

The Maneka Metamorphosis: Bridging Text and Time in Constitutional Interpretation

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Abstract

The Indian Constitution, a testament to resilience and adaptability, celebrates its 75th anniversary as a transformative document embodying the nation's evolving values. The interplay between originalism, which adheres to the framers' intent, and living constitutionalism, which emphasizes adaptability, underpins the judiciary's interpretative role in shaping India's socio-legal landscape. This paper examines this evolution, with the landmark case of *Maneka Gandhi v. Union of India* (1978) as a focal point. The decision marked a shift from a rigid textual approach to a liberal, purposive interpretation of Article 21, embedding fairness, justice, and reasonableness into the concept of "procedure established by law." The judgment catalyzed expansive jurisprudence, redefining Fundamental Rights and fostering dynamic constitutionalism. This paper explores the theoretical foundations of constitutional interpretation, the methodological transitions pre- and post-*Maneka Gandhi*, and the dialectics of judicial activism and restraint. By tracing this jurisprudential journey, it underscores the judiciary's pivotal role in aligning constitutional principles with contemporary realities, balancing innovation with self-restraint.

Keywords: Constitutional Interpretation, Originalism, Living Constitutionalism, Judicial Activism, Judicial Restraint.

Introduction

As we celebrate 75 years of the Constitution of India and reflect on its rich interpretation, we see a magnificent document that is resilient and transformative. This living document has not only withstood the test of time but has also evolved dynamically to meet the aspirations of a changing society. The debate between *originalism*—which advocates interpreting the Constitution strictly as intended by its framers—and *living constitutionalism*, which emphasizes its adaptability to contemporary realities, has significantly influenced the judiciary's role in shaping India's legal and social fabric.

Among the many judgments that have defined the interpretative trajectory of the Constitution, *Maneka Gandhi v. Union of India* stands as a watershed moment. Decided in 1978, this case expanded the scope of Fundamental Rights, particularly Article 21, which guarantees the right to life and personal liberty. The ruling marked a departure from earlier restrictive interpretations, embracing a broader, more liberal approach that aligned with the spirit of constitutional morality. By interpreting "*procedure established by law*" as "*fair, just, and reasonable procedure*," the Supreme Court moved away from a narrow, textual reading to embrace a more purposive and liberal approach. This judgement had a multidimensional impact on Fundamental Rights and showed how liberal tendencies have shaped the interpretation by the Supreme Court.

The present paper explores the judiciary's power in the post-*Maneka Gandhi* period, focusing on balancing judicial activism and judicial restraint. It examines key themes such as the multiple Interpretive Methodologies used in the interpretation of the Constitution, pre and *Maneka Gandhi*; Evolutionary Jurisprudence post-*Maneka Gandhi*; and a delicate balance between Judicial surrender, restraint, activism, overreach and surrounding issues.

Theoretical Foundations of Constitutional Interpretation Approaches in India

The interpretation of constitutions has long been a subject of intense debate. The interpretation of constitutions has long been a subject of intense debate. India represents a delicate balance between preserving a constitution's foundational principles framed after a long and arduous independence struggle and adapting to contemporary societal dynamics. The Constitution emerges not merely as a legal document, but as a transformative instrument embodying the nation's core values. This ongoing discourse has led to the emergence of two primary theoretical approaches: Originalism and Living Constitutionalism. This ongoing discourse has led to the emergence of two primary theoretical approaches: Originalism and Living Constitutionalism.

A. Originalism

The meaning of the word originalism is contested and has evolved overtime. While the Oxford English Dictionary initially defined originalism as a “*judicial interpretation of the Constitution which aims to follow closely the original intentions of its drafters*”, this definition has been criticised to be simplistic and outdated. The term appears to have been coined by Professor Paul Brest in an article entitled The Misconceived Quest for the Original Understanding where he described originalism as “*the familiar approach to constitutional adjudication that accords binding authority to the text of the Constitution or the intentions of its adopters*” Building on this foundation scholars like Jack Balkin proposed a wider approach to understanding originalism. He distinguished two ideal-contrasting theories of originalism: Living Originalism and Skyscraper originalism. Skyscraper Originalism views the Constitution as a completed document, permitting amendments through formal processes but resisting broader constitutional construction. Living Originalism perceives the Constitution as an initial governance framework that requires ongoing interpretation and development through constitutional construction. According to the framework of originalism constitution can be constructed by judges as well. Other prominent legal scholars have offered varying definitions that highlight the complexity of originalist thought. Professor Frederick Schauer suggested: “*Prescriptive language is to be understood by reference to evidence of the actual, contemporaneous mental states of the inscribers of the language at issue.*” Professor Mitchell Berman offered a different definition: “*Originalism proper is strong originalism—the thesis that original meaning either is the only proper target of judicial constitutional interpretation or that it has at least lexical priority over any other candidate meanings the text might bear (again, contrary judicial precedents possibly excepted).*”

These diverse perspectives underscore the rich intellectual debate surrounding constitutional interpretation, demonstrating that originalism is not a monolithic concept but a dynamic and evolving theoretical approach.

B. Living Constitutionalism

The concept of “living constitutionalism” has its roots in the idea that a constitution is a dynamic and evolving document, rather than a static text. The origins of the phrase “living constitutionalism” are obscure. It was popularised from Howard Lee McBain’s Book —The Living Constitution. Justice Oliver Wendell Holmes metaphorically captured its essence by describing words as “*the skin of an idea*” - particularly apt for a constitution that is “*elastic, expansile, and constantly being renewed.*”

Justice William Brennan's influential 1980s formulation encapsulated the core principle: “*To remain faithful to the content of the Constitution, therefore, an approach to interpreting the text must account for the existence of these substantive value choices and must accept the ambiguity inherent in the effort to apply them to modern circumstances.*” Brennan's formulation highlights the importance of understanding the historical context in which the Constitution was written, while also recognizing that its principles must be adapted to meet the challenges of the present.

The core idea is that “living constitutionalism” sanctions departure from the constitutional text. Living constitutionalism is not merely interpretation of the constitution; it requires to ascertain the meaning of the constitution and involves constitutional construction where a provision is vague or ambiguous, when there is need to create institutions to bridge constitutional objectives. The living Constitution develops through accumulation and evolution of precedents, shaped to some degree by notions of fairness and good policy.

In the Indian context, the methodological foundations for constitutional interpretation are not static. Instead, they represent a dynamic interplay between theoretical frameworks and pragmatic constitutional necessities. This dynamic approach ensures that the Constitution remains a living, breathing document that adapts to the changing needs and values of society.

Frameworks of Interpretation Methodologies for the Constitution of India: Constitutional Assembly Debates and the Pre-Maneka Gandhi Status

The transition from colonial laws to a robust constitutional framework was marked by a fundamental reimagining of Fundamental Rights and their protection. The Government of India Act, 1935, constrained judicial review to the examination of ordinary laws due to the absence of a Bill of Rights. The Constituent Assembly was of the opinion that judicial review was a quintessential feature of the constitution, terming it the “arm of social revolution” and the “extension of the Rights”. Article 21 reads “*No person shall be deprived of his life or personal liberty except according to procedure established by law.*” The phrase ‘procedure established by law’ was subject to profound debate, an important question was raised on would the deprivation of a citizen’s life or personal liberty be undertaken under ‘procedure established by law’ or under ‘due process of law’? Due process of law, unlike the procedure established by law, looks into not just if proper procedure has been followed by the legislature while enacting it but also examines whether the law is just, fair, and non-arbitrary. The due-process clause gives a wider range of power to the judiciary and if the procedure provided by law is frivolous, oppressive, or unreasonable, then can be struck down by the judiciary. A faction of the Constituent Assembly, influenced by American experiences, wanted to grant Parliament the final say, reflecting its distrust of courts in socio-economic reforms. This resulted in the famous “due process” clause being the first to be removed from the draft Constitution and replaced by “procedure established by law”

The Supreme Court in *A.K. Gopalan v. State of Madras* was called to interpret the Fundamental Rights. The petitioner, a social and political worker, challenged his detention under the Preventive Detention Act, 1950, arguing it violated multiple fundamental rights (Articles 13, 19, 21, 22) and that the Fundamental Rights must be collectively interpreted. The Supreme Court disagreed, holding that all the fundamental rights dealt with distinct matters and should be considered in isolation. The Supreme Court held that since the conditions set out in Article 22 have been satisfied, the petitioner was not entitled to challenge his detention under Article 21. The

reasoning can be inferred as when a law meets the requirements of the fundamental right applying to it, it cannot be said that the law is against any other fundamental right. In *Gopalan*, originalist and ‘extremely positivist’ approach was used, the majority opinion was based on what it perceived as the original and historical intent of the Constitution

Another such judgement adopting a positivist approach was *Satwant Singh v. Assistant Passport Officer, Government of India* the predecessor of *Maneka Gandhi*. The petitioner in the present case challenged the state's directive to surrender his passports, claiming it violated his fundamental rights under Articles 14 and 21. While recognizing the right to life and personal liberty could be curtailed by a 'procedure established by law,' the court struck down the order for surrendering the petitioner's passports due to the lack of any procedure under the Indian Passport Act, 1920. However, like *Gopalan* the majority judgement upheld the distinction between Articles 14, 19, and 21.

The ghost of *Gopalan* was finally laid to rest in *Maneka Gandhi v. Union of India*. It was a post emergency judgement when the Janta government came to power and the limited protection to life and liberty during the *Gopalan* period stood forfeited on declaration of Emergency. The case arose as the Janta Government impounded the passport of Maneka Gandhi under the Passports Act in 1977. Maneka Gandhi, challenged this decision.

The Supreme court, taking liberal a stance, departed from the straightjacketed interpretation in *Gopalan*. It read a new dimension to Article 21 prescribing that it was not enough that the law prescribed some semblance of procedure for depriving a person of his life or personal liberty, the procedure prescribed by the law had to be reasonable, fair and just; if not, the law would be held void as violating the guarantee of Article 21.

Evolutionary Jurisprudence: Dynamics of Constitutional Interpretation Post-Maneka Gandhi

Through *Maneka Gandhi* the Supreme Court ushered in an era of expansive judicial interpretation, embedding the principles of living constitutionalism into the heart of Indian constitutional jurisprudence. Although the makers of the Constitution rejected the due process clause, *Maneka Gandhi's case effectively* meant that ‘procedure established by law’ under Article 21 would have the same effect as the expression ‘due process of law’. This fresh look at Article 21 has helped the Apex Court in its new role - as the institutional Ombudsman of Human Rights in India. A burst of creative decisions of this court fast on the heels of Maneka Gandhi gave a new meaning to Article 21 and expanded its content and connotation.

The decision became a springboard for a catena of transformative judgements. The subsequent decisions held it to include both procedural and substantive due process of law. In *M.H. Hoskot v. State of Maharashtra*, the Court held that a prisoner's right to receive a copy of the judgment imprisoning him was part of his fundamental rights, ensuring the right to appeal. In *Hussainara Khatoon v. State of Bihar*, the right to a

speedy trial was recognized as integral to Article 21, protecting against prolonged detention. *Sunil Batra v. Delhi Administration* extended liberty under Article 21 to include a prisoner's right to interact with fellow inmates and be free from torture, leading to significant prison reforms. The Court also cited the UN Declaration Against Torture in protecting prisoners. In *Olga Tellis v. Bombay Municipal Corporation*, the right to livelihood was included under Article 21, with subsequent rulings in *Prabhakaran Nair v. State of Tamil Nadu* and *Shantistar Builders v. Narayan Khimalal Totame* extending it to food and clothing. In *Nilabati Behera v. State of Orissa*, the Court awarded compensation for violations of fundamental rights, while *A.K. Roy v. Union of India* upheld preventive detention laws but reinforced procedural safeguards.

These decisions collectively expanded the scope of Article 21, safeguarding a wide range of rights. The evolution of interpretation through *Maneka Gandhi* set the stage for exploring the dialectics of judicial activism and restraint—a critical discourse where the judiciary strategically balances creative constitutional interpretation with principled judicial self-limitation

Dialectics of Judicial Activism and Judicial Restraint

Judicial activism and judicial restraint are two sides of the same coin. These represent contrasting approaches to the role of the judiciary in interpreting the law and influencing public policy.

Judicial restraint advocates for a limited role of courts, emphasizing that judges should strictly adhere to the laws as written, focusing on resolving disputes without interfering in the legislative process. Proponents argue that lawmakers, not judges, are best equipped to create laws for society, and judges should interpret the law based on its plain meaning, ensuring fairness and respecting the legislature's role in policymaking. In contrast, judicial activism takes a more proactive stance, asserting that courts should actively shape public policy, particularly when legislatures fail to address social issues or when existing laws conflict with evolving societal values. Activists argue that judges have the moral responsibility to interpret laws in ways that align with contemporary norms, even if this means creating new legal principles or striking down unjust laws. Judicial activism is rooted in the belief that law is dynamic, evolving with society's needs, and judges, being less politically influenced, are often better positioned to advance justice. Two broad themes are essential to understanding the balance between Judicial Restraint and Judicial Activism

The first theme, post-*Maneka Gandhi*, examines whether the original intent of the Constitution can be altered through judicial interpretation. The question is crucial because it explores how the judiciary navigates the tension between preserving the Constitution's original intent and addressing evolving societal needs through dynamic interpretation, thereby defining the scope of judicial restraint and activism.

The originalist view was adopted in *Gopalan*. The contemporary view can be understood through multiple judgements. In *National Textile Workers' Union v. P.R. Ramakrishnan*

“We cannot allow the dead hand to the past to stifle the growth of the living present. Law cannot stand

still; it must change with the changing social concepts and values..... similarly, if the law fails to respond to the needs of changing society, then either it will stifle the growth of the society and choke its progress or if the society is vigorous enough, it will cast away the law which stands in the way of its growth. Law must therefore constantly be on the move adapting itself to the fast-changing society and not lag behind.”

In *M. Nagaraj* it was further stated

“Constitutional adjudication is like no other decision-making. There is a moral dimension to every major constitutional case; the language of the text is not necessarily a controlling factor. Our Constitution works because of its generalities, and because of the good sense of the judges when interpreting it. It is that informed freedom of action of the judges that helps to preserve and protect our basic document of governance.”

In the latest judgment in 2024, of *Property Owner Association v. State of Maharashtra* Justice Sudhanshu Dhulia (dissent) articulated.

“The Constitution is indeed a living document. The words and meanings in the Constitution are not frozen in time, they change and evolve. The Constitution cannot be limited to the vision of its founding fathers. To borrow a phrase from Anatole France if we do that then the dead would be the living and the living the dead”

The judgments converge on the idea that the Constitution is a living document that must adapt to evolving societal contexts and values. While rooted in its foundational principles, its interpretation must transcend the originalist perspective to ensure justice, equity, and relevance in a dynamic world.

The second major theme explores whether the judiciary can legitimately enter the domain of public policy. Articles 32 and 226 empower the Supreme Court and High Courts to issue “directions, orders, or writs” to enforce constitutional rights. Additionally, Article 142 grants the Supreme Court extensive powers to pass orders to ensure “complete justice.” Over time, particularly through the evolution of Public Interest Litigation politicians, serve as more impartial arbiters in conflicts involving competing interests, a view shared by various constitutional and statutory authorities.

Ultimately, the judiciary’s challenge lies in balancing activism and restraint to preserve its credibility while fulfilling its role as the guardian of constitutional values.

Conclusion

The Indian judiciary's transformative journey, marked by its interpretations of the Constitution, reflects the inherent tension between continuity and change. At the heart of this journey lies the struggle to balance the original intent of the framers with the dynamic realities of an evolving society. This tension has been most prominently visible in the judiciary's handling of Article 21, whose expansive interpretations have redefined fundamental rights, aligning them with contemporary values of dignity, equality, and freedom.

(PIL), courts have issued directions for varied purposes, including appointing committees, mandating government actions, or directly issuing orders to parties.

With these ruling the Supreme court of India has become one of the most powerful courts in the world. Prof. Pratap Bhanu Mehta calls the Indian judiciary a deeply paradoxical institution. From one standpoint, the courts and judiciary have not only become extraordinarily powerful, but also have transformed themselves into institutions of governance, custodians of constitutional values and highest institution of accountability. From another perspective, most of the institutions of judiciary remain under a permanent state of crisis, the Supreme Court being an exception. The corruption, the backlog cases, and other institutional complaints are widely rampant. These challenges raise critical questions about judicial accountability, especially given that judges are unelected and yet wield considerable power.

Judicial overreach, where courts overstep their constitutional mandate, risks undermining public trust and destabilizing the balance of powers. Excessive activism may result in the judiciary encroaching on legislative and executive roles, eroding the separation of powers and creating governance instability. Conversely, excessive judicial restraint can lead to stagnation in legal development, unchecked abuse of power by other branches, and the judiciary’s failure to safeguard fundamental rights and ensure social justice.

Sathe states the judiciary, though institutionally limited in performing legislative or administrative roles, has increasingly ventured into areas traditionally reserved for other branches of government. It cannot establish positive rights like work, education, or shelter, nor fully enforce measures such as abolishing child labor or preventing environmental degradation; its efforts in these areas remain largely symbolic. Despite this, judicial activism has garnered support from individuals, social activists, and even the government and political players, including political parties and civil servants. While some resistance arises from those with vested interests, the broader political establishment demonstrates notable respect for judicial decisions, adhering to limitations imposed by doctrines like the basic structure or constraints on executive powers. This difference reflects a public perception that courts, rather than

However, this transformation has not been without its critics. Judicial activism, while a powerful tool for social justice, has often drawn criticism for encroaching upon the legislature's domain, raising questions about separation of powers. On the other hand, judicial restraint, when excessively rigid, risks stifling the Constitution's adaptability to modern challenges. Thus, the judiciary has had to navigate a precarious path, acting as both the guardian of constitutional ideals and a catalyst for social change.

The judiciary’s ability to reimagine constitutional provisions without eroding their essence is a testament to its resilience. By addressing emerging socio-political and economic realities—such as privacy in the digital age, environmental sustainability, and the rights of marginalized communities—it has ensured that the Constitution remains a living, breathing document. This process underscores a fundamental truth: the Constitution is not

a relic frozen in time but a dynamic framework designed to serve the needs of an ever-changing society.

Ultimately, the Constitution's capacity to evolve while remaining anchored to its foundational ethos is its greatest strength. It is a reminder that true endurance lies not in resisting change but in embracing it with fidelity to one's core purpose. The Indian judiciary, through its stewardship, has ensured that the Constitution remains both timeless and timely—a vessel that continues to navigate the turbulent seas of democracy.

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