

The Paradox of Judicial Activism

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Scheme of Lecture

- Continuous Struggle to obtain the accountable exercise of power
- Key concepts relevant to understand paradox
- Can judicial activism be addressed on the binary of good or evil ?
- What could be a possible way of addressing this matter?

Struggle to obtain accountable exercise of power

- Power like fire useful if controlled, structured, bound
- Power corrupts then absolute power corrupts absolutely
- Separation of power
- Check and balance

Key concepts

- Judicial review a mechanism of overseeing other organs of State
- Judicial restraint a concept which aims to ensure that the judiciary calls out but does not substitute
- Distinction between activist and activism
- Distinguishing between activism, excessivism, adventurism

What is the problem with a binary understanding of judicial activism?

- It is always right.
 - question of judicial accountability
 - trenching into territories of the other organs
 - If wrong then how to set it right
- Or always wrong?
 - people left with no lawful remedies
 - a major counter majoritarian check destroyed
 - possibilities of forging customised remedies closed

What could be a possible way forward?

- Recognise both the strengths and weaknesses
- Look at the representational problems of a first by post system
- How forging of legal remedies is necessary for people to have faith in a polity
- A complex question needs complex treatment.