

Judicial activism



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Judicial Activism The issue as to whether judges should interpret or apply the constitution is debatable. There are cases where much caution and attention is needed to define the outcome of a court case. Basically, the constitution is seen by advocates of judges being interpreters as a laid down framework to decide on a case. Scalia (1972) asserts that the constitution is supposed to guide the judge to solve any dilemma with a judicial bearing. To a larger extent, the judicial function incorporates interpretation of the provisions of law. However, there are numerous debates intended to question the manner and extent of interpretation of law by any judge.

By interpreting, the judge is equipped with knowledge to decide what applies in a particular case. The decision must also be constitutional rather than a biased one. (Scalia, 1997) This is what is referred to as strict constructionism or strict constructivism. The judge must first acquire the meaning of a particular clause of the constitution then apply it in the ruling. The use of strict constructionism is recommended where the provisions of the constitution are unclear, ambiguous or absurd.

On the other hand, one may view the constitution as a self-fulfilled set of guidelines to govern any ruling. In the event that there are no ambiguous or the clarity of the provisions is spot on, the judges are expected to strictly apply the exact meaning in the ruling. (Forte, 1972) One of the issues that arise with interpretation of the constitution by the judges is expansion of the laws through implications. Justice, reason and fairness may fail to materialise if the judges fail to restrain from expansion of the law through implication. Abortion has been one of the most contentious and sensitive issue over a period of time. Judicial involvement is rampant and the most publicly highlighted case is the Roe v. Wade case. The outcome of this case was the

declaration of access abortion as being a fundamental right of any woman upon determination of foetal viability. (Craig, 1993) Consequently, the conditions determining foetal viability became very conflicting. Up to now, different states continue to set up rulings concerning abortion due to their own definition of the term “ foetal viability”.

For instance, the Supreme Court is under intense pressure to rethink about the legal conditions as to when an abortion can be performed. Various petitions have been raised by different states prompting the judicial system to re-evaluate its position as expressed in the Roe vs. Wade case. In this case, I tend to think that the decision of the justices can be predicted. It is likely that the decision will change depending on the latest information regarding foetal viability. The justices would be more inclined to use the provided information to interpret the earlier documented law about abortion. The issue of prejudgement surfaces contrary to the idea stating that no case is prejudged. The aspect of interpretation rather than application of the constitution has an immense contribution.

The Supreme Court was put to spotlight in 2012 on the issue of use of race in university admissions. This was prompted by the Fisher vs. University of Texas case. The University of Texas has a program that regulates the admission of freshmen on the basis of race. The review by the Supreme Court is in progress. The court decision can be prejudged. This is so because of the underlying need to interpret diversity in learning institutions. This is contrary to the view that no case is prejudged.

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