

Q=" What is judicial activism? Elaborate its reasons and discuss the merits and demerits of it. Support your argument with relative examples from judicial history of Pakistan.

Introduction:-

Judicial activism in Pakistan has played a crucial role in shaping the political landscape. It has both received praise and criticism for its role. Judiciary is an independent body that is even unhandled, unbiased and unprejudiced. It functions with the framework of the constitution, defined under the concept of separation of powers. It interprets the constitution which is supreme and at times needed, supports the rule of law and standards laid down in the constitution. Judicial activism often involves the court's active interpretation of constitutional provisions to protect citizen's rights, promote good governance, and address societal issues. It sometimes causes political and judicial chaos due to misuse of judicial review. Therefore, any thriving democracy is in the doctrine of separation of powers between three main organs

of the state; the executive, the legislative and the judiciary.

According to famous French philosopher ^{Montesquieu} "the intermingling of the distinct roles of the various state entities poses a risk of immense magnitude to the emancipation of the state as it could expose the liberty of the citizens to arbitrary control" (Vile, 1998).

What is Judicial activism?

Judicial activism is an approach to the exercise of judicial review, or a description of a particular judicial decision, in which a judge is generally considered more willing to decide constitutional issues and to invalidate legislative or executive actions.

It is sometimes used in place of judicial restraint which means that the courts can go beyond the applicable law to consider broader societal implications of its decisions. or judges can make rulings based on their own view rather than on precedent.

David A. Strauss has argued that judicial activism can be narrowly defined as

one or more three possible actions: overturning laws as unconstitutional, overturning judicial precedent, and ruling against a preferred interpretation of constitution.

Reasons of Judicial activism

(i) Administrative void leads to judicial activism

When executive and administrative branches fail to perform their duties or make decisions, it creates a vacuum that the judiciary may fill through judicial activism. Administrative void leads to judicial activism by failure to implement laws, inaction on important issues, abdication of responsibility, lack of regulatory oversight, Denial of justice and failure to enforce court orders. In these situations judges may respond with judicial activism to ensure the rule of law, protect individual rights and promote justice.

The Supreme Court suo moto notice on the Jaizabad sit in (2017) by intervening political crisis caused by that sit in.

leading to the resignation of law minister Zahid Hamid.

In 2018 Supreme court took suo motu on Karachi water crisis and directed the government to resolve the issue.

(iii) External pressure forces judges towards judicial activism

Judiciary itself is not free from external pressures. The pressure of political parties, martial law administrators and public pressures shape the decisions of courts.

In 1979 Zulfikar Ali Bhutto was not given the right of free trial and was sentenced to death under Zia's pressure claimed by a former chief justice.

In 2007 Pervez Musharraf removed justice Iftakhar Muhammad Chaudhry. This led to lawyer's movement. The action was largely condemned. In the end, the Supreme court ruled that the dismissal was unconstitutional and brought it

reinstatement of the justice chaudhry.

Merits and Demerits of Judicial activism

Merits :-

(i) protection of fundamental rights

Judicial activism in Pakistan played a crucial role in securing fundamental human rights, particularly in areas where executive and legislative branches have failed to protect them.

Shehla Zia v/s WAPDA case (1994) was heard as human rights issue by Supreme court regarding the constitutional right to life.

(ii) Enforcement of rule of law

In a country where executive and legislative branches have often failed to protect rights and enforce rule of law, judiciary has played its role to fill the gap. Through suo motu notices, public interest litigation and

Judicial review of legislation, the courts have taken active role in ensuring that the rule of law is upheld.

On 21 November 2017, the Supreme Court of Pakistan initiated a *Suo motu* case pertaining to the *Fazlbad sit in* of Tehree-e-Labank Pakistan, demanding the resignation of the then Law ministers.

Security of Democratic Values

The history of Pakistan is full of Military interventions and political instability. In these Military interventions dictators dismissed constitutions continuously. So, judicial activism has been a crucial bulwark against the erosion of democratic values.

In *Asma Jilani case* (1972) Supreme Court submitted its decision that the martial law of Ayub Khan was unconstitutional. And the next day democracy was restored.

Demerits of Judicial activism

(i) Judicialization of the politics

Article 184 (3) which grants the supreme court suo motu powers on its own is an effective tool by way of which the constitutional validity of laws and decisions made by public bodies may be reviewed. The actual issue arises when supreme judiciary go beyond its limitation and bring politics in judiciary.

For example, the decision taken by the supreme court in 2013 to suspend 28 lawmakers. The special bench comprising Justice Iftakhar Chaudhry passed the order while hearing petitions filed by the PTI and the PPP challenging the validity of by-polls conducted on the basis of bogus entries in the electoral rolls leading up to February 2008 elections.

(ii) Inter institutional conflicts

The frequent use of suo motu has encroached on the domain of executive and the legislative branches.

of government. For example when the judiciary takes notice of Public issues, such as availability of clean water and the state of health care, it overrides the responsibilities of executive branch. Similarly when a court takes notice of a legislative issue, such as the composition of election commission or the date of election, it interferes the legislative domain. This then cause conflict in these branches and make other branches passive and inefficient.

iii) No accountability of wrong decisions of supreme court

The decision of supreme court is last and superior and one cannot challenge it. So, if a supreme court uses its power of judicial activism its verdict is final and can cause a heavy loss. For example the ~~decision~~ decision of Zulfiqar Ali Bhutto case.

John Marshall an American justice said "we are straight because we are ultimate but we are not

ultimate 'because we are straight':

Conclusion

Pakistan's Supreme Court has long history of *Suo motu*, judicial review and judicial activism. Judicial activism has many times restored democracy and safeguard public interest and law. But the excessive use of it has brought distortion of balance of power and erosion of public trust in judicial system. Rush Limbaugh quoted that "liberal attempts through judicial activism what they cannot win at the ballot box".

In a country such as Pakistan, where the risk of democratic subversion is never too far fetched the sanctity of the judiciary in the mind of the public is of paramount importance. And, judicial activism erodes public trust in judiciary. So, steps should be taken to reduce judicial activism and *Suo motu* frequency and a committee should be made to investigate Supreme Court's decisions and bring it into accountability.