST THEORY”

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ABSTRACT

(Catchy opening line) Judges shape the law by interpreting legal principles, influenced by personal experiences and societal context, as per realist theory. Their rulings drive the dynamic evolution of legal norms to meet contemporary needs. **(History)** Legal realism, emerging in the early 20th century, challenged the formalist view of law as abstract rules. Pioneers like Holmes Jr. and Frank argued that judicial decisions are influenced by personal experiences and societal context, highlighting judges' discretionary power. This movement has since shaped modern legal thought, emphasizing the dynamic nature of legal interpretation. **(Present status)** Judges play a crucial role in shaping laws to reflect contemporary societal values, with legal realism emphasizing judicial discretion and the impact of personal and contextual factors. This approach fosters a pragmatic and flexible legal system, adapting to modern complexities. Ongoing debates focus on balancing judicial independence with accountability and ensuring fair application of the law. **(short Explanation)** According to realist theory, judges shape the law by interpreting it through their personal experiences, biases, and societal contexts. This makes the law dynamic and adaptable, reflecting socio-economic interests and public policy. **(Research Problem)** Researching judges' roles in law development through realist theory is challenging due to subjective decision-making, personal biases, societal influences, and balancing judicial discretion with legal consistency. **(Hypothesis)** Judicial decisions, influenced by personal experiences and societal context, create a dynamic legal system that adapts to contemporary needs but can introduce variability and inconsistency. **(Possible Reforms)** Enhancing judges' roles in law development can be achieved through rigorous training, increased transparency, a diverse judiciary, and clearer guidelines for judicial discretion. **(Aims and Objectives)** This research aims to analyze how judges shape legal principles through realist theory, examining its historical development, factors influencing judicial decisions, and the impact on legal consistency. It will also propose recommendations for enhancing judicial training, transparency, and diversity to improve legal outcomes.

KEY WORDS: JUDICIAL DISCRETION, LEGAL REALISM, LEGAL CONSISTENCY, ETC.

1. Introduction –

The role of judges in the development of law from a realist perspective is significant, as it highlights how judicial decisions shape and reflect the realities of society. Realism asserts that law is not just a static collection of rules but is influenced by the social,

economic, and political contexts in which it operates. Judges, as key interpreters of the law, have the power to adapt legal principles to address contemporary issues and societal changes.

Through their rulings, judges can either reinforce existing legal frameworks or

challenge and reshape them to better serve justice and equity. Their decisions often take into account the practical implications of the law on individuals and communities, emphasizing the need for a legal system that is responsive to real-life situations. This perspective encourages judges to consider the broader impact of their rulings, ensuring that the law evolves in alignment with societal values and needs.

By acknowledging the complexities of human behavior and the diverse contexts in which laws are applied, judges contribute to a more dynamic and relevant legal system. Thus, the realist perspective underscores the essential role of judges in not only interpreting the law but also actively participating in its development and adaptation.

2. History –

The historical context of the role of judges in the development of law from a realist perspective can be traced back to the evolution of legal thought and practice. In earlier legal systems, laws were often rigid and based on religious or customary codes. However, as societies grew more complex, the need for a legal framework that could adapt to changing circumstances became apparent.

Legal realism emerged in the early 20th century as a response to legal formalism. Legal formalism viewed law as a set of established rules applied uniformly, often ignoring the human elements involved in legal interpretation. Legal realists, including influential figures like Holmes and Frank, argued that the law is not a mere collection of abstract principles but is deeply intertwined with human experiences and societal contexts.

Oliver Wendell Holmes Jr. is often credited with laying the groundwork for legal realism. He famously stated, "The life of the law has not been logic; it has been experience." This

perspective highlighted that laws evolve from societal needs and are influenced by the experiences of those who interpret them. Jerome Frank further elaborated on this idea by emphasizing the unpredictability of judicial decisions, which often reflect the judges' own biases and the societal context in which they operate.

3. The Role of Judges in Law Development

Judges play a crucial role in the development of law, significantly impacting legal norms through their interpretations and rulings. This concept is central to legal realism, which asserts that judges do not merely apply established laws but actively engage in their evolution. The decisions made by judges reflect and shape societal values, adapting legal frameworks to address contemporary issues. This dynamic interaction between law and society highlights the judiciary's influence in fostering legal development responsive to changing norms.

3.1 Judicial Discretion –

At the heart of this process is judicial discretion—the authority judges possess to make choices within the framework of existing laws. This discretion is vital when interpreting statutes and applying legal principles to unique cases. For example, judges often face situations where the law may be ambiguous or where established precedents may not fully address the specifics of a case. In such instances, judicial discretion allows judges to exercise their judgment, tailoring their decisions to the particulars of the case at hand.¹

While discretion can facilitate flexibility and adaptability in legal interpretations, it also raises concerns regarding consistency and predictability within the legal system. Different judges may reach varying conclusions based on their interpretations, potentially leading to disparate outcomes for similar cases. This variability can

undermine public confidence in the legal system, as parties may perceive that justice is contingent on which judge hears their case rather than on the merits of the law itself.

3.2 Societal Context and Personal Experience –

Judges are not isolated from the societies in which they operate; rather, they are influenced by their personal backgrounds, experiences, and the broader societal context. This influence can enhance judicial decision-making by providing judges with a nuanced understanding of the human experiences underlying legal disputes. For instance, a judge's awareness of social issues may lead them to interpret laws in a manner that reflects current societal values and addresses injustices.

However, this connection to personal and societal contexts also introduces risks. Different judges may interpret similar cases differently, leading to inconsistency in judicial outcomes. The subjective nature of judicial discretion can result in varying applications of the law, particularly when judges bring their biases and perspectives into their rulings. This inconsistency can challenge the rule of law, where similar cases should ideally yield similar outcomes.

3.3 Contemporary Implications –

In today's increasingly complex legal landscape, the role of judges continues to evolve. Legal realism emphasizes a pragmatic approach, encouraging judges to consider the realities of societal change and the multifaceted nature of human experiences. As society evolves, so too must the law, and judges play a pivotal role in ensuring that legal interpretations remain relevant and reflective of contemporary values.²

3.4 Balancing Judicial Independence and Accountability –

A crucial ongoing debate in this context is the balance between judicial independence

and accountability. Judges must have the freedom to make decisions based on their interpretations without undue influence from external forces. However, this independence must be balanced with accountability to ensure that judges are responsible for their decisions. This balance is essential for maintaining fairness and consistency in the application of the law, reinforcing public trust in the judicial system.

3.5 The Impact of Personal Biases –

Judicial decisions are inevitably influenced by judges' personal biases and the prevailing societal norms. Such biases can lead to outcomes that reflect the interests of particular socio-economic groups rather than an impartial application of the law. Addressing these biases and fostering an inclusive legal environment is critical for maintaining the integrity of the judiciary. By recognizing the impact of personal experiences and societal contexts, the legal system can work towards a more equitable application of justice, ensuring that all individuals receive fair treatment under the law.

In summary, the interplay of judicial discretion, societal context, and personal experience highlights the vital role judges play in the development of law. While this dynamic fosters adaptability and responsiveness to contemporary issues, it also raises challenges that must be addressed to ensure consistency, fairness, and integrity in the legal system.

4. Research Problem

Investigating the role of judges in the development of law through the realist lens presents several challenges. The subjective nature of decision-making, the influence of personal biases, and the varying societal contexts complicate the analysis of judicial impact on law. Additionally, balancing the need for judicial discretion with the imperative for legal consistency poses

ongoing challenges.

5. Hypothesis

This research posits that judicial decisions, shaped by personal experiences and societal contexts, create a dynamic legal system that adapts to contemporary needs. However, this adaptability may also lead to variability and inconsistency, raising questions about the reliability of legal outcomes.

6. Possible Reforms

To enhance the role of judges in law development while addressing the challenges posed by discretion and bias, several reforms can be considered:

1. **Rigorous Training:** Judges should receive ongoing training on the importance of impartiality and the impact of personal biases on decision-making. This training can also include exposure to diverse perspectives and contemporary societal issues.³
2. **Increased Transparency:** Encouraging transparency in judicial decision-making can help mitigate concerns about bias. By providing clear reasoning for their decisions, judges can promote greater public trust in the judiciary.⁴
3. **Diverse Judiciary:** A more diverse judiciary can enrich legal interpretation and reflect a broader range of societal experiences. Efforts to recruit judges from varied backgrounds can enhance the legal system's responsiveness to contemporary needs.⁵
4. **Clearer Guidelines for Judicial Discretion:** Establishing clearer guidelines for the exercise of judicial discretion can help balance the need for flexibility with the goal of maintaining legal consistency.⁶

7. Aims and Objectives

The aim of this research is to analyze the ways in which judges shape legal principles through the lens of realist theory. Key objectives include:

1. Examining the historical development of legal realism and its impact on modern legal thought.
2. Identifying factors influencing judicial decisions and their implications for legal consistency.
3. Proposing recommendations for enhancing judicial training, transparency, and diversity to improve legal outcomes.

8. Case laws that helped in Judicial Activism –

1. **The Maneka Gandhi v. Union of India** – Case marked a transformative moment in Indian constitutional law by broadening the interpretation of Article 21, which guarantees the right to life and personal liberty. The Supreme Court ruled that this right cannot be curtailed without a “just, fair, and reasonable” procedure, establishing that the due process of law is essential for any deprivation of personal liberty. This decision significantly expanded the scope of fundamental rights, emphasizing that the protection of individual rights must align with contemporary societal values. The court moved beyond a purely textual interpretation of the Constitution, asserting that laws affecting personal liberty must meet substantive standards of fairness and justice. This expansion led to greater judicial scrutiny of legislative actions, prompting lawmakers to ensure that any restrictions on personal liberty are not only procedural but also just and reasonable. Consequently, the ruling

has influenced subsequent jurisprudence, reinforcing the judiciary's role as a protector of individual rights against arbitrary state action. It laid the groundwork for a more rights-oriented approach in Indian law, encouraging a dynamic interpretation of the Constitution that adapts to changing societal norms and values, ultimately enriching the landscape of human rights in India.⁷

2. **The Vishaka v. State of Rajasthan** - case was pivotal in shaping the legal landscape regarding sexual harassment in the workplace in India. In this landmark judgment, the Supreme Court established comprehensive guidelines aimed at preventing sexual harassment, thereby interpreting women's rights within the framework of fundamental rights enshrined in the Constitution. The court recognized that sexual harassment violates the right to equality and the right to work with dignity, as guaranteed by Articles 14 and

21. By articulating these guidelines, the Supreme Court not only addressed an urgent social issue but also highlighted the need for safe working environments for women. This proactive judicial intervention underscored the judiciary's role in filling legislative gaps, particularly in matters concerning gender equality and women's rights. The guidelines set forth in Vishaka served as a catalyst for legislative action, eventually leading to the enactment of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act in 2013. This development marked a significant shift in societal norms, fostering greater awareness and

accountability regarding workplace harassment. Overall, the Vishaka case exemplified how judicial pronouncements can drive legislative change and promote social justice, ultimately contributing to a more equitable society.⁸

3. **The Navtej Singh Johar v. Union of India** - case marked by a landmark moment in Indian jurisprudence by decriminalizing consensual same-sex relations, effectively striking down parts of Section 377 of the Indian Penal Code. The Supreme Court's ruling recognized that criminalizing homosexuality violated fundamental rights, including the right to equality, privacy, and dignity under Articles 14, 15, and 21 of the Constitution. This decision represented a profound shift in societal values, acknowledging LGBTQ+ rights as an integral aspect of human rights. The court emphasized that sexual orientation is an intrinsic part of an individual's identity, deserving of protection from discrimination and persecution. By affirming the right to love freely and the importance of individual autonomy, the ruling advanced the cause of equality and reinforced the idea that personal relationships are a private matter, beyond the reach of the state. The judgment also spurred broader discussions on LGBTQ+ rights in India, encouraging advocacy for further legal protections and societal acceptance. It prompted calls for comprehensive anti-discrimination laws and fostered a more inclusive dialogue around sexual orientation and gender identity. Overall, the Navtej Singh Johar case exemplified the judiciary's crucial role in reflecting and shaping evolving social norms while upholding the principles of

justice and equality.⁹

4. **The Shayara Bano v. Union of India** – case was a landmark ruling in which the Supreme Court declared the practice of instant triple talaq unconstitutional. This decision marked a significant step towards gender justice and highlighted the judiciary's role in interpreting personal laws in line with constitutional principles. The court found that instant triple talaq violated the fundamental rights of Muslim women, particularly their rights to equality, dignity, and protection from arbitrary action under Articles 14, 15, and 21. By emphasizing that personal laws must adhere to constitutional norms, the ruling underscored the idea that gender equality is paramount, even within religious practices. This judgment not only annulled a discriminatory practice but also set a precedent for judicial intervention in personal laws, encouraging discussions on the need for reform in other discriminatory practices across various communities. It galvanized public discourse on women's rights within religious contexts and paved the way for legislative measures aimed at protecting women from injustices related to divorce. Ultimately, the Shayara Bano case exemplified how judicial interpretation can catalyze social reform, affirming that personal laws must evolve to uphold fundamental rights and promote equality in a diverse society.¹⁰
5. **The Kesavananda Bharati v. State of Kerala** – case significantly shaped Indian constitutional law by establishing the “basic structure doctrine.” This doctrine asserts that while Parliament has the power to

amend the Constitution, it cannot alter or destroy its fundamental features. The Supreme Court's ruling emphasized the importance of safeguarding the Constitution's core values, such as democracy, secularism, and the rule of law. As a result of this decision, the judiciary has taken on a more active role in constitutional interpretation and protection. The basic structure doctrine provides a framework for judicial review, allowing the courts to evaluate legislative amendments and ensure they do not undermine essential constitutional principles. This has fostered a balance between parliamentary sovereignty and judicial oversight, reinforcing the notion that the Constitution is a living document that must be preserved against potential overreach by any branch of government. Moreover, subsequent rulings have built upon this foundation, further clarifying which features constitute the basic structure, thus guiding future legislative actions. This case has not only fortified the judiciary's role in maintaining constitutional integrity but has also had a profound impact on the relationship between the legislature and the judiciary in India.¹¹

The law developed in these areas due to the active participation of judiciary through the above judicial pronouncements.

9. Conclusion and suggestions–

Judges play a crucial role in the development of law, with their interpretations and decisions profoundly influencing legal norms. Legal realism provides a valuable framework for understanding this dynamic relationship, emphasizing the importance of personal experiences and societal contexts in judicial

decision-making. While the discretionary power of judges allows for adaptability, it also raises questions about consistency and reliability. Addressing these challenges through targeted reforms can enhance the judiciary's role in shaping a fair and responsive legal system that meets the needs of contemporary society.

Suggestions-

1. Enhanced Training: Implement ongoing training programs focused on implicit biases, cultural competence, and contemporary societal issues to equip judges with the necessary skills for informed decision-making.
2. Diversity in the Judiciary: Promote diversity within the judiciary to reflect the varied experiences and perspectives of society, enriching judicial interpretation and outcomes.
3. Clear Guidelines for Discretion: Establish clearer frameworks for judicial discretion to guide judges while allowing for the flexibility needed to address unique cases.
4. Increased Transparency: Foster transparency in judicial reasoning by requiring detailed explanations for decisions, which can enhance public understanding and trust.
5. Engagement with Communities: Encourage judges to engage with the communities they serve, ensuring that legal interpretations remain relevant and responsive to societal changes.

By implementing these suggestions, the judiciary can improve its role in law development, ensuring that it adapts effectively to the needs of a changing society while maintaining consistency and fairness.

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