SOS POLITICAL SCIENCE & PUBLIC ADMINISTRATION
M. A PUBLIC ADMINISTRATION II SEM
CONTITUTIONL SYSTEM IN INDIA-II

UNIT-IV

TOPIC-JUDICIAL ACTIVISM

Introduction-

Judicial activism, 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. Although debates over the proper role of the judiciary date to the founding of the American republic, the phrase *judicial activism* appears to have been coined by the American historian Arthur M. Schlesinger, Jr., in a 1947 article in *Fortune*. Although the term is used quite frequently in describing a judicial decision or philosophy, its use can cause confusion, because it can bear several meanings, and even if speakers agree on which meaning is intended, they will frequently not agree on whether it correctly describes a given decision. (*Compare* judicial restraint.)

The term *activism* is used in both political rhetoric and academic research. In academic usage *activism* usually means only the willingness of a judge to strike down the action of another branch of government or to overturn a judicial precedent, with no implied judgment as to whether the activist decision is correct or not. Activist judges enforce their own views of constitutional requirements rather than deferring to the views of other government officials or earlier courts. Defined in this way, *activism* is simply the antonym of *restraint*. It is not pejorative, and studies suggest that it does not have a consistent political valence. Both liberal and conservative judges may be activist in this sense, though conservative judges have been more likely to invalidate federal laws and liberals more likely to strike down those of the states.

In political rhetoric *activism* is used as a pejorative. To describe judges as activist in this sense is to argue that they decide cases on the basis of their own policy preferences rather than a faithful interpretation of the law, thus abandoning the impartial judicial role and "legislating from the bench." Decisions may be labeled activist either for striking down legislative or executive action or for allowing it to stand. In the early 21st century one of the most-criticized Supreme Court decisions in the United States was in *Kelo* v. *City of New London* (2005), in which the court allowed the city to exercise its eminent domain power to transfer property from homeowners to a private developer. Because judges may be called activist for either striking down government action or

permitting it (in *Kelo* they permitted it) and because activism in political usage is always considered wrongful, this sense of *activism* is not the antonym of *restraint*.

A judicial decision may also be called activist in a procedural sense if it resolves a legal issue unnecessary to the disposition of the case. A disputed example of alleged extreme procedural activism is the Supreme Court's controversial decision in *Citizens United* v. *Federal Election Commission* (2010), which ultimately struck down provisions of federal election law that had limited corporate and union spending on political advertisements. Following oral arguments, the Court called for reargument of the case on the basis of new questions, because it foresaw that a correct ruling on the questions originally presented would have left the provisions in place and frustrated its conviction that "this corporation [Citizens United] has a constitutional right to speak on this subject." Procedural activism is generally considered improper at the federal level in the United States and in countries that follow the U.S. system (e.g., Kenya and New Zealand) on the grounds that the function of courts is to resolve concrete disputes between adverse parties, not to issue legal pronouncements in the abstract. However, in states that follow other systems (e.g., Austria, France, Germany, South Korea, Spain, and some U.S. states), courts are permitted to decide issues in the absence of disputes or adverse parties.

Complaints about activism have arisen in most countries where courts exercise significant judicial review, particularly within common-law systems (e.g., at the federal levels in Australia, Canada, and India). Although in the U.S. contextallegations of activism have been raised more recently by conservative sthan liberals, such charges can be deployed by both sides, and the primary determinant is probably where the courts stand politically with respect to other government actors. In the first half of the 20th century, the Supreme Court tended to be more conservative than legislatures and was criticized by liberals for striking down progressive economic legislation (notably elements of Franklin D. Roosevelt's New Deal) on the basis of the justices' supposed free-market views. In the second half of the 20th century, especially under Chief Justice Earl Warren (1953–69), the Supreme Court was frequently more liberal than Congress and state legislatures and tended to be criticized by conservatives for striking down state and federal laws on the basis of the justices' supposed liberal politics. In the early 21st century, the Supreme Court tacked back to the conservative side and was criticized for striking down laws such as campaign finance reform (*see Citizens United* v. *Federal Election Commission*).

Since neither conservatives nor liberals claim that judicial decisions should be based on politics rather than law, the debate over judicial activism does not take the form of arguments for and against. Instead, each side accuses the other of activism while denying that they themselves engage in it. However, the persistent difference of opinion

among scholars and judges as to how the Constitution should be interpreted makes it difficult to demonstrate that any decision in a controversial case is the product of politics rather than law. In consequence, calling a decision activist serves primarily to indicate the speaker's belief that those on the other side are not operating in good fait

Role of Judicial Activism

Judicial activism is usually described as a pro active role played by the Judicial. It is an active prouns of implementation of the rule of law, essential for the presentation of function al democracy. In spite of negatively associated with the word Antiunion Indian Judiciary has always acted as an alarm bell to maintain the federal character, to ensures that the execution has Became Alive to perform its duties.

Judicial activism is not a distinctly separate concept from usual judicial activities. In judicial activism every judge is or at least should be an activist. Judicial activism is policy making in competition with policy making by the legislative and executive.

The essence of true judicial activism in the rendering of decisions which are in tune with the temper of the time. Activism is judicial policy making which furthers the cause of social change or articulates concepts such as liberty, equality or justice. An activist judge activates the legal mechanism and makes it play a vital role in socio-economic process.

Judicial activism reflect the following trends in the administrative system namely: expansion of rights of being heard on administrative lapses, excessive delegation without limitation, expansion of judicial control on discretionary powers; expansion of judicial review over the administration; indiscriminate exercise of contempt power; over extending the standard rules of interpretation in its search to achieve economic social and educational objectives.

In India, the national emergency in the second half of 70s reduced the apex court and the High Court's virtually at the mercy of executive's authority. It was at the end of the emergence the Supreme Court and also some of the High Court's began to show signs of judicial activism by intervening in executive and legislative areas.

From then onwards, the Supreme Court have time and again resorted to the weapon of judicial activism to preserve the sanctity of the Constitution's structure and its

attempt to do it tends to promote the socio-economic development of the country. The Judiciary's stand in the recent 2G spectrum case strikingly proves the necessity of judicial activism in restructuring the administrative requirements.

Importance of Judicial Activism-

Judicial activism refers to the phenomenon of the courts dealing with those issues which they have traditionally not touched or which were not in the contemplation of the founding fathers. It is a state of mind, the origin of which lies in the 'in activism' of the other two wings of the government. The reason behind the rise of Judicial Activism can be seen in inaction and non-action on the part or other pillars legislature and executive to deliver in governance.

The great contribution of Judicial Activism in India has been to provide a safety valve in a democracy and a hope that justice is not beyond reach.

In Keshvanand Bharti Case: Justice P.N.Bhagwati is known as the founder of Judicial Activism. For the first time, Hon'ble Supreme Court held that a Constitutional amendment duly passed by the Legislature was invalid as damaging or destroying its basic structure. This was a gigantic innovative Judicial Leap unknown to any legal system. Since it was held in the judgment passed that amendment passed by parliament is against the basic structure of the constitution, it could not be annulled by parliarment.

Reasons behind Public Support

• Administration has become apathetic and nonperforming.

• Corruption & Criminality are so widespreadthat they have no recourse except to movecourts through PIL, enlarging the scope for judicial intervention.

Judicial activism and Positive impacts

• The expansion of popular access: the judges case

• Redresser of public injury and public wrong .

• PIL : Curial democracy .

• The signature tune of our Constitution

• Liberation of Locus Standi

• Shadow Government : Breaks the

democratic deadlock .

• Dynamic approach.

Cases-

Recent case: Electoral Reforms

In the case of Association for Democratic Reforms , the judiciary brought er a major electoral reform by holding that a proper disclosure of the antecedents by candidates in election in a democratic society might influence intelligently the decisions made by the voters while casting their votes. Observing that casting of a vote by a misinformed and non-informed voter, or a voter having a one sided information only, is bound to affect the democracy seriously, the court gave various directions making it obligatory on the part of candidates at the elction to furnish information about their personal profile, background, qualifications and ante

Judicial Overreach - Cases

• In 2012, supreme court directed mostcomplex engineering of interlinking rivers inIndia.• Distribution of food grains to persons belopoverty line was monitored, which even madethe PM remind the court that it was interfering with the complex food distibutionpolicies of the government .election to furnish information about their personalprofile, background, qualifications and antecedents.

Jharkhand legislative assembly case(1998)

• Even proceedings of legislature are controlled bycourts. In the Jharkhand legislative assembly case(1998), supreme court ordered the speaker toconduct a motion of confidence and ordered the speaker to conduct the proceedings according to aprescribed agenda• Its proceedings were ordered to be recorded for reporting to the court. Orders were made inspite of Article 212 of the consitution, court not to enquire in to any proceedings of the legislature.

Conclusion-

The judiciary has shed its pro status quo approach and taken upon itself to enforce the basic rights of the poor and the vulnerable sections of society by progressive interpretation and progressive action.• The Supreme Court's pivotal role in making up for the lethargy of the Legislature and the inefficiency of the Executive is commendable. But the law can be dehumanized, thus the weapon of judicial activism must be used carefully!