

Question:

The growing judicial activism in Pakistan is clearly at the expense of parliamentary sovereignty and supremacy. Critically analyze the statement.

Introduction:

The growing influence of judicial activism is against the core concept of separation of power which divides the government into separate branches, independently. The act of judicial activism which involves usurping the domain of executive and legislature, demonises the power of other two branches of government. Judicial review enables judiciary to review a law if it is in accordance with the constitution but in contrary to this excessive use of judicial review paves way for judicial activism - commonly seen in Pakistan, transgressing the boundaries, of separate entities.

SEPERATION OF POWER:

The concept of separation of power dates back to time of political philosopher Aristotle who divided the function of government into Magisterial, deliberative and judicial class.

② Similarly this concept was propounded by Locke and Montesquieu in his book "The Spirit of Laws". The basic notion of this idea is to provide autonomous power to each organ while paving way for check and balance and preventing concentration of power in one domain.

JUDICIAL ACTIVISM AT THE EXPANSE OF PARLIAMENTARY SOVEREIGNTY:

Judicial activism which involves illegal occupation of power to exert control over other organs of state, is clearly and repeatedly seen in history of Pakistan where limitation of parliamentary sovereignty is seen in many cases such as following.

① Judicial activism propogated the idea of Doctrine of necessity:

In 1954, the case of Federation of Pakistan vs Molvi Tameez Ud Din displayed the courts verdict against the parliamentary

supremacy as Pakistan was independent under the Indian Independence Act 1947.

This verdict led to Doctrine of necessity and legitimising the acts of military coups in further years.

② Weakening the credibility of other institutions.

With unprecedented rise of taking suo moto in times of Chief Justice Chaudhary Iftikhar and Saqib Nisar has resulted in non linear growth of judicial power. Suo Moto which is public interest litigation must only be taken in case of socio-legal conundrums, otherwise it weakens the credibility of other institutions.

③ Rise of judicialised politics.

Independent judiciary should be cautious and provide reciprocity regarding liberty, but increased meddling of judiciary in political affairs have resulted in judicialised politics where political affairs cannot be sorted out without the intervention of judiciary.

④ Attenuating the basis of democracy.

Parliament constitutes of elected representatives by people as a result the decisions of members reflect the will of people.

In contrary to this judges are appointed independently. Hence, increase

intervention of judiciary in parliamentary affairs weakens the supremacy and the basis of democracy that is will of people.

⑤ Depriving parliament from its authority:

Parliament, the legislative organ of the state holds authority to enact the law but judicial activism weakens the status of parliamentary sovereignty.

OF BREACHING

REPERCUSSIONS OF PARLIAMENTARY SOVEREIGNTY:

① Waning public trust:

Although judicial review and suo motu's objective vests in the interest of public but within limits. Increased judicial activism creates a debacle of decreased public trust in parliament's authority.

② Judicial accountability is doomed:

Increase in asserting judicial authority diminishes the accountability of judges as it results in non-linear growth of judicial supremacy.

③ Violation of separation of power:

The very basic perspective of constitution regarding separation of power is violated by judicial activism resulting in undermining the credibility of states institutions.

④ Economic woes leading to financial crunch:

Judicial activism places the stability of state in a dilemma. This adversely affects the foreign investors interest in investing. For example preventing privatization of Pakistan Steel Mills 2006 eventually led down to closure of industry in 2015.

ii) EFFECTIVE ASPECT OF JUDICIAL ACTIVISM:

Defenders of judicial activism presents positive aspects of this side of judiciary as following

① Upholds the basis of Constitution.

Judicial activism which involve judicial review evaluates the enactment of law according to the basic requirement of protecting fundamental rights.

② Check and balance.

Assertive authority of judiciary can be seen as a mean of providing check and balance regarding executive and legislative organ while preventing concentration and misuse of power by one specific entity.

JUDICIAL REFORMS NEEDED TO STRENGTHEN THE SEPERATION OF POWER:

① Limiting the utilisation of suo moto power:

Excessive use of suo moto delineates the basic judiciary from abutting public interest litigation. It weakens the foundation of judiciary through decline in transparency and accountability of an institution. Subsequently Supreme court (Practise and Procedure) Act of 2023 curtails the power of CJP taking suo moto.

② Transparent bench formation:

Appointment or deposing of judges should be on the basis of proper evaluation as stated in Article 209 which involves Supreme judicial Council's intervention in deciding the deposition of any judge.

③ Accountability of appointed judges:-

Judges should be made a point of evaluation regarding accountability and transparency linked to their code of conduct. Hence limiting the unabated growth of activism threatening parliamentary supremacy.

Conclusion:

Parliamentary supremacy affirms the consent of people upholding a significant place in governance of a country. However, unleashed meddling of any institution, be it judiciary in form of judicial activism negates the autonomy of other organ while crippling the foundation of democracy. Judicial activism at the expense of parliament's supremacy needs to be revoked by appropriate judicial reforms, taken appropriately.