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Constitutional review and judicial activism in the Supreme Federal Court: between protecting the Constitution and...

risks to the separation of powers in a democratic state governed by the rule of law

Control of constitutionality and judicial activism in the Supreme Court: between the protection of the

Constitution and the risks to the separation of powers in the Democratic Rule of Law

Control of constitutionality and judicial activism in the Supreme Court: between the protection of

the Constitution and the risks for the separation of powers in the State of Democratic Derecho

Vitor Queiroz Rodrigues1

Paola Ingrid Ferreira2

Vera Mônica Queiroz Fernandes Aguiar3

SUMMARY

This article aims to examine the development of constitutional review.

in Brazil and understand how the actions of the Supreme Federal Court have influenced the

realization of fundamental rights. It starts from a historical and theoretical contextualization of

The Brazilian model of control, characterized by the combination of diffuse and concentrated systems, as well

such as through the institutional strengthening of the Supreme Federal Court within the State.

Democratic Rule of Law. The discussion thus revolves around the tension between the necessary protection of the Constitution and of...

fundamental rights and the risks that excessively interventionist action can entail.

The principle of separation of powers. The methodology adopted is qualitative in nature, with an approach...

bibliographical and descriptive in nature, based on specialized doctrine and current legislation.

and in the analysis of paradigmatic decisions of the Supreme Federal Court. Through this approach,

The aim is to understand the limits and possibilities of judicial action in the contemporary scenario.

It is concluded that, although judicial activism can play a relevant role in the implementation of

fundamental rights and the filling of normative gaps, its practice must be guided by

criteria of self-restraint and respect for institutional competencies, in order to preserve balance.

between the branches of government and to guarantee the legitimacy of decisions within the framework of the Democratic Rule of Law.

Keywords: Constitutional review; judicial activism; Supreme Federal Court.

1 Law student. E-mail: paolafefe12@gmail.com. Article submitted to the Unisapiens Academic Center as a requirement for obtaining a Bachelor's degree in Law. Porto Velho/RO, 2026.
2 Law student. E-mail: vitorqr88@gmail.com. Article submitted to the Unisapiens Academic Center as a requirement for obtaining a Bachelor's degree in Law. Porto Velho/RO, 2026.
3. Supervising Professor. PhD Professor in the Law course. Email: vera.aguiar@gruposapiens.com.br.

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ABSTRACT

Resume This article aims to examine the development of constitutional review in Brazil and to understand how the performance of the Supreme Federal Court has influenced the realization of fundamental rights. It begins with a historical and theoretical contextualization of the Brazilian model of review, characterized by the combination of diffuse and concentrated systems, as well as by the institutional strengthening of the Supreme Federal Court within the framework of the Democratic Rule of Law. In this context, the study discusses the tension between the need to protect the Constitution and fundamental rights and the risks that an overly interventionist stance may pose to the principle of the separation of powers. The methodology adopted is qualitative, with a bibliographic and descriptive approach, grounded in specialized doctrine, current legislation, and the analysis of landmark decisions of the Supreme Federal Court. Through this approach, the study seeks to understand the limits and possibilities of judicial action in the contemporary scenario. It is concluded that, although judicial activism may play a relevant role in the enforcement of fundamental rights and in filling normative gaps, its practice must be guided by criteria of self-restraint and respect for institutional competences, in order to preserve the balance among powers and ensure the legitimacy of decisions within the Democratic Rule of Law.

Keywords: Constitutional review; judicial activism; Supreme Federal Court.

1 INTRODUCTION

Constitutional review is one of the central mechanisms for protecting...
The supremacy of the Constitution in a democratic state governed by the rule of law. Through it, it becomes possible...
to ensure that laws and regulations are in accordance with constitutional principles.
and the fundamental rights established in the legal order. In Brazil, this system has gained particular importance.
Relevance stems from the 1988 Federal Constitution, which structured a hybrid model of oversight.
constitutional, combining characteristics of diffuse control and concentrated control. This arrangement
The institutional framework broadened the role of the Supreme Federal Court (STF) in interpreting the Constitution and in addressing conflicts involving fundamental rights and state action.

According to Silva (2023), the control of constitutionality constitutes an essential instrument.
to ensure the normative force of the Constitution, allowing it to prevent the application of norms.
incompatible with their principles and values. For the author, the existence of this mechanism not only
It preserves constitutional supremacy, but also ensures that the fundamental rights provided for in it are upheld.
constitutional texts produce concrete effects on the social and political organization of the State.

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It can therefore be inferred that the control of constitutionality constitutes a mechanism.
legal and political; in addition to safeguarding the supremacy of the Constitution, it also ensures its effectiveness.
of the fundamental rights and guarantees provided for in the Constitution.

From this perspective, it can be observed that the strengthening of constitutional jurisdiction
It also contributed to expanding the participation of the Judiciary in matters of great importance.
political and social. This event came to be identified in legal literature as
The judicialization of politics, characterized by the transfer of certain controversies from one sphere to another.
political sphere extending to the judicial sphere. In this scenario, the Supreme Federal Court began to play a role
an increasingly central role in the realization of fundamental rights, especially in contexts
marked by regulatory gaps or by the inertia of the other branches of government.

In this sense, Barroso (2025) explains that the judicialization of politics stems from the very
structure of contemporary constitutional democracies, in which the expansion of rights
Fundamental principles and the centrality of the Constitution lead to various social and political issues being addressed.
submitted to the consideration of the Judiciary. It can be inferred that judicial activism then corresponds
to a more expansive interpretative stance of the Judiciary in the application of the Constitution, especially in
situations of legislative omission.

The Supreme Federal Court's actions on sensitive public agenda issues have demonstrated the relevance of this...
Debate in the Brazilian context. Decisions related to the recognition of stable unions between
same-sex couples, the criminalization of homophobia, and the protection of fundamental rights.
They highlight the Court's active role in constitutional interpretation. However, this action
It also raises questions about the institutional limits of constitutional jurisdiction.
especially with regard to preserving the separation of powers and the democratic legitimacy of
court decisions.

From a critical perspective, Streck et al. (2017) argue that judicial activism should be
Analyzed with caution, as excessively expanding the Judiciary's interpretive space may...
to compromise the objectivity of the application of law. For the author, when judicial decisions go beyond that.
If decisions are based predominantly on the personal convictions of judges, there is a risk of replacing...
The constitutional will can be overridden by the individual will of the judge, which may affect the balance.
institutional harmony between the branches of government, avoiding institutional disharmony.

In light of these discussions, it becomes relevant to examine the development of the control of
Constitutionality in Brazil and understanding how the Supreme Federal Court acts.
has influenced the realization of fundamental rights. It can be inferred that the analysis of decisions
The paradigmatic examples of the Court allow us to identify how judicial activism manifests itself in practice and what...
Criticisms of the doctrine formulated regarding its potential impacts on the democratic system and...

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separation of powers.

In this context, Mendes (2025) emphasizes the legitimacy of constitutional jurisdiction
It depends on respecting the institutional limits imposed by the Constitution itself. According to the author,
Although the Supreme Federal Court plays an essential role in protecting the constitutional order,
their actions must observe principles such as the separation of powers, legal certainty, and...
Deference to the democratic choices of the Legislative Branch.

Thus, reflection on judicial activism in constitutional review becomes...
fundamental to understanding the contemporary challenges of Brazilian constitutional jurisdiction.
Furthermore, it is extremely prominent because it contemplates the interference of the Judiciary in
The powers of the other branches of government affect constitutional consensus. Although it can be asserted...
While fundamental rights and filling legislative gaps are important, activism, if excessive, can tarnish the process.
Separation of powers and democracy.

2. MATERIALS AND METHODS

This article focused on the analysis of established scientific procedures with the objective
to ensure logical coherence, theoretical foundation, and academic rigor. The approach adopted was...
deductive, starting from the fundamental concepts of Constitutional Law, such as the supremacy of
The Constitution and the principle of separation of powers, in order to subsequently analyze judicial cases.
decisions made by the Supreme Federal Court, which illustrate practices of judicial activism.

Similarly, dialectical analysis was used to confront different currents of thought.
Doctrinal and jurisprudential arguments regarding judicial activism.

The research was basic in nature, with the aim of deepening theoretical knowledge.
Regarding constitutional review and judicial activism, without any claim to practical application.
immediate. The aim was to understand the foundations, implications, and limits of this judicial action.
within the framework of the Democratic Rule of Law.

The approach adopted was qualitative, focusing on the analysis of ideas, concepts, and interpretations.
Legal aspects, rather than data quantification. Qualitative research allowed for a deeper understanding.
an in-depth analysis of judicial activism and its theoretical and institutional repercussions, starting from
Interpretation of legal texts, judicial decisions, and scholarly works.

The technical procedure used was bibliographic and documentary research, based on
Books, scientific articles, dissertations, theses, and court decisions were analyzed.
relevant scholars of Constitutional Law, as well as the pertinent legislation, including the
Federal Constitution of 1988, Law No. 9,868/1999.

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Case law precedents considered relevant to the were also examined.
Understanding judicial activism in Brazil, among which the following stand out: ADI 4277 and ADPF 132 (union same-sex relationships); ADPF 54 (abortion of anencephalic fetuses); ADPF 347 (unconstitutional state of affairs) in the prison system); RE 635.659 (decriminalization of drug possession for personal use); MI 670, 708 and 712 (legislative omission and injunction order); ADI 3510 (stem cell research) embryonic stages); and ADI 26 and MI 4733 (criminalization of homophobia).

In accordance with the institution's ethical research guidelines, no further information was used. data collection instruments that involved interviews, questionnaires, or observation with human participants. The sources consulted consisted exclusively of databases. academic and legal databases with public access, such as Google Scholar, SciELO, and Portal de Periódicos. CAPES, LexML Brazil, Digital Library of Theses and Dissertations (BDTD/IBICT), Library of Supreme Federal Court, Digital Library of the Chamber of Deputies and institutional repositories from Brazilian public universities, such as USP, UnB, UFRGS and Unicamp.

The research was conducted based on previously defined descriptors, such as control. constitutionality, judicial activism, Supreme Federal Court, separation of powers and the State Democratic Rule of Law.

The data analysis was performed using content analysis and data analysis techniques. Legal discourse, allowing for the identification and interpretation of the main arguments employed. both in the decisions of the Supreme Federal Court and in the doctrinal productions analyzed.

3. RESULTS

It is noted that judicial activism is a controversial topic, as it is understood considered by some as essential to guarantee fundamental rights and fill gaps. legislative, while, by others, it constitutes an interference considered improper in the separation of This happens when the Judiciary goes beyond the interpretation of the law, establishing new powers. rules or replacing the claims of the other branches of government.

Judicial activism in the context of constitutional review has its limits. constitutional principles defined by the separation of powers, legality, and security. legal principles that guide the actions of the constitutional jurisdiction and define the scope of its decisions. A cut in the interpretation of the Constitution.

The expansive role of the Supreme Federal Court (STF) in situations of legislative omission may constitute a A legitimate instrument to ensure the effectiveness of fundamental rights. However, when If exercised excessively, this behavior can also lead to risks of hypertrophy of Power.

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Judiciary and the weakening of the democratic legitimacy of representative institutions, especially from the Legislative Branch.

4. DISCUSSION

The expansion of constitutional jurisdiction in Brazil, especially after the Federal Constitution. The 1988 Constitution placed the Supreme Federal Court at the center of the institutional debate about the limits of... Constitutional interpretation. The 1988 Constitution assigned to the Supreme Federal Court the role of guardian of the Constitution. as established by article 102 of the Federal Constitution, significantly expanding its competence to exercise control over constitutionality.

In this context, authors such as Sarmento (2018), Sarlet (2022) and Novelino (2023) highlight that the expansion of the role of the Supreme Federal Court in the Brazilian constitutional system is directly related to strengthening mechanisms for protecting fundamental rights and the growth of The importance of constitutional jurisdiction in contemporary democracies.

Given the contributions presented, it is possible to understand that the expansion of jurisdiction Constitutional law in Brazil is directly related to strengthening the protection of rights. fundamental and central to the Constitution in the legal system.

In this sense, it is understood that this expansion contributes to the effectiveness of the Constitution of In 1988, the Judiciary was consolidated as an important instrument for institutional balance and defense. of rights. However, the need to establish limits to this action is also evident, in order to to avoid excesses that could compromise the democratic principle and generate undue interference. within the competencies of the other branches of government.

Institutional data from the Supreme Federal Court itself indicate that, since the promulgation Since the 1988 Constitution, the number of concentrated constitutional review actions has increased. significantly.

Between 1988 and 2023, more than 7,000 Direct Actions of Unconstitutionality were filed. (ADIs) and hundreds of Claims of Non-Compliance with Fundamental Precepts (ADPFs), which This demonstrates the increasing use of these instruments to resolve relevant constitutional conflicts. These numbers highlight the social importance of the topic, given the decisions made by The Supreme Federal Court (STF) in this context frequently deals with fundamental issues, public policies, and other matters. sensitive aspects of collective life, directly impacting the organization and functioning of society. of democratic institutions.

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In the academic field, the debate revolves around judicial activism and constitutional review. This has become one of the most discussed topics in contemporary constitutional theory. The analysis of the performance The Supreme Federal Court's decision allows us to understand how constitutional interpretation can influence implementation. of fundamental rights and the resolution of conflicts between the branches of government.

Although the Supreme Federal Court plays an essential role in defending the constitutional order, their actions must observe the limits established by the constitutional text itself, preventing the constitutional review results in the undue substitution of legislative functions or female executives.

Thus, the study of judicial activism in the Supreme Federal Court allows for a critical analysis of the challenges. challenges faced by Brazilian constitutional jurisdiction and contributes to the construction of a model an institutional framework capable of reconciling the protection of fundamental rights with the stability of the State. Democratic rule of law, as stipulated in article 1, caput, of the 1988 Constitution.

4.1 Constitutional review and supremacy of the Constitution

Constitutional review is one of the principles that underpin the democratic rule of law. ensuring that the supremacy of the Constitution prevails and that sub-constitutional norms are... in accordance with its structuring principles (De Figueiredo Dantas, 2023). Jurisdiction The constitutional order functions as an essential instrument for preserving constitutional order and to limit the exercise of state power.

In this sense, Agra (2018) argues that every state action must observe the parameters. established by the Constitution, since it constitutes the foundation of validity for the entire system. legal. The renowned Brazilian scholar, professor, and lawyer, whose works, such as the Course of Constitutional Law and other research, addressing constitutional supremacy, argues that all State action, whether legislative, administrative, or judicial, must strictly respect the guidelines of the Federal Constitution.

From the foregoing, it is possible to understand that the control of constitutionality constitutes an essential mechanism for ensuring the supremacy of the Constitution and the coherence of the legal system. legal. It acts as an instrument to limit state power, ensuring that all actions and The rules are subordinate to constitutional parameters.

In contemporary Brazilian constitutionalism, the control of constitutionality It developed from a combination of different legal traditions. As Novelino explains. (2023), the Brazilian system was structured in a hybrid way by incorporating elements from both the model diffuse as well as the concentrated model of constitutional oversight. This configuration allowed

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to expand the institutional mechanisms for protecting the Constitution, granting the Judiciary a a central role in guaranteeing constitutional supremacy and in resolving conflicts between norms. Sub-constitutional and constitutional principles.

Let us then consider, from the perspective of these authors, that the understanding of control of constitutionality as an instrument for preserving the supremacy of the Constitution demonstrates its importance for the functioning of the Democratic Rule of Law.

In this way, the strengthening of constitutional jurisdiction contributed to consolidating its role. of the Judiciary as guarantor of constitutional order. This role, however, requires Institutional balance, since the protection of the supremacy of the Constitution must occur in harmony with democratic principles and with the very structure of separation of powers that This characterizes the contemporary constitutional state.

4.2 Judicialization of politics and the role of the Judiciary

Cruvinel (2022) observes that the expansion of the catalog of constitutional rights and the growing The complexity of social demands has led to various political and institutional conflicts. would then be resolved within the judicial sphere. In this context, issues traditionally dealt with in Political matters end up being submitted to the Judiciary for review, especially when there is an omission. or an inability to respond on the part of the other branches of government.

Along the same lines of analysis and thought, Ran Hirschl (2014), professor of political science, It highlights that the judicialization of politics is not an issue isolated to Brazil, but a trend. observed in various constitutional democracies around the world.

Thus, the reflections presented by the authors demonstrate that the judicialization of Politics is deeply linked to the transformations that have occurred in constitutionalism. contemporary

In this scenario, the Judiciary assumes the role of mediator in disputes involving non- not only legal issues, but also highly relevant political and social aspects. This reality This demonstrates that judicialization does not necessarily represent a distortion of the democratic system. but it can be understood as a natural consequence of the centrality of the Constitution in contemporary legal system.

However, this expansion of judicial action also raises debates about its limits. institutional aspects of the Judiciary. Although judicial intervention may be necessary to ensure the For the effectiveness of fundamental rights, it is essential that this action occurs in a balanced way. preserving the autonomy and powers of the other branches of government.

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In addition to the judicialization of politics, constitutional doctrine also highlights the importance of to differentiate this process from judicial activism. Viaro (2017) argues that judicialization corresponds to an institutional condition arising from the constitutional model itself, while activism judicial represents a more expansive interpretative stance adopted by magistrates in the exercise of their duties. of constitutional jurisdiction.

From the above, it is possible to understand that the judicialization of politics and activism Judicialization, although related, is not the same. The judicialization process stems from a characteristic... structural to the constitutional model itself, which expands the scope of the Judiciary's action by allowing The submission of relevant issues for their consideration. Judicial activism, on the other hand, is linked to the way in which... Judges perform this function, reflecting a more expansive stance in interpretation and in application of the Constitution.

In this sense, it is understood that, while judicialization is an inevitable phenomenon in In more comprehensive constitutional systems, activism depends on interpretative choices and can... varying according to the actions of the courts. This highlights the importance of establishing criteria that guide this action in order to preserve the balance between the effectiveness of rights and respect for institutional limits.

From another perspective, Vieira (2018) argues that the leading role of the Judiciary in Contemporary democracies are linked to the need to guarantee the effectiveness of rights. fundamental and to control potential abuses by political majorities. For the author, strengthening The performance of constitutional courts reflects the growing social expectation that the judiciary will act as guarantor of the Constitution and fundamental rights.

It can be observed, therefore, that the conceptual distinction between the judicialization of politics and activism... judicial analysis contributes significantly to deepening the debate on the role of the Judiciary. In constitutional democracies, judicialization stems from the institutional structure itself. In the context of the constitutional state, judicial activism is related to the way in which judges... They interpret and apply the Constitution in the exercise of their jurisdictions.

This distinction allows us to understand that judicial action in politically sensitive matters Sensitive issues should not be automatically interpreted as an invasion of the Power's competencies. Legislative or Executive Branch.

4.3 Judicial activism in contemporary constitutional theory

Barroso (2025) understands judicial activism as a more interpretative stance. The expansive role of the Judiciary in applying the Constitution, especially in contexts where there is

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regulatory gaps or inertia on the part of political powers.

Similarly, Bonavides (2020) argues that the evolution of constitutionalism
Contemporary times have expanded the role of constitutional courts in protecting fundamental rights.
Defending the normative force of constitutional principles and the supremacy of the constitution.
material about the merely formal, establishing fundamental rights at the heart of the legal system.
legal.

Thus, the concepts presented highlight the influence of what is called
Neoconstitutionalism in contemporary legal theory. This doctrinal current emphasizes...
normative centrality of the Constitution and assigns a relevant role to constitutional principles in
interpretation and application of the law, expanding the scope of action of the Judiciary in
Implementation of constitutional norms.

In this context, judicial activism comes to be understood as a mechanism capable of
To fill institutional gaps in the political system. When the Legislative Branch fails to regulate.
certain rights or when public policies are necessary for the realization of rights.
If fundamental rights are not implemented, the Judiciary may be called upon to act as guarantor of them.
Constitution and the effectiveness of constitutional norms.

Based on Waldron's analysis (2019), the democratic legitimacy of protagonism is questioned.
Judicial interpretation of the Constitution. For the author, in democratic societies that have
Representative institutions functioning properly, the definition of moral and political issues.
Complex matters should primarily occur within the Legislative Branch, which possesses the legitimacy to do so.
direct democratic process.

However, while this action may strengthen the protection of fundamental rights, it
It also raises debates about the institutional limits of the Judiciary. The expansion of
Judicial protagonism demands caution and institutional responsibility, so that the interpretation
The constitutional provision should not unduly replace the functions assigned to the other branches of government.

Along the same lines of thought, Ferrajoli (2019) argues that judicial action should
to remain bound by the limits established by the legal system. According to the author, although
The courts play an essential role in protecting fundamental rights, the exercise of
Constitutional jurisdiction must operate within clear normative parameters, preventing decisions from...
judicial processes become a substitute for legislative activity.

The criticisms raised reflect a central concern in the contemporary debate about
Judicial activism: preserving the democratic legitimacy of political decisions. By emphasizing the
Regarding the role of the Legislature as a privileged space for democratic deliberation, these authors warn that
the risks of an excessive expansion of judicial action.

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In this sense, the actions of constitutional courts should seek to balance two values. fundamental principles of the constitutional state: the protection of fundamental rights and respect for democratic institutions. Although the Judiciary has a relevant role in defending the Constitution, the The systematic substitution of political decisions with judicial decisions can generate institutional tensions. and compromise the principle of separation of powers.

4.4 Contemporary perspectives and paradigmatic decisions of the STF

The Internal Regulations of the Supreme Federal Court (RI/STF) play an essential role in organization and functioning of the Court, regulating procedural aspects, the competence of its organs and the processing of constitutional review proceedings. This is an instrument. Internal regulations that provide greater rationality and efficiency to the Court's actions, allowing it to... proper conduct of trials and the standardization of understandings within the jurisdiction. constitutional.

With regard to sub-constitutional legislation, Law No. 9,868/1999 stands out, which regulates the process and judgment of the Direct Action of Unconstitutionality (ADI) and the Action Declaratory Action of Constitutionality (ADC), establishing fundamental procedural rules for The exercise of concentrated constitutional review in Brazil. The aforementioned rule contributes to legal certainty and the systematization of access to the Supreme Federal Court, defining the those with standing, the effects of decisions, and mechanisms for participation, such as amicus curiae.

In turn, Law No. 9,882/1999 governs the Action for Non-Compliance with a Precept. Fundamental (ADPF), a subsidiary instrument intended for the protection of precepts Fundamental aspects of the Constitution in the face of injuries or threats arising from acts of public authorities. This The law broadens the scope of constitutional review, allowing the Supreme Federal Court (STF) to act in situations not previously addressed. encompassed by the other actions of concentrated control, reinforcing its role in defending order. constitutional.

Thus, both the Internal Regulations of the STF and Laws No. 9,868/1999 and No. 9,882/1999 These constitute normative pillars of the Brazilian system of constitutional review, structuring the mechanisms by which the Court exercises its function as guardian of the Constitution, at the same time which highlight the institutional space that enables, in certain contexts, the manifestation of judicial activism.

Thus, the analysis of judicial activism in Brazil can be observed from the perspective of decisions. paradigmatic rulings issued by the STF, in which the Court played a central role in the interpretation of the Constitution and in the realization of fundamental rights. On several occasions, the Court was

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called upon to decide on matters of high social and political relevance, highlighting the leading role of Constitutional jurisdiction in the Brazilian legal system.

One of the most relevant precedents in this context is the Claim of Non-Compliance with Fundamental Precept No. 54, in which the Supreme Federal Court decided that the interruption of Pregnancy resulting from anencephalic fetuses does not constitute the crime of abortion. In its ruling, the Court understood... that criminalizing this conduct would violate constitutional principles such as the dignity of the person. Human rights, women's autonomy, and the right to health. Thus, the Court recognized the possibility of... The term "therapeutic anticipation of childbirth" can be applied in cases of anencephaly (Brazil, 2012).

Another important precedent refers to the joint trial of the Direct Action of Unconstitutionality No. 4277 and the Claim of Non-Compliance with Fundamental Precept No. 132, in which the Supreme Federal Court recognized same-sex civil unions as family entity. In its decision, the Court stated that the Constitution must be interpreted in a way that to ensure equality and legal protection for different forms of family organization, extending same-sex couples have the same rights as heterosexual couples (Brazil, 2011).

Within the scope of public policies and the protection of fundamental rights, it is also worth highlighting... the Argument of Non-Compliance with Fundamental Precept No. 347, in which the STF recognized the The existence of an "unconstitutional state of affairs" in the Brazilian prison system. The Court It was found that the country's prison situation involves systematic violations of fundamental rights. resulting from structural failures of the State, determining the adoption of institutional measures aimed at to overcome this crisis (Brazil, 2015).

More recently, the Supreme Federal Court faced a matter of great importance. constitutional in the judgment of Extraordinary Appeal No. 635659, which discussed the The constitutionality of criminalizing the possession of marijuana for personal use. In the decision, the The court established parameters to distinguish between a user and a trafficker and removed the criminal nature of the latter. possession for personal use, recognizing the need for differentiated legal treatment for situations of individual drug use (Brazil, 2024).

Another relevant precedent refers to Direct Action of Unconstitutionality No. 3510, which analyzed the constitutionality of scientific research with embryonic stem cells as foreseen in Biosafety Law. The Supreme Federal Court (STF) considered the carrying out of these studies legitimate, understanding that the scientific development aimed at protecting human health is compatible with the principles constitutional and does not violate the right to life (Brazil, 2008).

Furthermore, the constitutional discussion present in the Allegation of Non-Compliance stands out. Fundamental Precept No. 442, which questions the criminalization of abortion up to the 12th week of pregnancy. pregnancy. Although the trial has not yet concluded, the process reveals the centrality of

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The Brazilian Supreme Court (STF) analyzes sensitive issues involving fundamental rights, public morality, and autonomy. reproductive (Brazil, 2017).

In addition to the precedents mentioned above, other decisions of the Supreme Court Federal institutions are also frequently cited in legal scholarship as relevant examples of the actions of Constitutional jurisdiction in contexts of legislative omission or protection of fundamental rights.

Among these cases, the following stand out: Injunction Orders No. 670, 708, and 712, in which the Supreme Federal Court... acknowledged the existence of legislative omission regarding the regulation of the right to strike of public servants as provided for in the Constitution. In the absence of specific legislation, the Court decided to apply, by analogy, Law No. 7,783/1989, which regulates the right to strike in the private sector. allowing the constitutional right to be realized until the Legislative Branch enacts a law. specific on the topic (Brazil, 2007).

Another precedent of great constitutional significance refers to the joint judgment of Direct Action of Unconstitutionality by Omission No. 26 and Writ of Injunction No. 4733, in which the Supreme Federal Court recognized as a legislative delay in criminalizing homophobia and of transphobia. In its decision, the Court understood that, until there was specific legislation, such Such conduct should be classified under Law No. 7.716/1989, which deals with crimes of racism, in order to To guarantee legal protection for the LGBTQIA+ population and ensure the effectiveness of the principle of equality. (Brazil, 2019).

The decisions mentioned demonstrate that the Supreme Federal Court plays a role. fundamental in the implementation of the Constitution and in the protection of fundamental rights, especially in contexts where the Legislative Branch does not offer sufficient normative responses to certain social demands.

However, the Court's prominent role also raises relevant debates in theory. Contemporary constitutional issues. The expansion of the Judiciary's decision-making space raises questions. questions about the limits of constitutional jurisdiction and the need to preserve the Institutional balance between the branches of government within a democratic state governed by the rule of law.

4.5 Doctrinal criticisms and limits to judicial activism

The discussion about the limits of judicial activism has also been the subject of critical analysis. in contemporary legal literature. In this sense, Sousa (2024), when analyzing the jurisprudence of Supreme Federal Court ruling regarding the execution of a sentence after a conviction in the second instance. In this instance, it is noted that the Court's interpretative shifts over time demonstrate how the The court can play a relevant role in redefining constitutional parameters.

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It can therefore be inferred that there are different forms of judicial activism in the decisions of the Supreme Federal Court, including Counter-majoritarian demonstrations and interpretations that broaden the scope of constitutional norms.

Similarly, Cavalher et al. (2024) highlight the performance of the Supreme Court. Brazilian law has sparked debates regarding the extent and limits of its constitutional powers. of his interpretive performance.

The analyses developed by the authors show that the debate on judicial activism This is directly related to the evolution of Brazilian constitutional jurisdiction itself. The expansion The prominent role of the Supreme Federal Court has allowed the Court to exert influence. significant in defining legal and political issues of great social relevance.

In this context, it is observed that judicial activism is not limited to the mere interpretation of Constitution, but it also involves redefining institutional parameters within the system. democratic. This reality demonstrates that the decisions of the Supreme Federal Court can produce impacts that They go beyond the strictly legal realm, influencing the dynamics between the branches of government and the... The functioning of the political system itself.

Therefore, a critical analysis of judicial activism becomes fundamental to understanding the... Contemporary challenges of Brazilian constitutionalism: A reflection on the limits of action. Judicial review allows us to assess the extent to which judicial intervention contributes to the effectiveness of A constitution that does not compromise the institutional balance of power.

From another perspective, Solimani and Silva (2019) argue that the growth of The judicialization of public policies and judicial activism is associated with the State's inability to act. to fully guarantee the effectiveness of the fundamental rights enshrined in the Constitution.

From this perspective, it is possible to understand that the increasing judicialization of Public policies and judicial activism are directly related to state failures in Effective implementation of fundamental rights. When the government fails, in practice, To ensure what is stipulated in the Constitution, the Judiciary is called upon as an instance capable of fulfilling its obligations. such gaps.

In this sense, it is understood that the more intense activity of the Judiciary does not stem solely from a a voluntary stance of taking the lead, but also a social demand for the effectiveness of rights. This reveals that, in this context, judicialization functions as a mechanism for correcting... state shortcomings, although it also raises debates about the limits of this intervention.

Similarly, Fonseca and Couto (2018) highlight the judicialization of politics. It stems from a social and institutional context in which political and social demands are addressed. to the Judiciary.

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The authors' studies demonstrate that the expansion of judicial action cannot be... understood only as a result of a voluntarist stance by the courts. In many cases, the Judicial intervention occurs due to the incapacity or delay of the other branches of government. to meet the social and political demands present in society.

In this sense, the process of judicialization of politics can be interpreted as a A consequence of institutional transformations in the contemporary constitutional state. The expansion of fundamental rights and the strengthening of democratic constitutions have led to... that the Judiciary would assume a relevant role in guaranteeing the effectiveness of these norms.

However, the growth of judicial activity also prompts reflection on its limits. Institutional. Preserving the balance of power is an essential element of the State. Democratic rule of law, which is why the exercise of constitutional jurisdiction must seek to reconcile The protection of fundamental rights while respecting the democratic legitimacy of political decisions.

FINAL CONSIDERATIONS

This study allows us to affirm that the control of constitutionality in Brazil plays a central role in preserving the supremacy of the Constitution and guaranteeing rights. fundamental, consolidating itself as one of the pillars of the Democratic Rule of Law. Throughout the Analysis revealed that the Supreme Federal Court's actions have been decisive in this process, especially in contexts of legislative omission and insufficient public policies.

It was also observed that judicial activism, while often necessary for implementation... The exercise of rights and the realization of constitutional values must be carried out with caution. This is because An excessively expansive role of the Judiciary can compromise the balance between powers, weakening the principle of separation of functions that structures the democratic system.

In this sense, the importance of this work, which contributes to the debate, becomes evident. academic and legal perspectives address the limits and possibilities of the Supreme Federal Court's role in controlling... constitutionality.

The research enabled a critical reflection on the role of the contemporary Judiciary. highlighting the need to harmonize the protection of fundamental rights with respect for institutional competencies of the other branches of government.

Therefore, it can be concluded that the proposed objectives were fully achieved, since which made it possible to examine the development of constitutional review in Brazil, to understand the influence of the Supreme Federal Court (STF) in the realization of fundamental rights and to critically analyze it. The risks and benefits of judicial activism. Finally, it is reaffirmed that the adoption of criteria of

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