

JUDICIAL ACTIVISM

What is judicial activism. Elaborate the reasons Merits and Demerits with supporting examples from Pakistan itself.

Introduction:-

Judicial activism has been a determining force in painting Pakistan's legal and political canvas. Since the inception of Pak's judiciary has actively performing its role not only as a law enforcing authority but also addressing various fundamental issues. This might include stepping into political fray to address issues of **governance, human rights and democratic accountability**. So for this, judiciary is receiving mixed responses for its role. Some school of thought believe that it should confine its role to the implementation of Supreme Constitution while other think otherwise. Wandering in streets of Pakistan history, it is heard that judiciary has exerted significant on country's political trajectory through various landmark judgements and suo moto notices. Resultantly it has become a double edge sword as some regard it to be a sole custodian for exercising authorities to implement orders and to actively take **judicial review** where needed while others deny this overreach of

Judicial power as a threat to imbalancing the powers of all three organs of constitution and will stir conflicts between them thereby disturbing the Pakistan's fragile democracy.

According to Lord Denning 1963;

To interpret the law and moulded to meet the needs of changing time (while remaining) outside the sphere of politics

Judicial Activism: A closer look:

It refers to the practice of judges and courts by participating in other roles like exercising judicial reviews to ensure good governance and stepping in human rights ensurance apart from its conventional role of prioritising constitution and ^{to} make certain that fair disputes are resolved and to maintain law and order.

Justice is the way by which we maintain the balance of social and individual rights

Lord Denning defined it as;

To dispense justice and to uphold the rule of "law irrespective of the public clamour."

On contrary to it, David A Strauss coined judicial activism f 20
to be one or more of three possible actions, sh
overturning laws as unconstitutional
overturning judicial precedent
and ruling against the preferred interpretation of
constitution.

It is right to say that when judiciary tend to validate
their personal opinions prevail over law and legislature
they are said to be exercising judicial activism.
They may start meddling other organs of state i.e
raising funds for dams, visiting hospitals and
stoking down Baluchistan agreement.

Its **history** dates back to 18th century, Marbury
and Madison case in supreme court of United States.
Before leaving President John Adam appointed Marbury as
Chief justice of peace however ^{(John Marshall} secretary of States failed
to deliver Marbury's commission. Therefore, when new
President got power he refused him to give his
commission. On account of it, Marbury filed petition
to compel Madison (State ^{secretary of}) to give his commission. Let's
there arose judicial review which declared that act
of congress unconstitutional, and has great significance
till now. That law was proved faulty and was
struck off.

disqualified. Dismissal of Nawaz Sharif 2017 during political instability is a bold step through judicial activism.

(iii) - Activist aptitude of Judges and Judicial Independence:

In 2007, lawyers movement led to the restoration of Chief Justice Iftikhar M. Chaudhry who was previously deposed by Pervez Musharraf. This was turning point enumerating judicial freedom. Justice **Sagib Nisar** (former Chief Justice) took suo moto notice for pollution and environmental degradation of **Katpana Lake case**; a perfect instance of his active approach.

(iv) Judicial review can be a reason:

As in

Madison - Marbury case where previously prevailing congress law was struck off as it got declared unconstitutional.

In **2019**, Supreme Court struck down parliament's attempt to **amend constitution** as it lack parliamentary insights. Thus checking executive's power and constitutional integrity.

v) Public expectations call for Judicial Activism.

In 2012, Supreme court took notice of missing person's cases in Baluchistan addressing human rights issue.

This is also an incident of judicial activism witness in Pakistan. ^{These} court's efforts led to the recovery of several missing people.

Also in 2019, death penalty for disabled people was declared unconstitutional.

vi) To clear constitutional ambiguities:

Courts may

participate actively to clear constitutional ambiguities. In 2015, Case of PTI leadership vs PMFN leadership, Supreme court interpreted article 184(3) of constitution which deals with court's jurisdiction. It clarified scope of powers and set precedent for future cases.

vii) External factors and military interference paves way of judicial activism.

Being solely independent and free body, sometimes subjected to external influences. **Lawyer movement 2007** on dismissal of Iftakhar M. Chaudary by Musharraf was proved unconstitutional by court.

2 (1979) Death sentence of Zulfikar Ali Bhutto was solely owing to pressure on chief justice. He wasn't given right of free and fair trial.

viii) Interference in Policy matters:

Sometimes, justice needs to take a notice of policy matters so that other two organs work smoothly and effectively. For instance mineral oil resources and its distribution. Still Mill case included in this regard too.

Shall judicial activism prevail?

Merits

Protection of Fundamental rights

Judicial activism is necessary where other two organs failed to pronounce their authorities

- Constitutional right to life **Shela Zia vs WAPDA Case** and allotment of Salaries to media persons

Demerits

^{Interinstitutional Conflict}
Distortion of Balance of Power in 3 organs:

Over use of suo moto has negatively influenced the balance between the three organs of the government. Interference in the duties and responsibility of other organs is not appreciated by legislature.

law enforcement through suo moto. This conflict may arise in three domains.

Suo moto powers of **Hospital visits** if executive and legislature are unable to ensure implementation of law.

clear water availability Jurisdiction of Political

Protection of natural assets (oil, mineral oil, coal)

Shutting down 56 companies in Pakistan highlights active role of judiciary in it

Amplifying performance of governance by pressuring executives and legislators to enhance performance.

Guardian of Democratic norms i.e. military interventions and constitutional dismissals.

Suo moto use is appropriate only until when judiciary exercises fair decisions without getting indulged in politics.

(Suspending 28 Law makers in 2012) Heavy petitions filed by PTI and PPP challenging the validity of polls on basis of bogus entries leading up to 28 elections.

Erosion of Political and judicial repute.

If judiciary practices activism against the law or under influence of any political party

1972 Asma Supreme Court that Aur Mastia' Una d

1972 **Asma Jilani case**
Supreme Court stated
that Ayub Khan's
Martial law was
unconstitutional and
democracy was restored

It not only declines the
repute of that party but
the custodian of human
and individual right -
Judiciary

Unquestionable faculty
decisions! No remedy
against wrong decisions
Supreme Court's decision
is not to be held

accountable even if it is
wrong. This states the danger
of judicial activism. John
Marshall said,
We are not final because
we are infallible but we
are infallible because we
are final.

Conclusion :-

In a nutshell, judicial activism has its
own goods and bads. It is significant phenomenon
in shaping country's legal and political landscape
with its pronouncing merits like promoting rules of

laws and protecting fundamental rights, it has its own demerits like ^{over}stepping into judicial boundaries and political interference disturbing balance between organs of government.

"The Judiciary perpetuates a breach of state structure. If it fails to purify and justify itself consequently, all of its systems, envisage a collapse."

(Weath of Words)

The above quote perfectly resonates with the role of judiciary and limiting its interference as judicial activism in whatever possible means. There should be a borderline between judicial activism and judicial restraint, ensuring judiciary practices its power in a responsible and accountable manner. Especially in a country like Pakistan, where majority of the masses hold their trust in judiciary, excessive use of *habeas corpus* under umbrella of judicial activism may erode the repute of this respectable body. A committee should control or held accountable for overexercising the power of judiciary in terms of judicial activism so that it always proves fruitful rather than causing above mentioned demerits.