

BETWEEN TEXT AND INTENT: JUDICIAL INTERPRETATION AT THE MARGINS OF INDIA'S CONSTITUTION

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Abstract

The Indian Constitution is a living document that is meant to last through the changing social, political and economic landscapes. Although the Constitution covers a wide range of topics, there are some issues that are not explicitly mentioned that could arise in the field of governance and constitutional adjudication. Lack of clarity, gaps and constitutional 'silences' are an issue that needs to be addressed by the judiciary in order to make constitutional institutions and fundamental rights work. To fill these lacunae, the Indian judiciary has often taken an imaginative reading route to interpret the Constitution and interpret its principles beyond the literal meaning of the Constitution and beyond traditional boundaries to meet the demands of the present.

A creative approach in the working of the judiciary has played an important role in shaping Indian constitutional jurisprudence. The judiciary has recognised rights and principles which are not mentioned in the Constitution such as the right to privacy, right to environment, and procedural safeguards under Article 21 through innovative interpretation. At the same time, concerns have been raised about judicial interpretation and the limits of judicial power, as well as the potential for judicial encroachments on the legislative and executive functions. The debate on judicial activism and judicial overreach has thus become a key issue in contemporary discussions about the constitution.

The paper deals with the concept of 'constitutional silence' and also discusses how Indian judiciary has filled up the constitutional lacunae by creative interpretation. It examines the theoretical underpinnings of judicial creativity, reviews some important judicial decisions, and considers the constitutional boundaries that ought to be respected in judicial interpretation. The paper proposes that judicial innovation must be both compatible and respectful to constitutional structure, democratic legitimacy and the separation of powers in order to safeguard constitutional values and respond to the society's new challenges; yet, it must not be excessive. The study ultimately aims to determine a proper equilibrium between Constitution's adaptability and the doctrine of judicial restraint in the Indian Constitution.

Keywords: Indian Constitutional Law, Constitutional Silence, Judicial Creativity, Constitutional Interpretation, Judicial Activism, Separation of Powers, Constitutional Morality, Fundamental Rights.

INTRODUCTION

The Constitution of India is the highest law of the land and it is the basic framework which is followed in the functioning of constitutional institutions, distribution of power, protection of rights and governance. It is a living document, and was drafted with remarkable foresight by the Constituent Assembly, who took into account the needs and aspirations of an independent nation. But, even though it is an all-encompassing document, the Constitution could not have anticipated all the social, economic, technological and political changes that might arise over time. As society has developed, and the issues of modern governance have become more complex, the constitution has been silent on many matters or has not provided clear direction about how to resolve current legal problems. These situations of constitutional silence pose serious problems for constitutional adjudication and demand a consideration of how constitutional principles can be stretched to make sense of the new realities, without losing their original constitutional meaning. As such, the judiciary plays an important role in maintaining the vitality and relevance of the Constitution in this regard.

When the text of a constitution is ambiguous or even lacking in any specific aspect, constitutional courts often are asked to interpret it. The function of constitutional interpretation is to fill in gaps in the constitution and to make it work in new situations. Judicial interpretation helps the constitutional principles to develop in tandem with social change and allows the Constitution to react to issues that were not anticipated when it was drafted. This interpretative function has often been accompanied by a certain judicial creativity, in which courts have found rights, duties, and constitutional principles in broader constitutional values instead of just a plain reading of the text. Such judicial creativity is reflected in several interesting instances in constitutional jurisprudence in India.

The broad reading of Article 21 which gives rise to multiple substantive rights reflects the adaptability of the judiciary to the needs of the times. The same way, the Basic Structure Doctrine in *Kesavananda Bharati v. State of Kerala*, was a judicial innovation which sought to carve out a core of the Constitution, though no such textual limitation on the Parliament's amending power existed. The

Supreme Court of India has been a catalyst to constitutional governance and safeguarding of fundamental rights through these and other decisions. Meanwhile, judicial creativity is a topic of much discussion. It has played an important role in the evolution of constitutional law, but questions have been raised with respect to its consequences for democratic control and institutional legitimacy.

Some critics have contended that too much judicial interpretation can result in the courts becoming indistinguishable from the legislative branch, and in this way take over what the Constitution leaves to elected officials. Such fears are frequently voiced under the rubric of judicial activism, and it is believed that courts are establishing new law instead of merely interpreting it. In this respect, unrestricted judicial creativity can lead to the erosion of the separation of powers and to the imbalance of the constitutional structure. On the other hand, those who believe in a dynamic and creative judiciary argue that the rules of judicial interpretation must not be limited to literal reading of the Constitution. They maintain that courts have a responsibility to defend constitutional values, to protect the rights of the individual, and to deal with new problems, especially when the legislature is slow to act or is unable to act.

In this opinion, judicial innovation is not judicial overreach, but a means to allow the Constitution to be a living and effective document of governance that meets the needs of the present day. In this context, the issue of 'constitutional silence and judicial creativity' therefore gives rise to fundamental questions about constitutional interpretation, judicial authority and the role of the judiciary vis-à-vis the other branches of the government. These questions take on special importance in a constitutional democracy like India where the judiciary is vested with the duty of safeguarding the supremacy of Indian Constitution without sacrificing the democratic principles. In this light, the following study aims to look into the theoretical underpinnings of the concept of constitutional silence, the way in which Indian courts have addressed the gaps in the Constitution, and the constitutional and institutional boundaries which should be placed on the creative judicial interpretation.

The study seeks to make a contribution to the understanding of the role of the judiciary in the current constitutional governance in the following ways: first, by studying its evolution and second, by examining the role it plays in the current constitutional governance.

RESEARCH OBJECTIVES:

1. To analyse the principle of constitutional silence and its relevance in the context of Indian constitution.
2. To examine the role of creativity in judicial approach to constitutional issues by means of constitutional interpretation and judicial decision-making to fill the gaps in the Constitution.
3. To test the limits of judicial interpretation in the Constitution, and to examine the tension between judicial innovation and democratic government.

RESEARCH METHODOLOGY

The methodology used in this study is doctrinal. The research is done mainly by means of secondary sources such as books, journal articles, constitutional commentaries, scholarly works and judicial precedents and constitutional provisions. The concept of constitutional silence, the emergence of judicial creativity in India and the constitutional boundaries of judicial interpretation have been explored analytically and critically. The study is based on the top judgments of the Supreme Court of India and literature on the constitutional theory, judicial review, and constitutional governance.

1. UNDERSTANDING CONSTITUTIONAL SILENCE AND JUDICIAL CREATIVITY

1.1 MEANING AND NATURE OF CONSTITUTIONAL SILENCE

Constitutional silence is when a constitution does not have an explicit provision, information or clear guidance on a specific matter. This is because the framers of the Constitution might not have thought of all these possibilities and/or they actually meant for some issues to be left as open as possible for future elucidation. Constitutional courts must face new challenges arising from society's development and change over the years, as well as new legal, political, social and technological contexts, which they may not have anticipated when the Constitution was drafted.

The absence of explicit provisions on a subject from a constitution does not necessarily mean that the constitutional system is weak or has a lack of provisions. In many situations, it is merely a fact of life that no constitution can anticipate all future situations. Constitutions are supposed to offer permanent principles and not specific answers to all the questions that may arise. The framers of the Constitution leave some things open to make room for future generations and institutions to mold constitutional concepts to new circumstances. Consequently, constitutional silence can be a tool that enables constitutional systems to be flexible and responsive over time.

Although one of the world's most comprehensive constitutions, the Indian Constitution also has some general and value-based provisions which can be interpreted constantly. Liberty, equality, dignity, privacy, constitutional morality and rule of law are concepts that are not captured by the text of the constitution. The exact meaning and application of their meaning have evolved over time through judicial construction. Consequently, there has been a judicial creativity in uncovering constitutional principles that define current government that have coalesced over significant constitutional gaps and ambiguities.

Undeniably, the nature of constitutional silence is closely connected to the dynamic nature of constitutional law. Constitutional values are not limited to the words in the Constitution; often, courts refer to the values of the day in interpreting constitutional provisions. In that respect, constitutional silence is frequently the basis of constitutional development and growth of law. It allows constitutional adjudication to meet the new challenges and maintain the basic values and goals of the Constitution.

1.2 JUDICIAL CREATIVITY AS A TOOL OF CONSTITUTIONAL EVOLUTION

Judicial creativity involves the capacity of courts to read the constitution in such a way that the constitution can be responsive to the evolving social facts and legal problems. Courts, rather than relying strictly on the text of the Constitution, tend to take a more purposive and value-based approach that will safeguard the intent and spirit of the Constitution. The process ensures that constitutional ideas are updated to suit the current times and makes the constitution a living and dynamic document of government.

In the constitutional system, the power of the judiciary has a significant function in coping with situations where the constitution is silent or unclear or it cannot solve the problem outright on the issue of new problems that emerge. The courts play a part in shaping the evolution of constitutional jurisprudence by interpreting the general values enshrined in the constitution, including liberty, equality, dignity, justice and the rule of law. This interpretative role will ensure that constitutional safeguards continue to have meaning and effectiveness in a society that may be different from that envisioned by the Constitution's framers, and to which they may not have been applicable.

In recent times, the Indian judiciary has used ingenious interpretation of the Constitution to interpret the scope of rights and to enhance constitutional governance. One of the most important ones is *Kesavananda Bharati v State of Kerala (1973)* in which the Supreme Court formulated the concept of Basic Structure. While the Constitution does not place substantive restrictions on the amending power of Parliament, the Court determined that there are certain fundamental aspects of the constitutional system which cannot be amended or destroyed. In this doctrine the judiciary tried to preserve the identity and core values of the constitution and at the same time ensure constitutional flexibility and continuity.

Another important instance of judicial creativity is that in the case of *K.S. Puttaswamy vs Union of India (2017)*, the Supreme Court had declared the right to privacy as a fundamental right. The Court did not find privacy as a fundamental right in the Constitution, but it was implied from the other guarantees of Article 14, 19 and 21 of the constitution which guarantee life, personal liberty, equality and freedom. In so doing, the Court answered some of the questions that contemporary society had to address in the wake of technological development, digital surveillance, and informational privacy.

The decisions show how judicial creativity can be a powerful tool in the evolution of the Constitution. By creatively interpreting the Constitution, courts not only settle constitutional conflicts, but also they help develop constitutional principles and the safeguard of individual rights. Such creativity, however, needs to be limited by the constitution so as not to supersede the responsibility of the legislature, or to efface democratic government.

2. JUDICIAL CREATIVITY AND CONSTITUTIONAL GOVERNANCE

2.1 EXPANSION OF FUNDAMENTAL RIGHTS

One of the most significant contributions of judicial creativity in India has been the expansion of the scope and content of fundamental rights. The framers of the Constitution provided a broad framework of rights, but the practical meaning and application of many of these rights have been shaped through judicial interpretation. Over the years, the Supreme Court has adopted an increasingly liberal and purposive approach to constitutional interpretation, ensuring that fundamental rights remain relevant in changing social and political circumstances.

A notable example of this evolution can be seen in the interpretation of Article 21, which guarantees the right to life and personal liberty. In its early years, Article 21 was interpreted narrowly, with courts largely confining themselves to the literal wording of the provision. However, this approach underwent a major transformation with the landmark decision in *Maneka Gandhi v. Union of India (1978)*. In this case, the Supreme Court held that any procedure affecting life or personal liberty must be fair, just, and reasonable. The judgment effectively introduced the concept of substantive due process into Indian constitutional law and significantly broadened the protection available under Article 21.

Following this decision, the judiciary progressively recognised a wide range of rights as integral components of the right to life and personal liberty. These included the right to education, the right to a clean and healthy environment, the right to legal aid, the right to livelihood, the right to shelter, and eventually the right to privacy. Through such interpretations, the Court transformed Article 21 from a narrowly framed provision into a comprehensive source of protections necessary for leading a life with dignity. These developments demonstrate the important role played by the judiciary in adapting constitutional rights to contemporary social realities and ensuring that constitutional guarantees remain meaningful in practice.

2.2 CONSTITUTIONAL MORALITY AND TRANSFORMATIVE CONSTITUTIONALISM

In recent years the use of the notions of constitutional morality and transformative constitutionalism has become important tools of interpretation. The concepts are based on the notion that the Constitution is not only a law but also a tool for social change, designed to foster the ideals of justice, equality, freedom, and human dignity. When the written text of the constitution is not explicit, or when social practices run counter to it, courts have turned to the principles to inform their interpretation of the constitution.

Constitutional morality is about respecting the values that permeate the Constitution, not simply taking it for granted that they are the norms of society or that they reflect the overwhelming views of the majority. A similar method was used by the Supreme Court in *Navtej Singh Johar v. Union of India* (2018), which abolished the criminality of consensual same-sex relations, through a reading down of Section 377 of the Indian Penal Code. The Court affirmed the constitutional values for dignity, equality, privacy and individual autonomy and stated that the values of the constitution should be more important than social prejudice and historical discrimination.

The same thing was done in the *Sabarimala case*, *Indian Young Lawyers Association v. State of Kerala* (2018). The Court looked at the bans on women's access to the Sabarimala temple and evaluated their legitimacy in the context of the Constitution's fundamental tenets of equality, non-discrimination and dignity. The judgment was a testament to the vision of the Constitution and a reminder for the judiciary to protect constitutional values, even when they come into conflict with entrenched social norms and practices.

The decisions are examples of how constitutional morality and transformative constitutionalism allow courts to deal with constitutional silence and ambiguity and to further the overall purposes of the Constitution. The judiciary has played a key role in the evolution of the Constitution and in upholding the Constitution as a tool for social transformation and the safeguarding of fundamental rights, by applying these principles.

3. LIMITS OF JUDICIAL INTERPRETATION IN INDIA

3.1 JUDICIAL ACTIVISM VS. JUDICIAL OVERREACH

The function of the judiciary in filling gaps in the constitution has been a topic for debate about the "line between the legitimate and the illegitimate" between judicial activism and judicial overreach. Judicial activism is a general term that describes the proactive stance taken by courts in the protection of constitutional values, fundamental rights and the limitation of government within constitutional bounds. Judicial activism has been used by courts to deal with problems which were not sufficiently regulated by legislation or for which executive action was inadequate or which were not dealt with by the executive action because executive action failed to meet constitutional principles.

But, when judges get too much involved in interpretation and start enforcing policies, concerns emerge. The doctrine of separation of powers, which is a core principle of constitutional governance, mandates the separation of the three branches of government: legislative, executive and judicial. There is a certain overlap, but if one organ takes over functions which are more appropriately assigned to the other, the constitutional balance can be disturbed.

Those who fear overreaching judicial power have been concerned at times at the creeping scope of judicial authority that touches upon policy making, administration or legislative decisions, areas normally considered the domain of elected institutions. Judges are not directly elected by the voters, and their excessive involvement in governance related issues might lead to questions about democratic legitimacy and institutional accountability. Judicial creativity from this point of view, should not be an excuse for changing the legislature's will with one of the judges.

However, it is crucial to acknowledge that sometimes a constitutional right is at stake or the other two arms of government are unable or unwilling to intervene. The challenge is not yet to abandon judicial creativity, but to make sure judicial creativity is grounded in constitutional principles and is applied with sensitivity to the institutional context. If the goal of judicial innovation is to implement constitutional values, rather than crafting new policy, then it is most legitimate.

3.2 NEED FOR CONSTITUTIONAL RESTRAINT

As important is the power of the judiciary must be the exercise of that power and the accompanying constitutional restraint. Courts have a critical function in enforcing the Constitution and in filling it in, but they need to be aware of the restrictions on the constitutional framework. The constitution should be interpreted not solely based on the text, but on the principles that should be underlying the constitution, the historical background of the constitution and the overall structure of democratic government.

Courts are not passive in the face of injustice or constitutional violations when it is the case of constitutional restraint. Instead, it emphasizes that the judgment should be made with respect to constitutional reasoning that is already in place, not on the judge's own views of the kind of public policy he or she would like. Courts are not to rewrite the Constitution, but to interpret it. Judicial creativity has to take place within a framework that remains faithful to the separation of interpretation and law-making.

Spending a bit less on it also helps maintain institutional legitimacy, by respecting what is in charge of the legislators and the executives. Representatives have democratic authority to make policy and make laws, and courts have the authority to make sure that the policy and laws are constitutional. This distinction is important when courts are aware of it, as it improves the functioning of constitutional governance and boosts public trust in institutions.

The quest for a proper balance between adaptability and restraint is therefore the main issue in constitutional adjudication. New issues can sometimes necessitate the courts to build new silences or to extend existing rights. However, any such developments should be in keeping with the values, structure and spirit of the Constitution. A well-principled and balanced stance helps assure the judiciary to participate in a constitutional process without compromising democratic accountability and the separation of powers. In this manner, the duty of constitutional interpretation not only serves as a tool for continuity but also for change, ensuring that the Constitution's character remains unchanged while it adapts itself to the changing needs of the people.

CONCLUSION AND SUGGESTIONS

Constitutions are meant to be perpetual, but no constitution can forcefully cover all future social, political, technological or legal changes. As a result, constitutional silence is an unavoidable aspect of constitutional governance. These absences do not necessarily mean that the Constitution is deficient; they are simply a reflection of the fact that the constitutional framers cannot anticipate all the situations that might occur in future generations. In a live democracy such as India, the Constitution's silence can also provide room for the development and interpretation of the law.

The Indian judiciary has contributed much to plugging gaps in the Constitution and applying the principles of the Constitution to the modern day. By creatively and purposively interpreting the Constitution, the judiciary has enlarged the concept of fundamental rights, enhanced constitutional governance and safeguarded individual freedoms. Judicial innovations like the Basic Structure Doctrine, the recognition of the right to privacy and the use of constitutional morality have shown the judiciary to be capable of preserving the constitutional values in new social realities. Such developments have added significantly to the constitutional jurisprudence in India and have strengthened the living nature of the Constitution.

In parallel, the judicial creativity will involve issues of the boundaries of judicial power. Courts have a role to play in clarifying the Constitution but they must be aware of the rule of law and democratic principles as well as separation of powers. Legitimacy of judicial interpretation comes from text, structure, values, and purpose of constitutions. Over-ambitious judicial role may lead to imbalance in the system and loss of democratic accountability. Hence, creativity in the judiciary should be guided by principles, be within limits and it must be firmly rooted in Constitutional values.

Constitutional considerations are relevant, and it is recommended that courts remain purpose-focused and value-based while being constitutionally mindful. Judicial reasoning can be enriched and constitutional interpretation more legitimist if reliance is placed on constitutional history, comparative constitutional jurisprudence, constitutional philosophy, and the general goals of the Constitution. Whereas courts should aim to resolve constitutional lacunae in a way that further justice and respects rights, whilst also respecting the legislative and executive functions.

The problem is in balancing constitutional continuity and constitutional evolution. A system that lacks flexibility can be paralysed to cope with the present needs, and one that allows unchecked judicial innovation can impair the democratic system. The survival of Indian constitutionalism, therefore, hinges on a judicious and judicious interpretation of the constitution which can maintain constitutional values, constitutional boundaries and a future-oriented approach to the Constitution that is responsive to the changing needs of society. This will help the Constitution to remain a sound tool of governance, liberty, equality and justice for future generations.

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