



INTERNATIONAL LAW
JOURNAL

**WHITE BLACK
LEGAL LAW
JOURNAL**
**ISSN: 2581-
8503**

Peer - Reviewed & Refereed Journal

The Law Journal strives to provide a platform for discussion of International as well as National Developments in the Field of Law.

WWW.WHITEBLACKLEGAL.CO.IN

DISCLAIMER

No part of this publication may be reproduced or copied in any form by any means without prior written permission of Editor-in-chief of White Black Legal – The Law Journal. The Editorial Team of White Black Legal holds the copyright to all articles contributed to this publication. The views expressed in this publication are purely personal opinions of the authors and do not reflect the views of the Editorial Team of White Black Legal. Though all efforts are made to ensure the accuracy and correctness of the information published, White Black Legal shall not be responsible for any errors caused due to oversight or otherwise.

WHITE BLACK
LEGAL

EDITORIAL **TEAM**

Raju Narayana Swamy (IAS) Indian Administrative Service **officer**



Dr. Raju Narayana Swamy popularly known as Kerala's Anti Corruption Crusader is the All India Topper of the 1991 batch of the IAS and is currently posted as Principal Secretary to the Government of Kerala . He has earned many accolades as he hit against the political-bureaucrat corruption nexus in India. Dr Swamy holds a B.Tech in Computer Science and Engineering from the IIT Madras and a Ph. D. in Cyber Law from Gujarat National Law University . He also has an LLM (Pro) (with specialization in IPR) as well as three PG Diplomas from the National Law University, Delhi- one in Urban Environmental Management and Law, another in Environmental Law and Policy and a third one in Tourism and Environmental Law. He also holds a post-graduate diploma in IPR from the National Law School, Bengaluru

and a professional diploma in Public Procurement from the World Bank.

Dr. R. K. Upadhyay

Dr. R. K. Upadhyay is Registrar, University of Kota (Raj.), Dr Upadhyay obtained LLB , LLM degrees from Banaras Hindu University & Phd from university of Kota.He has succesfully completed UGC sponsored M.R.P for the work in the ares of the various prisoners reforms in the state of the Rajasthan.



Senior Editor

Dr. Neha Mishra



Dr. Neha Mishra is Associate Professor & Associate Dean (Scholarships) in Jindal Global Law School, OP Jindal Global University. She was awarded both her PhD degree and Associate Professor & Associate Dean M.A.; LL.B. (University of Delhi); LL.M.; Ph.D. (NLSIU, Bangalore) LLM from National Law School of India University, Bengaluru; she did her LL.B. from Faculty of Law, Delhi University as well as M.A. and B.A. from Hindu College and DCAC from DU respectively. Neha has been a Visiting Fellow, School of Social Work, Michigan State University, 2016 and invited speaker Panelist at Global Conference, Whitney R. Harris World Law Institute, Washington University in St.Louis, 2015.

Ms. Sumiti Ahuja

Ms. Sumiti Ahuja, Assistant Professor, Faculty of Law, University of Delhi,

Ms. Sumiti Ahuja completed her LL.M. from the Indian Law Institute with specialization in Criminal Law and Corporate Law, and has over nine years of teaching experience. She has done her LL.B. from the Faculty of Law, University of Delhi. She is currently pursuing Ph.D. in the area of Forensics and Law. Prior to joining the teaching profession, she has worked as Research Assistant for projects funded by different agencies of Govt. of India. She has developed various audio-video teaching modules under UGC e-PG Pathshala programme in the area of Criminology, under the aegis of an MHRD Project. Her areas of interest are Criminal Law, Law of Evidence, Interpretation of Statutes, and Clinical Legal Education.



Dr. Navtika Singh Nautiyal

Dr. Navtika Singh Nautiyal presently working as an Assistant Professor in School of law, Forensic Justice and Policy studies at National Forensic Sciences University, Gandhinagar, Gujarat. She has 9 years of Teaching and Research Experience. She has completed her Philosophy of Doctorate in 'Intercountry adoption laws from Uttranchal University, Dehradun' and LLM from Indian Law Institute, New Delhi.



Dr. Rinu Saraswat

Associate Professor at School of Law, Apex University, Jaipur, M.A, LL.M, Ph.D,

Dr. Rinu have 5 yrs of teaching experience in renowned institutions like Jagannath University and Apex University. Participated in more than 20 national and international seminars and conferences and 5 workshops and training programmes.

Dr. Nitesh Saraswat

E.MBA, LL.M, Ph.D, PGDSAPM

Currently working as Assistant Professor at Law Centre II, Faculty of Law, University of Delhi. Dr. Nitesh have 14 years of Teaching, Administrative and research experience in Renowned Institutions like Amity University, Tata Institute of Social Sciences, Jai Narain Vyas University Jodhpur, Jagannath University and Nirma University.

More than 25 Publications in renowned National and International Journals and has authored a Text book on Cr.P.C and Juvenile Delinquency law.



Subhrajit Chanda

BBA. LL.B. (Hons.) (Amity University, Rajasthan); LL. M. (UPES, Dehradun) (Nottingham Trent University, UK); Ph.D. Candidate (G.D. Goenka University)

Subhrajit did his LL.M. in Sports Law, from Nottingham Trent University of United Kingdoms, with international scholarship provided by university; he has also completed another LL.M. in Energy Law from University of Petroleum and Energy Studies, India. He did his B.B.A.LL.B. (Hons.) focussing on International Trade Law.

ABOUT US

WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

ROLE OF REALISM IN THE INTERPRETATION OF STATUTES IN INDIA

AUTHORED BY - SHIVANSH GAURAV & ANUNANDA C

INTRODUCTION

Statutory interpretation is a pillar of judicial role, allowing courts to clarify legislative intentions and apply law to particular circumstances. In India, which has a multifaceted socio-political milieu and multiple legal issues, the interpretation of statutes is not a technical exercise but a crucial tool for upholding constitutional principles and dispensing justice. The Indian judiciary has evolved a rich jurisprudence of statutory interpretation, reconciling textual fidelity with purposive understanding to evolve laws to accommodate changing societal needs.

Overview of Traditional Approaches: Textualism and Purposivism

Two major methodologies have hitherto governed statutory interpretation: textualism and purposivism.

Textualism prioritizes the precedence of the statutory text, supporting an interpretation on the sole basis of the literal meaning of the words employed. This method is consistent with the doctrine of separation of powers, which restricts judicial discretion and prevents courts from taking on legislative roles. In *Grasim Industries Ltd. v. Collector of Customs*, the Supreme Court held that where the words of a statute are plain and unambiguous, there is no room for interpretation beyond the words¹.

Purposivism, however, endeavors to determine the intent of the legislature in enacting a statute, with reference to the wider purpose and aims for which the law seeks to promote. Purposivism permits a greater degree of elasticity in interpretation, particularly where literal interpretations produce absurd or inequitable results. The Supreme Court in *Bangalore Water Supply & Sewerage Board v. A. Rajappa* took a purposive view to construe the term "industry," broadening its ambit to achieve the social welfare goals of the statute².

¹ *Grasim Industries Ltd. v. Collector of Customs, Bombay*, (2002) 4 SCC 297

² *Bangalore Water Supply & Sewerage Board v. A. Rajappa*, AIR 1978 SC 548

Introduction to Legal Realism: Origins, Principles, and Contrast with Formalism

Legal realism developed in the early 20th century as a reaction against the perceived rigidity of legal formalism. Realists believe that law is not an abstract set of rules but is affected by social, economic, and political considerations. They stress the experiences of judges and the practical effects of legal rulings.

Legal formalism, in contrast, believes that legal argumentation is an exercise in logic, where judges apply settled rules to facts mechanically without social pressure or personal bias. Formalists advocate predictability and consistency in the result of law.

This assumption is denied by legal realism: Judges are often influenced by extralegal factors; acknowledgment of such influences opens the judge to greater honesty, making the outcome more fair. The result is that judges are encouraged to consider actual consequences of their rulings and interpret legislation so as best to advance the public good.

Relevance of Realism in the Indian Context

The canons of legal realism have developed in the Indian legal system, particularly in situations where following strict technical statutory language would impede the administration of justice. An important observation is an apparent shift by the courts to a much more pragmatic attitude, that is developing to consider the real-world circumstances of contemporary society regarding statutory interpretation. For example, in *Maneka Gandhi v. Union of India*, the Supreme Court expanded the meaning of Article 21 of the Constitution to ensure that the "procedure established by law" is fair, just, and equitable, effectively incorporating substantive due process into the Indian jurisprudence metaphorically.

Also, in *Kesavananda Bharati v. State of Kerala*, the Court introduced the "basic structure doctrine," arguing that certain features of the Constitution are essentially unamendable by way of amendments, demonstrating a realist approach to constitutional interpretation.

This article will analyze the evolving relationship between traditional approaches to interpretation and legal realism in the Indian context. By studying several well-known judicial decisions and legal publications, the aim is to provide an understanding of how the Indian

judiciary reconciles textual fidelity with consequentialist and pragmatic tendencies to facilitate justice and constitutional principles in the given cases.

EVOLUTION OF JUDICIAL INTERPRETATION IN INDIA

Historical and Constitutional Context of Statutory Interpretation

Indian Law, with origins in the common law tradition, has experienced rich changes since India attained independence. The judiciary had first a formalist conception, where, for example, it made use of the law's word where word of law biggest effect on legal interpretational legitimacy. The tradition was adopted from British law concepts where judges focused more on the precise words of the law rather than the overall intent of the law or societal effects.

The Indian Constitution, which came into effect in 1950, brought about a paradigm shift by providing an extensive scope of directive principles and fundamental rights. This involved a more sophisticated method of interpretation, which pushed the judges to look at the overall purpose of the Constitution. According to Barak (2005), "the constitutional text must be interpreted in light of its purpose, structure, and the values it seeks to promote."³

Evolution from Formalism to Pragmatic and Purposive Directions

With time, the Indian judiciary understood that strict literal interpretation was not without limitation, particularly if it resulted in judgments opposite the spirit of the Constitution. It was in these circumstances that the judiciary moved from literal interpretation towards purposive interpretation, where courts aimed to discern and implement the legislative intent. A milestone case illustrating this change is *Kesavananda Bharati v. State of Kerala* (1973), where the Supreme Court evolved the "basic structure doctrine." The doctrine states that there are some features that are inherent in the Constitution and cannot be amended, and the "basic features" of the Constitution must remain constant. Additionally, in *Maneka Gandhi v. Union of India* (1978), the Court enlarged the concept of Article 21, where it held that "procedure established by law" must be just, reasonable and fair, thus incorporating substantive due process in Indian law. These examples encapsulate the movement by the courts away from textualism, toward an open interpretation aligned with constitutional principles and societal needs.

Impact of Socio-Political Transformation on Judicial Philosophy

India's constantly changing socio-political context has significantly influenced judicial

³ Barak, A. (2005). *Purposive Interpretation in Law*. Princeton University Press.

interpretation. Sometimes the judiciary reacted to society's evils by becoming activist-oriented, and trying to eradicate the evils, such as poverty, inequality, and human rights abuses. For example, the Court's active intervention on behalf of public interest for protection of the environment in *M.C. Mehta v. Union of India* (1987) is reflective of its zeal to interpret the laws in a broad manner, for the public interest. Similarly, the Court's articulation of guidelines to prohibit sexual harassment in the workplace, in *Vishaka v. State of Rajasthan* (1997), demonstrated that it was pursuing social justice by filling a legislative gap⁴.

Experts attribute this judicial activism to the judiciary's perception of itself as the protector of the Constitution and upholder of oppressed groups. Sepaha et al.(2023) explain, "the judiciary often has taken the role of enforcing constitutional mandates when the other branches have failed".⁵ Judicial interpretation's development in India also embodies adherence to legal realism, which means consideration of law's practical effects and legal principles in the socio-economic contexts in which law grows. Indian courts have increasingly observed that strict adherence to legal formalism will not always mean just results will be achieved.

This realist tendency is evident in cases such as *State of Uttar Pradesh v. Raj Narain* (1975), where the Court recognized the election of then Prime Minister Indira Gandhi, was illegal, and where the Court emphasized its own role in upholding democratic principles. This ruling was a sign of prudence in making the law impact government and people's trust.⁶

In addition, the judiciary's handling of cases pertaining to policies of affirmative action and reservation shows its responsiveness to historical injustices and requirements of substantive equality. The Court's rulings in *Indira Sawhney v. Union of India* (1992)⁷ and *Ashoka Kumar Thakur v. Union of India* (2008)⁸ reflects its attempt to reconcile legal principles with socio-economic conditions.

These developments evidence the judiciary's shift towards a more pragmatic and context-sensitive direction and in keeping with legal realism ideals.

⁴ *Vishaka v. State of Rajasthan*, AIR 1997 SC 3011.

⁵ Sepaha, P., Tiwari, P., & Pandey, H. (2023). Boundaries and Changing Perspectives on Judicial Activism in India: A Critical Legal Analysis. *ResearchGate*

⁶ *State of Uttar Pradesh v. Raj Narain*, AIR 1975 SC 865.

⁷ *Indira Sawhney v. Union of India*, AIR 1993 SC 477.

⁸ *Ashoka Kumar Thakur v. Union of India*, AIR 2008 SC 844.

REALISM IN PRACTICE: CASE STUDIES AND JUDICIAL TRENDS

Legal realism, as a jurisprudential school, emphasizes the functional effect of the law and the socio-economic contexts in which it operates. In India, the courts increasingly employed realist thinking, interpreting statutes in light of their social effects and day-to-day realities. This part criticizes milestone cases that demonstrate this trend and discusses trends in Supreme Court jurisprudence that indicate a realist bent.

Kesavananda Bharati v. State of Kerala (1973)

The Kesavananda Bharati case is a pillar of Indian constitutional law, in which the Supreme Court articulated the "basic structure doctrine," indicating that certain integral features of the Constitution cannot be altered. The decision reflects a realistic approach to the fact that the core principles of the Constitution must be guarded against changing political situations. The Court's consideration included the long-term implications of constitutional amendments upon democratic rule and individual freedoms.⁹

Maneka Gandhi v. Union of India (1978)

The Supreme Court's judgment in Maneka Gandhi extended the meaning of Article 21 by holding that the "procedure established by law" also has to be fair, just, and reasonable. This was a departure from strict formalism, imparting Indian law with substantive due process. The judgment was given in the backdrop of society at the time of the Emergency years and was meant to safeguard personal freedom against executive arbitrariness.¹⁰

Navtej Singh Johar v. Union of India (2018)

The Navtej Singh Johar case is a prime example of the judiciary's pragmatist approach to decriminalizing consensual same-sex relationships through reading down Section 377 of the Indian Penal Code. The Court prioritized constitutional morality over morality in society, recognizing the everyday lives of the LGBTQ+ community. This ruling is a manifestation of the judiciary's role in confronting social injustices and legal interpretations aligning with the modern human rights paradigms.¹¹

⁹ *Kesavananda Bharati v. State of Kerala*, AIR 1973 SC 1461.

¹⁰ *Maneka Gandhi v. Union of India*, AIR 1978 SC 597

¹¹ *Navtej Singh Johar v. Union of India*, A.I.R. 2018 S.C. 4321

Shayara Bano v. Union of India (2017)

In the Shayara Bano case, the Supreme Court held instant triple talaq (talaq-e-biddat) unconstitutional. The ruling was based on the principles of gender justice and gender equality, acknowledging the negative impact of the practice on Muslim women. The case shows that the judiciary is prepared to interfere in personal laws to protect fundamental rights and indicates a realist approach where social realities take precedence over dogmatic legal principles.¹²

Interpretation of Statutes based on Societal Impact

These trailblazer cases show how Indian courts have drifted toward statutory interpretation keeping in view the societal context. Courts have now looked beyond mere literal interpretation and addressed the aim and ramifications of legislation. In doing so, judicial interpretations take care to synchronize legal understanding with present-day values and the interests of underprivileged classes in society.

The realist bent of the judiciary can be observed in judgments advancing social justice and the enlargement of rights. In environmental law, the Court has recognized the right to a healthy environment as part of the right to life under Article 21. In relation to economic reform, the judiciary has purposefully interpreted the balance to be struck between constitutional safeguards and economic policies, assuring that the reforms will not invade basic rights.

A summary of Supreme Court judgments shows a growing pattern of engaging with realism. The courts are increasingly making more purposive interpretations, reflecting on the larger purposes for which laws are enacted and their implications for society. This evolution is a reflection of a commitment to ensuring interpretations of law respect public interest and constitutional values.

CONTRADICTIONS AND CRITICISMS

Concerns of Judicial Overreach and Subjectivity

Legal realism has been sometimes accused of potential judicial overreach, placing an emphasis on the real-world consequences of judged decisions. Legal realists are referred to critics of legal realism who believe that any consideration of ad hoc social results above settled law-set doctrine amounts to encroachment of the legislature and consequent interference with the

¹² Shayara Bano v. Union of India, A.I.R. 2017 S.C. 4609

system of checks and balances that are fundamental to responsible governance. Judicial decisions based on subjective values will be inconsistent because of the influence values and social pressures have on judgements. Such unpredictability contradicts the doctrine of legal certainty that is at the foundation of the rule of law.

Debate on Legitimacy and Constitutional Limits of Interpretative Freedom

The tension between adherence to legal precepts and the attainment of realistic justice has in fact become a central issue of modern-day jurisprudence. Doctrinal advocates place a premium value on consistency, continuity, and deference to legislative intent. Pragmatists talk about the necessity for legal interpretation to adjust to any number of social changes and injustices. The researchers have developed the notion that a middle ground honoring the law and legal structure but allowing for some context would at least alleviate these conflicting prescriptions on our courts.

Rebuttals from Positivist and Textualist Scholars

Positivist and textualist thinkers claim that legal realism does not give enough respect to the objectivity of law. Legal realism allows law to be affected by a judges' personal biases when applying it to real-world situations. Positivist scholars counsel that law should only consider the text of the law itself and no other extra legal considerations such as social impacts and moral perspectives. Some argue that by closely following the text, the law becomes more predictable and limits a judges' ability to apply the law according to their own interpretations and biases. This allows branch lines between the judiciary, and the legislative and executive branches to stay as intact as possible.

Balancing Discretion with Doctrinal Stability

There must exist a middle ground to take advantage of the potential strengths of legal realism while avoiding its potential weaknesses. Judges should utilize their judgment in accordance with law and precedent. There are a variety of procedural ways including review on appeal and adherence to stare decisis which slow the pace of judicial involvement. Furthermore, by incorporating interdisciplinary studies including empirical legal studies, the act of judging can still be bound by the fact of a legal doctrine.

CONTEMPORARY RELEVANCE AND FUTURE TRAJECTORY

Realism's Place within a Dynamic, Pluralistic Society

The legal environment in India is defined by its pluralistic texture; there are many cultures, religions, and socio-economic environments. Legal realism focuses on the practical ramifications of the law and the socio-economic background in which law operates in useful response to the complexity. Indeed, by recognizing the multi-dimensionality of Indian society, realism allows courts to interpret law in a manner that connects to the everyday lives of the peoples of India and ensures that legal interpretation is not theory bound, but realistic in the realities of a multicultural society.

Judicial Responsiveness to Social Justice and Accountability

The judiciary provided an endorsement of realism that has been significant to advancing social justice in India. Through proactive intervention, courts have corrected systemic imbalances and enforced rights for marginalized groups in cases to include- Navtej Singh Johar v. Union of India (2018) considered a landmark decision, the Supreme Court decriminalized same-sex relations by consent, thus affirming the rights and dignity of the LGBTQ+ population. These are examples of a judiciary that is responsive to an evolving society and committed to upholding constitutional values. By keeping its interpretation of law aligned with contemporary format laws or social norms, the judiciary is affirming its accountability to society, and its role as a bastion of justice.

Growing Relevance in Constitutional Morality, Civil Liberties, and Economic

Governance Legal realism has a unique legacy vis-à-vis constitutional morality, civil liberties and economic governance in India. Constitutional morality is conceptually about being faithful to the basic features of the Constitution, which has been invoked to ensure that laws and policies are in line with the democratic ethos. In Shayara Bano v. Union of India (2017), the Supreme Court of India invalidated instant triple talaq on the basis of constitutional morality and gender justice. Similarly, in matters of economic governance, our courts have scrutinized policies to ensure they do not violate our fundamental rights. The judicial realism will ensure economic reforms will not tread upon civil liberties thereby keeping development and liberty in check.

The Possibility for Structured Realist Frameworks in Legal Education and Training

If we want to truly institutionalize the principles of legal realism, we must further engrave these values in our law schools, as well as the training for judicial positions. Law schools must provide courses focused on the intersections of law and society, and require that students interact with their legal problems from a realist interpretation. Clinical education programs would also provide an opportunity to create experiential education because these programs allow students to discuss real legal problems, and really learn about the implications of their legal decision-making on society. Ongoing judicial education programs can also promote the consideration of realist principles, by providing judges with resources that allowed them to connect their decision to legal doctrines and society. By adopting a culture of legal realism, the legal system can better response to contemporary issues, while being aware of the underlying principles and foundations of law.

CONCLUSION

The growth of statutory interpretation in India reveals a contestation between traditional legal ideas and changing legal realities which reflect further developments of legal realism. While traditional approaches of textualism and purposivism provided layers for the interpretation of statutory provisions, they seem consistently inadequate to grapple with the complexities of a heterogeneous, rapidly changing society. While legal realism has a focus on the context of the law as well as the actual effects a decision has on the realities of life, it has also provided an importation into Indian jurisprudence that has opened up for law to not only represent lived experiences, but what is also more reflective of contemporary ideas of morality.

In India's long tradition of constitutional and legal history, the courts show the slow and deliberate movement away from a rigid formalism and positivism, toward a more grounded and purposive methods of interpretation. In addition to Kesavananda Bharati, Maneka Gandhi, Navtej Singh Johar, and Shayara Bano are good examples of the courts engaging in realist ideas while holding on to the notion that law is an instrument for justice, and not just some rigid, and in some ways sanitized, background to daily life. Further, when engaging with the real effects of social injustices, historical injustices, and the voices of the marginalized, Indian courts have also sought to democratize and humanize the law.

Still, the realism-infused declaration was also contested. Anxiety over judicial activism,

subjectivity, and overstepping constitutional boundaries gave rise to many heated discussions. Critics, many of whom are further chastened by tools of positivism and text, had alarms raised over perceived exercises of judicial discretion undermining the predictability and objectivity of law. Amidst administrative strategies, this very anxiety paradigm exemplifies how the tempered approach ought to be adopted in balancing continuity of doctrine with contextual and societal inputs.

Going forward, therefore, the challenge before statutory interpretation in the Indian context is to justly balance these two polarities. The courts should be the guardians of constitutional directives by applying those realist treaties of statutory interpretation that give rise to equity and social justice. Equally important is the vehicle of legal education in this change. Under the ambit of Indian law and judicial education, the incorporation of realist jurisprudence will begin to foster a legal culture where doctrine is favored yet socially conscious.

Legal realism does not reject rules; it instead insists that rules, when enforced, are done so in accordance with the practice of justice. With respect to India, where civil liberties, social reforms, and governance will remain a contented struggle, realism, thus, stands as a guiding light for the judiciary in landmark purposive and egalitarian interpretations of the law.

WHITE BLACK
LEGAL