

Judicial activism and constitutional interpretation

Law



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What is Judicial Activism?

Judicial Activism is the act of a Judge to decide upon a case on his own without referring to the constitution or against the public law. Judges are to abide by the provisions of constitution and the common law, which protect the public interest. But, in a very few cases, they are pressurized to protect the personal interest of a group of people by virtue of political ideologies and/or for personal gain. Thus, it is a usurpation of power and it happens when a judge takes a decision that is different from common law, jurisprudence and the constitution of the country. It may also occur when the decision of judges overrules the prevalent law or legal doctrines in the country that are likely to undermine the country's social policy. The United States of America has a checking system of judicial activism to ensure that it is minimal and public interests are mostly protected. According to Merriam-Webster's Dictionary of Law, judicial activism is " the practice in the judiciary of protecting or expanding individual rights through decisions that depart from established precedent or are independent of or in opposition to supposed constitutional or legislative intent" (Jha).

What is the difference in philosophy between strict constructionists and those who believe in a living constitution?

The supporters of judicial interpretations have different philosophies and the most debated among them are strict constructionists and those who believe in living constitution. A strict constructionist is one who believes that the words and phrases used in the law and constitution are static and hence there are limited instances of interpretations. U. S. Supreme Court nominee John Roberts has been dubbed a " strict constructionist" -- someone who <https://assignbuster.com/judicial-activism-and-constitutional-interpretation/>

believes the U. S. Constitution should be interpreted exactly as its original authors intended” (Chadwick Alex). The main outcome of this philosophy is that judgment is based on what is written in the law and not on what it should be. Some of the popular supporters of this argument include Supreme Court of the United States Justice Hugo Black and former U. S. Chief Justice William Rehnquist, and Chief Justice of Australia, Owen Dixon. In contrast to the strict constructionism, living constitutionalists are of the view that the law words and phrases are not static and should be treated as living and dynamic and they must be interpreted in such a manner that they are useful for the changing societal needs. As opined by David Dieteman on living constitution, it is “ one of the most nefarious influences in the minds of Americans is the notion that the federal constitution of 1787 (the " U. S. Constitution") is a " living" document” (Dieteman David). Therefore, the words and phrases in the law and constitution framed by Congress do not mean the same thing at different time points.

Thinking critically about these arguments what do you believe? How should judicial activism be defined? And whose interpretation of the constitution is correct, if any?

The law and constitutional provisions framed at one time in the past need not be operational in a social environment, which is subject to perennial changes. The law should be interpreted as they are meeting the constitutional rights of the populace in the country. However, they should not be used for the benefit of a group of people to protect their vested interest and the judges should affirm that the country’s judiciary is not influenced by the political ideologies and vested interests. In a study undertaken by Paul Gewirtz and Chad Golder, it is found that justices vary on <https://assignbuster.com/judicial-activism-and-constitutional-interpretation/>

their views to deviate from what was intended by the legislatures. The study observes that “striking down Congressional legislation is sometimes justified and some activism is necessary and proper” (Gewirtz Paul, 2005). Thus, what is appropriate to a judge may not be so to another. The validity is checked by taking into account the need of the given situation and the views of the judge. Judicial activism, therefore, may be defined as the act of deviating from the meaning and significance of the law words and phrases, by judges on the basis subjective views that likely to protect the interest of a vested group. The living constitution philosophy seems to be more practical and committed as they conform to the requirements of the present.

Work Cited

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