



INDIAN JOURNAL OF LEGAL AFFAIRS AND RESEARCH

VOLUME 3 ISSUE 1

Peer-reviewed, open-access, refereed journal

IJLAR

+91 70421 48991
editor@ijlar.com
www.ijlar.com

DISCLAIMER

The views and opinions expressed in the articles published in the Indian Journal of Legal Affairs and Research are those of the respective authors and do not necessarily reflect the official policy or position of the IJLAR, its editorial board, or its affiliated institutions. The IJLAR assumes no responsibility for any errors or omissions in the content of the journal. The information provided in this journal is for general informational purposes only and should not be construed as legal advice. Readers are encouraged to seek professional legal counsel for specific legal issues. The IJLAR and its affiliates shall not be liable for any loss or damage arising from the use of the information contained in this journal.

Introduction

Welcome to the Indian Journal of Legal Affairs and Research (IJLAR), a distinguished platform dedicated to the dissemination of comprehensive legal scholarship and academic research. Our mission is to foster an environment where legal professionals, academics, and students can collaborate and contribute to the evolving discourse in the field of law. We strive to publish high-quality, peer-reviewed articles that provide insightful analysis, innovative perspectives, and practical solutions to contemporary legal challenges. The IJAR is committed to advancing legal knowledge and practice by bridging the gap between theory and practice.

Preface

The Indian Journal of Legal Affairs and Research is a testament to our unwavering commitment to excellence in legal scholarship. This volume presents a curated selection of articles that reflect the diverse and dynamic nature of legal studies today. Our contributors, ranging from esteemed legal scholars to emerging academics, bring forward a rich tapestry of insights that address critical legal issues and offer novel contributions to the field. We are grateful to our editorial board, reviewers, and authors for their dedication and hard work, which have made this publication possible. It is our hope that this journal will serve as a valuable resource for researchers, practitioners, and policymakers, and will inspire further inquiry and debate within the legal community.

Description

The Indian Journal of Legal Affairs and Research is an academic journal that publishes peer-reviewed articles on a wide range of legal topics. Each issue is designed to provide a platform for legal scholars, practitioners, and students to share their research findings, theoretical explorations, and practical insights. Our journal covers various branches of law, including but not limited to constitutional law, international law, criminal law, commercial law, human rights, and environmental law. We are dedicated to ensuring that the articles published in our journal adhere to the highest standards of academic rigor and contribute meaningfully to the understanding and development of legal theories and practices.

THE INDIAN CONSTITUTION IN JUDICIAL HANDS: INTERPRETATION, INNOVATION, AND CONSTITUTIONAL RESTRAINT

AUTHORED BY - NANDINI BERRY

Guru Gobind Singh Indraprastha University, New Delhi

The Constitution of India, which came into force in 1950, was conceived not as a static legal code but as a dynamic framework capable of responding to the changing social, political, and moral aspirations of the nation. Over the decades, judicial interpretation has played a pivotal role in ensuring this adaptability, enabling the Constitution to remain relevant without compromising its core principles. Through interpretative ingenuity, the judiciary has mediated the tension between constitutional continuity and social transformation, carefully navigating the boundaries between judicial innovation and institutional restraint. This study explores the idea of judicial creativity as an essential tool for preserving constitutional identity while giving practical meaning to the moral and ethical commitments embedded in the constitutional text. By engaging with landmark Supreme Court judgments, insights from the Constituent Assembly Debates, observations of eminent jurists and senior advocates, and scholarly commentaries, the article examines key areas where judicial innovation has been most pronounced. These include the articulation of the basic structure doctrine, the expansive interpretation of Article 21, the evolution of equality jurisprudence, the reinforcement of federal principles, and the development of public interest litigation as an instrument of social justice. The discussion further emphasizes how the judiciary has invoked the concept of constitutional morality to harmonize democratic values with the protection of fundamental rights, particularly in contexts where legislative or executive action has been inadequate or exclusionary. Judicial reasoning in these cases reflects a conscious effort to uphold democratic legitimacy while ensuring that constitutional promises are not rendered illusory. The article concludes that judicial creativity, when exercised with discipline and constitutional fidelity, is not an aberration but a necessity in a constitutional democracy. It serves as a vital mechanism for preserving the Constitution as a living instrument, one that responds

meaningfully to contemporary challenges while maintaining respect for legislative supremacy and the separation of powers.

The Indian Constitution represents a carefully calibrated balance between constitutional stability and the capacity for change. Drafted in the shadow of colonial domination and at a moment of profound national transition, it was designed to serve not merely as a legal charter but as a transformative instrument capable of addressing India's vast social, political, and economic complexities. The framers were acutely aware that no constitutional text, however meticulously drafted, could anticipate the full range of future challenges confronting the nation.

Dr. B. R. Ambedkar, as the principal architect of the Constitution, consistently underscored that the endurance of the constitutional framework would depend less on rigid adherence to its words and more on the spirit in which it was interpreted and applied. He introduced the idea of *constitutional morality* to convey the belief that constitutional governance requires a deep ethical commitment from institutions responsible for its implementation. For Ambedkar, constitutional morality was not an abstract ideal but a guiding principle that demanded restraint, responsibility, and fidelity to democratic values. He warned that a purely literal or mechanical interpretation of constitutional provisions could hollow out its emancipatory promise, reducing it to a procedural shell devoid of moral substance. In his view, the Constitution could remain alive and effective only if its interpreters, particularly the judiciary, approached it with ethical sensitivity, historical awareness, and a commitment to justice beyond formalism.

Within this constitutional framework, judicial interpretation emerges not as a matter of institutional discretion but as a functional imperative essential to constitutional governance. Justice H. R. Khanna famously articulated the view that the Constitution must be understood as a living document, one that draws continuity from its foundational values while remaining responsive to the evolving needs of society. This perspective recognizes that constitutional provisions, expressed in broad and principled language, require contextual interpretation to address new social realities, technological developments, and shifting political conditions.

In this mediatory role, courts translate abstract constitutional ideals into enforceable norms, bridging the gap between enduring principles and the practical demands of governance. Judicial creativity operates as the means through which constitutional rights and guarantees acquire tangible meaning in lived experience. Far from being an unrestrained exercise of power, such creativity is circumscribed by constitutional text, precedent, and institutional limits, ensuring that innovation does not collapse into judicial overreach.

Eminent constitutional lawyers, most notably Nani A. Palkhivala, echoed this understanding by emphasizing the judiciary's responsibility to preserve the Constitution's structural coherence while remaining attentive to the democratic process. Palkhivala cautioned that while courts must act as vigilant guardians of constitutional values, they must do so with sensitivity to the roles of elected institutions. Judicial creativity, in this sense, is a disciplined and principled endeavor, one that safeguards constitutional identity, respects democratic legitimacy, and enables the Constitution to function as a responsive instrument of governance in a changing society.

Judicial Creativity as Institutional Necessity

Constitutional silences are an inherent and deliberate feature of the Indian Constitution. The framers consciously articulated many of its provisions in broad and open-textured language, employing concepts such as liberty, equality, and dignity that resist exhaustive definition. These principles were intended to remain flexible, capable of accommodating unforeseen social realities and evolving moral understandings. It is within these interpretative spaces that judicial creativity assumes particular significance, enabling courts to give concrete meaning to constitutional ideals without altering the text itself. Justice V. R. Krishna Iyer vividly captured this responsibility when he described judges as trustees of the Constitution, entrusted with the task of ensuring that constitutional guarantees are realized in substance rather than reduced to empty formalities.

The judicial evolution of Article 21 offers a compelling illustration of how constitutional silences have been addressed through principled interpretation. In its early jurisprudence, most notably in *A.K. Gopalan v. State of Madras* (1950), the Supreme Court adopted a narrowly positivist approach, confining the right to life and personal liberty to the mere satisfaction of procedural

requirements prescribed by law. This interpretation treated fundamental rights as isolated compartments, limiting the transformative potential of the Constitution.

A decisive shift occurred with the landmark judgment in *Maneka Gandhi v. Union of India* (1978), which fundamentally redefined the constitutional understanding of personal liberty. The Court rejected formalistic reasoning and instead read Articles 14, 19, and 21 as an integrated framework for the protection of individual freedom. Justice P. N. Bhagwati articulated a substantive conception of life, emphasizing that the constitutional guarantee extends beyond physical existence to include dignity, autonomy, and the conditions necessary for meaningful human development. Through this interpretative leap, the judiciary bridged the gap between abstract constitutional promises and lived human experience, demonstrating how disciplined judicial creativity can advance rights without undermining constitutional structure.

Scholarly commentary reinforces the view that such interpretative innovation is not unbounded. Judicial creativity, particularly in the realm of fundamental rights, is guided by ethical and normative constraints rooted in constitutional morality. This moral framework operates as a compass for judicial discretion, ensuring that interpretation remains aligned with democratic values, the rule of law, and the Constitution's commitment to social justice. Far from representing judicial excess, this approach reflects a conscious effort to fulfill the Constitution's transformative vision while preserving its legitimacy and institutional balance.

Constitutional Morality: The Ethical Compass

Constitutional morality functions as a vital normative anchor that ensures judicial creativity remains both principled and institutionally legitimate. It provides the ethical framework within which courts can interpret constitutional provisions expansively while remaining faithful to the Constitution's foundational values. Justice D. Y. Chandrachud has repeatedly emphasized that the judiciary bears a constitutional responsibility to protect fundamental rights even in the face of dominant public opinion or majoritarian impulses. In his view, constitutional adjudication cannot be reduced to a mere reflection of popular will; it must instead uphold the deeper moral commitments embedded in the constitutional order.

Judicial innovation, when guided by constitutional morality, is thus rooted in reasoned ethical judgment rather than subjective preference. Courts draw legitimacy not from the novelty of their interpretations but from their fidelity to the constitutional text, its structural principles, and the accumulated wisdom of precedent. This moral grounding ensures that judicial creativity operates as a stabilizing force, reinforcing the Constitution's promise of justice, liberty, and equality rather than destabilizing democratic governance.

Legal theorists have consistently argued that it is this ethical foundation that distinguishes legitimate judicial creativity from impermissible judicial overreach. Innovation informed by constitutional morality enhances public confidence in the judiciary by demonstrating that interpretative departures are motivated by constitutional necessity rather than personal ideology. It offers courts a principled pathway to respond to social change while respecting the separation of powers, ensuring that innovation serves the Constitution itself and not the individual predilections of those entrusted with its interpretation.

The Basic Structure Doctrine: Preserving Constitutional Integrity

The landmark decision in *Kesavananda Bharati v. State of Kerala* (1973) stands as one of the most compelling illustrations of judicial creativity employed as a constitutional safeguard rather than an assertion of judicial dominance. At a time when the scope of Parliament's amending power under Article 368 was the subject of intense political and legal contestation, the Supreme Court was confronted with the challenge of reconciling constitutional flexibility with the need for structural permanence. The Court responded by articulating the basic structure doctrine, holding that while Parliament possesses wide authority to amend the Constitution, it cannot alter or destroy its essential features.

These foundational elements such as democracy, the rule of law, separation of powers, and the protection of fundamental rights were identified as integral to the Constitution's identity and continuity. Justice Y. V. Chandrachud clarified that the doctrine was not intended to elevate judicial power above legislative authority but to preserve the core architecture of the constitutional

order. In his reasoning, the doctrine functioned as a means of maintaining constitutional balance, ensuring that constitutional change does not culminate in constitutional self destruction.

Eminent constitutional lawyers, most notably Nani Palkhivala, welcomed the judgment as a necessary bulwark against legislative excess. They viewed the doctrine as a principled restraint that reinforces, rather than undermines, democratic governance by ensuring that elected institutions operate within constitutionally prescribed limits. The basic structure doctrine thus exemplifies disciplined judicial creativity an intervention that enforces structural boundaries while respecting parliamentary supremacy within those boundaries. By safeguarding constitutional continuity, the judiciary reaffirmed its role as a custodian of the Constitution without encroaching upon the legitimate domain of legislative policymaking.

Article 21: Substantive Expansion of Rights

The interpretation of Article 21 has undergone a profound transformation, moving away from narrow procedural formalism toward a substantive and purposive understanding of the right to life and personal liberty. The watershed judgment in *Maneka Gandhi vs Union of India* marked a decisive break from earlier positivist approaches, redefining Article 21 as a repository of substantive freedoms rather than a mere procedural safeguard. The Court recognized that the constitutional promise of life and liberty would be hollow if confined to formal legality alone.

Justice P. N. Bhagwati played a central role in shaping this expansive vision, asserting that constitutional guarantees must be informed by ethical reasoning and grounded in social realities. He emphasized that the right to life encompasses more than physical existence; it includes dignity, autonomy, and the material conditions necessary for a meaningful human life. This interpretative shift infused Article 21 with moral content, aligning constitutional rights with the lived experiences of individuals in a changing society.

Building upon this foundation, subsequent judicial decisions have progressively broadened the scope of Article 21 to address emerging and complex challenges. The Court has interpreted the right to life to include environmental protection, recognizing in *Subhash Kumar v. State of Bihar*

that access to a clean and healthy environment is integral to human dignity. Similarly, in *Justice K. S. Puttaswamy v. Union of India* (2017), the Court affirmed the right to privacy as an intrinsic component of personal liberty, autonomy, and individual identity in the digital age. During the COVID-19 pandemic, public health litigation further demonstrated the elasticity of Article 21, as courts underscored the state's obligation to safeguard health, access to medical care, and humane conditions during public emergencies.

In each of these contexts, judicial creativity functioned as a responsive mechanism, enabling constitutional principles to address contemporary realities without departing from constitutional morality. Advocates and scholars alike have noted that such interpretative developments enhance state accountability while remaining sensitive to institutional limitations. Rather than constituting judicial overreach, these decisions exemplify disciplined constitutional interpretation, one that strengthens the protective capacity of fundamental rights while respecting the balance between judicial authority and democratic governance.

Equality Jurisprudence: Article 14 and Substantive Justice

Article 14, which enshrines the principle of equality before the law, has undergone a significant evolution in judicial interpretation. In its early application, the provision was understood in largely formal terms, emphasizing equal treatment and the doctrine of reasonable classification. While this approach provided a framework for assessing legislative distinctions, it often proved inadequate in addressing deeper forms of structural inequality embedded in social and economic realities.

Over time, the Supreme Court broadened the scope of Article 14 to confront arbitrariness in state action, recognizing that equality is undermined not only by explicit discrimination but also by unjust, unreasonable, or disproportionate exercises of power. This interpretative expansion marked a shift from formal equality toward a more substantive understanding of fairness. Justice D. Y. Chandrachud has consistently emphasized that substantive equality requires attention to context, acknowledging that identical treatment may perpetuate disadvantage rather than remedy it. In this view, equality is concerned not with mechanical uniformity but with the creation of conditions that enable genuine fairness and inclusion.

The development of doctrines such as arbitrariness, proportionality, and reasonableness through judicial interpretation reflects a careful exercise of judicial creativity. These principles equip courts with the tools to scrutinize state action while remaining within constitutional boundaries. By applying these doctrines, the judiciary has been able to protect marginalized and disadvantaged groups without displacing legislative intent or encroaching upon policymaking functions.

Legal scholars have observed that this evolving equality jurisprudence gives practical effect to the Constitution's transformative aspirations. It illustrates how judicial innovation, when guided by principle and constitutional morality, can translate abstract ideals into enforceable norms. Rather than representing judicial excess, such interpretation exemplifies disciplined creativity—an approach that strengthens constitutional governance by aligning legal equality with substantive justice.

Federalism and Structural Balance

India's federal architecture reflects a carefully constructed balance between a strong central authority and meaningful autonomy for the states. This design was shaped by the framers' desire to maintain national unity while accommodating the country's immense regional, linguistic, and cultural diversity. However, the constitutional experience in the decades following independence revealed that this balance was not always respected in practice. In particular, the repeated and politically motivated invocation of Article 356, which allows for the imposition of President's Rule in states, exposed the vulnerability of federal principles to executive misuse.

Judicial intervention became necessary to arrest this erosion of democratic federalism. The landmark judgment in *S. R. Bommai v. Union of India* (1994) marked a decisive moment in the constitutional understanding of Centre-State relations. The Supreme Court asserted that federalism is not merely an administrative arrangement but a core constitutional principle that limits the exercise of executive power. By subjecting proclamations under Article 356 to judicial review and insisting on objective material to justify such action, the Court sought to restore accountability and prevent the arbitrary dismissal of elected state governments.

Justice B. P. Jeevan Reddy, in his reasoning, emphasized that federalism is intrinsic to democratic pluralism, enabling diverse political voices and regional aspirations to find expression within the constitutional framework. His observations underscored the idea that democracy in India cannot function meaningfully without respect for state autonomy and constitutional balance.

Judicial creativity in the realm of federalism, as exemplified by this decision, operates as a mechanism of constitutional preservation rather than policy formulation. By reinforcing structural limits and reaffirming foundational principles, the judiciary intervened in a disciplined and restrained manner, protecting the federal equilibrium without encroaching upon the legitimate domain of political decision-making. This jurisprudence illustrates how judicial innovation can strengthen constitutional governance while remaining faithful to institutional boundaries and democratic legitimacy.

Public Interest Litigation: Procedural Innovation

Public Interest Litigation (PIL) represents one of the most significant instances of procedural innovation in Indian constitutional jurisprudence. By relaxing traditional rules of locus standi, the judiciary transformed access to justice from an individual privilege into a collective constitutional entitlement. Justice V. R. Krishna Iyer was a leading proponent of this shift, advocating a more inclusive understanding of standing that would allow courts to hear the grievances of marginalized and disadvantaged groups who were otherwise unable to approach the judiciary due to social, economic, or institutional barriers.

Through PIL, courts enabled constitutional rights to move beyond formal recognition and acquire practical enforceability. Scholars have observed that this procedural creativity gives concrete expression to constitutional morality by ensuring that the promises of justice, dignity, and equality are not confined to paper declarations. PIL has been instrumental in addressing systemic issues such as environmental degradation, custodial abuse, bonded labour, and access to basic civic amenities areas where conventional litigation often proved inadequate.

At the same time, the expansion of judicial involvement through PIL has not been free from criticism. Critics caution that excessive or unprincipled intervention risks blurring the separation of powers and drawing courts into matters better suited for executive or legislative resolution. In response, proponents argue that PIL remains constitutionally legitimate only when it is exercised with restraint and guided by clearly defined constitutional purposes. When aligned with fundamental rights and democratic values, PIL exemplifies a form of judicial creativity that is both responsive and disciplined, one that strengthens constitutional governance without undermining institutional balance

Democratic Legitimacy and Judicial Limits

Judicial creativity, by its very nature, often assumes a counter-majoritarian character, particularly in constitutional democracies where courts are entrusted with the protection of fundamental rights. In performing this role, the judiciary is frequently required to act as a check on transient majoritarian impulses that may undermine constitutional values. Justice H. R. Khanna consistently underscored that the exercise of this counter-majoritarian function must be tempered by humility and a deep respect for legislative authority. He cautioned that while courts must not hesitate to defend constitutional principles, they should do so with an awareness of the limits of judicial power and the primacy of democratic institutions in policy formulation.

Judicial innovation, therefore, does not operate in isolation or opposition to democratic governance. Rather, it is guided by the constitutional text, informed by precedent, and anchored in ethical reasoning that seeks to preserve institutional balance. Courts innovate not to supplant the legislature but to ensure that constitutional commitments are upheld when political processes fall short. This approach reflects a conscious effort to harmonize judicial responsibility with democratic legitimacy.

The concept of dialogic constitutionalism further illuminates this relationship. Through an iterative and ongoing engagement between the judiciary and the legislature, constitutional meaning is shaped over time rather than imposed unilaterally. Judicial decisions often invite legislative response, refinement, or reconsideration, fostering a constitutional dialogue that enhances

democratic accountability. In the Indian context, this dialogic process has enabled courts to strike a careful balance between creativity and restraint. By preserving the Constitution's core identity while remaining responsive to evolving social challenges, the judiciary has contributed to a constitutional order that is both stable and dynamic.

Landmark Interpretive Innovations (2025–26)

Recent constitutional adjudication demonstrates that judicial creativity in India continues to evolve in response to contemporary governance challenges, while remaining anchored in democratic legitimacy and constitutional restraint. Courts have increasingly engaged with questions of institutional accountability, separation of powers, and rights protection, illustrating how interpretive innovation can reinforce, rather than disrupt, constitutional balance.

Governor's Powers and Judicial Limitation (Articles 200–201)

The Supreme Court's decision in *State of Tamil Nadu v. Governor of Tamil Nadu* (April 2025) represents a significant recalibration of gubernatorial discretion under Articles 200 and 201. By holding that Governors cannot exercise absolute veto powers or indefinitely withhold assent to duly passed legislation, the Court addressed a long-standing constitutional ambiguity that had allowed executive inaction to undermine legislative authority. The judgment reaffirmed that the Governor's role is constitutionally bound and must operate in aid of democratic governance, not in obstruction of it. This intervention exemplifies judicial creativity deployed as a corrective mechanism—clarifying constitutional silences while preserving the federal and democratic framework envisioned by the Constitution.

Legislative Immunity and Accountability (Articles 105 & 194)

In *Sita Soren v. Union of India* (2024), the Supreme Court confronted the tension between legislative privilege and the rule of law. By ruling that Members of Parliament and State Legislatures do not enjoy immunity from prosecution for criminal acts such as bribery, the Court reinforced the principle that constitutional privileges are functional protections, not personal shields. The judgment carefully balanced the autonomy of legislative institutions with the foundational commitment to accountability and equality before the law. This decision illustrates

disciplined judicial creativity, one that refines constitutional interpretation to prevent abuse while respecting the institutional role of legislatures.

Religious Freedom and Reform: Waqf (Amendment) Act, 2025 (Articles 25 & 26)

The Supreme Court's interim approach to the Waqf (Amendment) Act, 2025 reflects a nuanced exercise of interpretive restraint. By safeguarding core aspects of religious freedom under Articles 25 and 26 while permitting legislative reform to proceed, the Court avoided both constitutional paralysis and unchecked intervention. This balanced stance demonstrates how judicial creativity can mediate between societal reform and minority rights, ensuring that constitutional protections are preserved without foreclosing democratic experimentation.

Engagement with International Norms and the UN Charter

Indian constitutional interpretation has increasingly drawn upon international human rights principles, particularly those embodied in the United Nations Charter. Courts have invoked the Charter's emphasis on peaceful dispute resolution, respect for human rights, and the promotion of fundamental freedoms to enrich domestic constitutional meaning. The recognition of privacy as a fundamental right in *Puttaswamy* reflects this transnational engagement, aligning constitutional dignity and autonomy with global human rights norms articulated in Articles 1 and 13 of the UN Charter. Such interpretive openness underscores India's commitment to constitutionalism as part of a broader international legal order.

Environmental and Administrative Justice under Articles 14 and 21

Recent judicial interventions further illustrate the adaptive reach of constitutional interpretation. Judicial safeguards for the Aravalli Hills reaffirm the understanding of Article 21 as encompassing environmental justice and intergenerational equity. Similarly, proactive judicial responses to forest land encroachments in Uttarakhand reflect the Court's willingness to protect ecological interests where administrative action has been insufficient. Decisions quashing arbitrary village renaming practices reinforce the non-arbitrariness mandate under Article 14, emphasizing that state power must be exercised rationally and transparently.

Article 32 and the Supreme Court as the Sentinel on the Qui Vive

Dr. B. R. Ambedkar's characterization of Article 32 as the "heart and soul of the Constitution" captures its centrality to India's constitutional architecture. Unlike many constitutional systems in which the enforcement of rights depends largely on legislative action or indirect judicial review, the Indian Constitution places the remedy for rights violations at the very core of constitutional governance. By empowering citizens to directly approach the Supreme Court for the enforcement of fundamental rights, Article 32 transforms the judiciary from a passive arbiter into an active guardian of constitutional guarantees.

Judicial interpretation has progressively elevated Article 32 from a purely procedural provision into a substantive instrument for the protection of constitutional liberty. The Supreme Court has consistently recognized that the mere declaration of rights is insufficient unless accompanied by effective and accessible remedies. Justice P. N. Bhagwati poignantly observed that without meaningful enforcement mechanisms, fundamental rights risk degenerating into "mere parchment promises." Guided by this understanding, the Court has employed interpretive creativity to relax rigid procedural requirements, broaden rules of standing, and prioritize access to justice for marginalized and disadvantaged sections of society.

This evolution of Article 32 reflects constitutional morality in practice—a judiciary acutely aware of its responsibility to convert constitutional ideals into lived realities. At the same time, the Court has exercised restraint by anchoring this creative interpretation firmly within the constitutional text. By repeatedly affirming that Article 32 itself constitutes a fundamental right, the judiciary has underscored that its expansive role in rights enforcement is not self-assumed but constitutionally mandated. In this way, the interpretation of Article 32 exemplifies disciplined judicial creativity, balancing proactive constitutional guardianship with fidelity to constitutional structure and democratic legitimacy.

Article 142: Complete Justice or Constitutional Excess?

Article 142 of the Constitution occupies a distinctive place in India's constitutional framework, empowering the Supreme Court to pass such decrees or orders as may be necessary to "complete

justice” in any cause or matter before it. This provision stands as a powerful symbol of judicial innovation, while simultaneously attracting sustained constitutional debate. Its breadth reflects the framers’ recognition that rigid legal rules may, in exceptional circumstances, prove inadequate to remedy profound injustice.

Over the years, the Supreme Court has invoked Article 142 to address situations where statutory law is silent, fragmented, or procedurally constrained. Through this provision, the Court has filled legislative gaps, fashioned equitable relief, and ensured that justice is not defeated by technicalities. One of the most prominent illustrations is the Bhopal Gas Tragedy litigation, where the Court employed Article 142 to craft an unprecedented settlement framework aimed at providing immediate relief to victims in the absence of an adequate legislative mechanism. Similarly, in matrimonial disputes, environmental protection cases, and matters involving mass harm, Article 142 has enabled the Court to move beyond narrow procedural confines in pursuit of substantive justice.

At the same time, the judiciary has consistently emphasized that Article 142 does not confer unfettered authority. Justice R. F. Nariman has clarified that the provision is not a license for judicial law making, but rather a constitutional safety valve designed to prevent injustice in exceptional cases where existing legal frameworks fall short. This understanding situates Article 142 within the broader philosophy of constitutional morality, where judicial discretion is exercised in service of justice rather than institutional aggrandizement.

Recent jurisprudence further reflects a conscious trend toward constitutional restraint and self-limitation. In *Supreme Court Bar Association v. Union of India*, the Court explicitly cautioned that the power under Article 142 cannot be exercised in a manner that overrides substantive statutory provisions. This acknowledgment reinforces the separation of powers, ensuring that judicial creativity does not encroach upon the legislative domain.

Viewed in this light, Article 142 exemplifies the delicate balance between innovation and discipline in constitutional adjudication. It demonstrates how judicial creativity can operate within

principled limits, retaining flexibility to address extraordinary injustice while remaining anchored to constitutional structure, democratic legitimacy, and institutional restraint.

Digital Rights, Privacy, and the New Constitutional Frontier

The landmark judgment in *Justice K. S. Puttaswamy v. Union of India* (2017) marked a decisive moment in Indian constitutional jurisprudence by affirming the right to privacy as an intrinsic component of Article 21. In doing so, the Supreme Court did not merely recognize privacy as an ancillary interest but elevated it to the status of a foundational constitutional value. The Court grounded this recognition in the interrelated principles of human dignity, individual autonomy, and informational self-determination, emphasizing that personal liberty in a constitutional democracy is inseparable from control over one's body, choices, and personal data.

Justice D. Y. Chandrachud's articulation of privacy as a "constitutional value which straddles across fundamental freedoms" captured the breadth of the right and its deep integration within the constitutional framework. Privacy was presented not as an isolated entitlement but as a condition precedent for the meaningful exercise of other fundamental rights, including freedom of expression, association, and belief. The judgment also situated Indian constitutional interpretation within a broader global human rights discourse, drawing upon international norms and aligning its reasoning with principles reflected in the Universal Declaration of Human Rights, particularly the protection against arbitrary interference with privacy, family, and correspondence.

Judicial Engagement with Technology and Surveillance

In the aftermath of *Puttaswamy*, the judiciary has been increasingly called upon to confront complex questions arising from rapid technological advancement and expanding state surveillance capabilities. Courts have scrutinized the constitutional implications of large-scale digital infrastructures such as the Aadhaar identification system, examined allegations concerning the use of intrusive surveillance tools like Pegasus spyware, and evaluated evolving frameworks for digital data protection. These cases have required courts to translate abstract constitutional principles into practical safeguards in an era defined by data-driven governance.

By 2025, emerging debates surrounding artificial intelligence regulation, facial recognition technologies, and data localization policies have further tested the resilience of constitutional interpretation. In addressing these challenges, courts have generally adopted a rights-first approach, insisting that technological progress must remain subject to constitutional constraints. Judicial reasoning in this domain reflects an awareness that innovation, while necessary for development, cannot come at the cost of eroding individual freedoms or diminishing democratic accountability.

This evolving jurisprudence illustrates judicial innovation rooted in ethical constitutionalism rather than unrestrained activism. By grounding interpretive expansion in dignity, autonomy, and proportionality, the judiciary has sought to ensure that constitutional values remain effective in the digital age. The right to privacy thus stands as a powerful example of how judicial creativity can respond to contemporary realities while remaining anchored in constitutional morality and institutional restraint.

Constitutional Interpretation through the Lens of Social Justice

Indian constitutional jurisprudence has increasingly embraced the idea of transformative constitutionalism, the understanding that the Constitution is not merely a framework for governance but a normative instrument designed to actively dismantle entrenched social hierarchies and historical injustices. This approach recognizes that formal equality and passive interpretation are often insufficient to address deep-rooted discrimination arising from caste, gender, sexuality, and other axes of marginalization. Consequently, courts have interpreted constitutional provisions in a manner that reflects evolving social consciousness and the lived realities of disadvantaged communities.

Judicial engagement with issues such as reservations under Articles 15 and 16 illustrates this transformative impulse. Rather than viewing affirmative action as an exception to equality, courts have increasingly understood it as a substantive mechanism to achieve equal opportunity in a deeply unequal society. Similarly, in *Navtej Singh Johar v. Union of India*, the Supreme Court decriminalized consensual same-sex relations by reinterpreting constitutional morality in light of

dignity, autonomy, and individual choice. The judgment marked a decisive rejection of social majoritarianism in favor of constitutional values, affirming that fundamental rights cannot be hostage to prevailing social prejudice.

The Court's approach to gender justice further underscores this transformative vision. In *Joseph Shine v. Union of India*, which struck down the offence of adultery, the judiciary confronted patriarchal assumptions embedded in criminal law. By emphasizing individual agency, equality, and dignity, the Court reimagined constitutional guarantees in a manner that aligned legal doctrine with contemporary understandings of gender justice. Justice Indu Malhotra's poignant observation that "history owes an apology to members of the LGBTQ community" reflected not judicial excess, but an acute awareness of the Constitution's redemptive role in correcting historical wrongs.

Directive Principles and Judicial Creativity

Although the Directive Principles of State Policy contained in Part IV of the Constitution are expressly non-justiciable, they have exerted a profound influence on the evolution of constitutional interpretation. Courts have consistently treated these principles as vital interpretive aids, informing the content and scope of fundamental rights. Through a process of harmonization between Parts III and IV, the judiciary has ensured that socio-economic justice remains central to constitutional adjudication.

This interpretive harmony has enabled courts to infuse rights jurisprudence with concerns for education, health, livelihood, and social welfare without transgressing constitutional boundaries. Rather than undermining democratic authority, such an approach respects legislative primacy while ensuring that constitutional interpretation remains faithful to the transformative aspirations of the Constitution. In this sense, judicial creativity operates not as a substitute for democratic action, but as a catalyst that aligns constitutional governance with the promise of justice, dignity, and equality envisioned by the framers.

Comparative Constitutional Perspectives

Indian constitutional adjudication has consistently demonstrated an openness to comparative constitutional law, treating foreign jurisprudence not as a binding authority but as persuasive material that can illuminate constitutional reasoning. Courts have drawn selectively from diverse constitutional traditions to enrich interpretation, particularly where domestic law confronts novel or complex questions. This comparative engagement reflects an understanding that constitutional democracies, while rooted in distinct histories, often grapple with shared challenges relating to rights, governance, and liberty.

Judicial reasoning has occasionally drawn inspiration from the constitutional experience of the **United States**, particularly in areas concerning due process and the protection of free speech, where long-standing jurisprudence has shaped global constitutional discourse. Similarly, South Africa's post-apartheid constitutional framework has influenced Indian courts through its emphasis on dignity as a foundational constitutional value, offering a morally resonant model for rights-based adjudication. The **United Kingdom** has also provided interpretive guidance, especially in the development of proportionality analysis and human rights reasoning within a common law tradition.

At the same time, Indian courts have remained conscious of the dangers of uncritical transplantation. Justice H. R. Khanna cautioned that comparative references must always be filtered through the distinctive social, political, and constitutional context of India. He emphasized that while foreign judgments may offer intellectual insight, they cannot substitute for an interpretation grounded in indigenous constitutional values and democratic realities.

This selective and contextual adoption of comparative principles illustrates a form of judicial creativity marked by restraint rather than imitation. By engaging with global constitutional thought while preserving domestic relevance, Indian courts have demonstrated intellectual openness without compromising constitutional autonomy. Such an approach strengthens constitutional interpretation, allowing it to remain both globally informed and deeply rooted in the lived conditions of Indian society.

Judicial Restraint: Doctrine, Practice, and Necessity

Judicial restraint should not be mistaken for judicial passivity; rather, it reflects a form of institutional wisdom rooted in constitutional responsibility. Restraint signifies an awareness of the judiciary's role within a broader democratic framework, where power is distributed among coequal branches of government. Courts restrain themselves not because they lack authority, but because constitutional legitimacy demands respect for institutional boundaries.

In practice, judicial restraint manifests in several ways. Courts often defer to legislative policy choices, particularly where elected representatives have exercised their mandate within constitutional limits. They consciously avoid entering the domain of political questions that are better resolved through democratic debate rather than judicial decree. Similarly, courts limit the issuance of advisory opinions, recognizing that constitutional adjudication must remain anchored in concrete disputes rather than abstract speculation.

This approach is especially evident in matters of economic and fiscal policy. Indian courts have consistently acknowledged that questions involving taxation, budgetary priorities, and economic regulation require specialized expertise and political accountability that lie primarily with Parliament and the executive. By deferring in such areas, the judiciary affirms the principle of institutional competence and avoids substituting judicial preferences for democratic choice. This restraint plays a crucial role in preserving democratic legitimacy and sustaining public confidence in constitutional governance.

H. R. Khanna eloquently captured this philosophy when he observed that “judicial review is a great power, but it is also a great trust.” His words underscore the idea that constitutional authority carries with it an obligation of self-discipline. Judicial restraint, therefore, is not an abdication of duty but an expression of constitutional fidelity ensuring that judicial power is exercised with humility, responsibility, and respect for the democratic process.

Judiciary, Legislature, and Dialogic Constitutionalism

Indian constitutional practice increasingly reflects the model of *dialogic constitutionalism*, in which courts and legislatures engage in an ongoing constitutional conversation rather than a relationship defined by institutional confrontation. This approach recognizes that constitutional meaning is not shaped unilaterally by any single branch of government but evolves through interaction, response, and mutual accommodation among constitutional actors.

Within this framework, judicial review does not necessarily signal finality. Instead of asserting absolute supremacy, courts often invite legislative reconsideration by identifying constitutional infirmities while leaving room for democratic correction. Legislative responses to judicial invalidations exemplify this dialogue, as Parliament and state legislatures frequently revise laws to align with constitutional standards articulated by the judiciary. In turn, courts have shown a preference for clarification, reading down, or partial invalidation rather than striking down statutes in their entirety, thereby preserving legislative intent where possible.

Dialogic engagement is also reflected in the use of time-bound compliance directives, where courts set constitutional benchmarks and grant the legislature or executive a defined period to bring laws or policies into conformity with constitutional requirements. This technique allows constitutional evolution to occur through cooperation rather than coercion.

Such dialogic practice ensures that constitutional development remains dynamic without concentrating authority in any single institution. By fostering engagement instead of supremacy, Indian constitutionalism balances judicial creativity with democratic legitimacy, reinforcing the Constitution as a shared enterprise rather than a judicial monopoly.

Contemporary Constitutional Challenges (2024–2026)

Recent interventions by the Supreme Court have significantly advanced the development of *environmental constitutionalism* in India. Judicial engagement with issues concerning the protection of the Aravalli Hills, forest conservation, and the control of urban pollution has progressively expanded the scope of Article 21 to encompass what may be described as *ecological*

dignity. The right to life is no longer confined to human survival alone but is understood to include the right to a clean, healthy, and sustainable environment. Through this interpretive evolution, environmental protection has been firmly embedded within constitutional jurisprudence, reflecting an awareness that ecological degradation poses a direct threat to human dignity, public health, and intergenerational justice.

These decisions illustrate how judicial creativity responds to contemporary environmental crises while remaining anchored in constitutional text and values. Rather than displacing legislative or executive authority, courts have acted as constitutional sentinels intervening where regulatory failures or administrative inertia jeopardize fundamental rights. Environmental adjudication thus exemplifies disciplined innovation, using constitutional principles to address modern challenges without assuming a policy-making role.

Judicial scrutiny of electoral processes further reflects the Court's commitment to preserving democratic accountability. Interventions relating to electoral bonds and campaign finance transparency demonstrate the judiciary's concern with maintaining the integrity of the democratic process. By examining the constitutional implications of opaque funding mechanisms, courts have sought to ensure that democratic participation remains informed, fair, and free from undue influence.

At the same time, judicial reasoning in this domain has been marked by caution and restraint. Rather than dictating electoral policy, courts have focused on constitutional standards such as equality, transparency, and the right to information, thereby respecting legislative prerogatives while safeguarding democratic values. This balance reinforces public confidence in electoral institutions and underscores the judiciary's role as a guardian of democratic processes rather than a rival political actor.

This research demonstrates that judicial interpretation is indispensable to the survival and vitality of the Indian Constitution. Far from being an exercise in arbitrariness, judicial creativity in India has largely evolved as a principled response to constitutional awareness, social transformation, and governance challenges. Constitutional morality emerges as a guiding compass, shaping

judicial discretion and ensuring that interpretive innovation remains ethically grounded and democratically legitimate.

Equally important is the role of judicial restraint. By respecting legislative competence, avoiding unwarranted intrusion into policy domains, and engaging in dialogic constitutionalism, courts have preserved democratic legitimacy and institutional balance. Taken together, these developments reveal that Indian constitutional practice has largely succeeded in harmonizing innovation with discipline. The judiciary has neither frozen the Constitution in time nor allowed it to drift untethered from its foundations, instead sustaining it as a living document responsive, resilient, and faithful to its transformative vision.

Conclusion: The Constitution Lives Through Judicial Conscience

The Indian Constitution does not merely survive the passage of time; it grows with it. Its evolution is neither accidental nor arbitrary, but the result of a continuous process shaped by judicial conscience, ethical reasoning, and fidelity to constitutional purpose. The endurance of the constitutional order lies not only in the resilience of its text, but in the integrity with which it is interpreted by those entrusted with its guardianship.

Judges, in this constitutional scheme, are neither architects redesigning the constitutional edifice at will nor passive umpires mechanically applying rules. They function as custodians of constitutional values, tasked with interpreting the Constitution in a manner that remains attentive to social realities, historical experience, and the moral commitments that animate the constitutional project. This role demands both imagination and restraint, an ability to respond to injustice without severing interpretation from constitutional structure.

V. R. Krishna Iyer captured this philosophy with characteristic clarity when he observed that “*the Constitution is not a lawyer’s document; it is a vehicle of life.*” His words underscore the idea that constitutional meaning must be drawn from lived human experience rather than confined to legal abstraction. A Constitution that fails to speak to the conditions of life risks becoming formally intact yet morally hollow.

Judicial interpretation, when exercised with creativity tempered by institutional humility, ensures that the Constitution remains both timeless and timely. It preserves continuity with the founding vision while enabling the constitutional order to respond meaningfully to the evolving aspirations of the nation. In this delicate balance between innovation and restraint lies the true strength of Indian constitutionalism: a Constitution that remains faithful to its origins even as it speaks to the demands of the present and the promise of the future.

Bibliography

1. Constituent Assembly Debates, Vols. I–X
2. *Kesavananda Bharati v. State of Kerala* (1973)
3. *Maneka Gandhi v. Union of India* (1978)
4. *S.R. Bommai v. Union of India* (1994)
5. *Justice K.S. Puttaswamy v. Union of India* (2017)
6. *Navtej Singh Johar v. Union of India* (2018)
7. Chandrachud, D.Y., *The Constitution of India: A Contextual Analysis*
8. Seervai, H.M., *Constitutional Law of India*
9. UN Charter, Articles 1, 12, and 13
10. Recent Supreme Court Judgments (2024–2025)

IJLAR