

2 branches of govt & later on because of passivism of the other 2 branches.

Judicial activism is global trend. Entire South Asia is witnessing very active Judiciary.

Conditions which give rise to Judicial activism

→ If any country has following

- Written constitution
- System of rule of law
- FRs
- Federal system
- Political culture of the country.

e.g. in India Judges are always held in high esteem.

Situations specific to India

- Overreach by Executive
- Executives interference in Judicial independence.
- call for committed Judiciary
- Decline of parliament
- Increase in corruption
- Rise of Civil society.
- Introduction of RTI.
- Increasing awareness of law & Human Rights
- Globalization.
- Indian public romanticising active judiciary.
- Preference of Judges

J. Review vs J. Activism.

- Judicial review is not judicial activism but it is a basis of judicial activism.

What is judicial review?

Judiciary examine the acts of commission & commission by other 2 branches of govt & declaring them unconstitutional if they are inconsistent with the Constitution.

J.R. is necessary for rule of law.

For

Judicial passivity.

If judiciary is reluctant to go for J.R.

Judicial restrain

Judiciary restrict itself to the review

It does not tell what should be done.

Judicial Activism

When judiciary does not restrain itself, rather start telling what should be done, it becomes Judicial Activism.

Judicial Overreach

There is a thin line between activism & overreach. Activism is accepted but some actions of judiciary fail to generate consent are categorised as overreach.

Arguments in favour & against J.A.

-- Tradition Approach

Activism is not desirable.

Lord Jowett, former Justice M. Katju,

former Justice Bhargava, former PM M. Singh. view

- Judiciary should limit itself to telling what the law is. It should not make the law. According to former Justice Katju, "Tell it there is one, don't make it there is none". Justice Bhargava: "Judiciary neither has resources nor infrastructure nor expertise to monitor & micromanage administrative leviathan."

Other arguments:

- Least representative
- Least accountable
- It is a universal code of conduct that judges should refrain from entering into public policy.

- Alternative view

Justice Reed of U.S.A., former Justice

P.M. Bhagwati, Social activist & writer

Kalpna Kanawattan Kannabiran.

Just. Reed: Judicial interpretation is not a photographic function, whenever judges tell law they make law. Interpretation is a creative process. Law is general & judges apply it in specific situation & gone are the days when it was considered indiscreet for judges to make laws.

Justice Bhagwati: Purpose of Judiciary is to deliver justice. There is nothing to feel shy or guilty. Judicial restraint is escapism.

Judges want to live in comfort zones, not ready to accept criticisms. Constitution of India itself gives the scope & judicial governance. (Art 141)

Judicial activism in India

In India there is a legitimacy for judicial activism. Judicial activism has benefited ordinary people in India. In a situation where Parliament is in decline & executive is passive, if judiciary also does not fill the vacuum, it will result into chaos & anarchy.

- Judicial activism in India has been a damage control exercise. It has protected sanctity of Constitution, established rule of law, strengthened rights of poor. It has taken actions to check corruption & criminalisation of politics. It has a potential to change the image of India as a soft state.

J.A. can be a medicine.

It cannot be a daily bread. Country cannot run by judiciary indefinitely. Responsibility lies with other 2 branches of govt to leave their high headedness as well as passivism.