
EVOLVING JURISPRUDENCE IN INDIA: LEGAL REALISM AND THE EXPANSION OF RIGHTS

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ABSTRACT

This expanded article examines how legal realism has influenced the trajectory of constitutional jurisprudence in India, with particular attention to the Supreme Court's recognition of the right to privacy and the decriminalization of consensual same-sex relations. Legal realism is understood here as a pragmatic approach that encourages judges to interpret legal texts in light of social realities, public policy implications and the lived experiences of affected groups. Starting from theoretical origins in American legal realism, the paper traces the adaptation of realist approaches in Indian constitutional adjudication, analyses landmark cases - *K.S. Puttaswamy v. Union of India* (privacy), *Navtej Singh Johar v. Union of India* (decriminalization of consensual same-sex relations), *National Legal Services Authority v. Union of India* (recognition of transgender rights) - and surveys the social and policy consequences of these decisions. The article also addresses common criticisms of judicial activism and outlines safeguards which can preserve democratic legitimacy while allowing the law to remain responsive to social change.

Introduction

Legal realism, as an intellectual movement, challenged the picture of law as a closed system of logical rules and instead emphasized the role of social, economic and political forces in shaping judicial decisions. While the movement has its origins in early twentieth-century American thought, its ideas have travelled and evolved, finding a distinct expression within India's constitutional project. Indian courts, particularly the Supreme Court, have over the decades read the Constitution as a living instrument and have often relied on pragmatic reasoning to give effect to fundamental rights in changing social circumstances. This article explores the contours of that pragmatic or 'realist' approach as it has been deployed in cases of high constitutional and social significance.

Objectives of the Paper

The principal objectives of this paper are:

1. To explain the central tenets of legal realism and their theoretical utility in constitutional adjudication.
2. To trace the historical and jurisprudential pathways by which realist reasoning reached Indian courts.
3. To analyze landmark Indian Supreme Court judgments where realist methods contributed materially to outcomes, particularly in the areas of privacy and sexual orientation.
4. To assess the social, legislative and policy consequences of these decisions and to evaluate the critiques raised against a realist-inflected judiciary.
5. To propose measured recommendations aimed at reconciling judicial responsiveness with democratic legitimacy.

Methodology

This paper uses doctrinal case law analysis supplemented by a socio-legal perspective. Primary materials comprise full-text judgments of the Supreme Court together with official reports and statutory texts. Secondary materials include scholarly commentary, reputable legal journalism and analytical reports assessing social impact. The approach combines close reading of

judgments (to identify legal reasoning, tests applied and principles articulated) with a socio-legal lens that emphasizes consequences beyond formal doctrinal holdings.

Legal Realism: Theoretical Framework

Legal realism emerged as a critique of legal formalism. Thinkers such as Oliver Wendell Holmes Jr., Karl Llewellyn and Jerome Frank insisted that judges in practice make choices influenced by social purposes, policy considerations and empirical realities rather than by mechanical deduction from abstract rules. Holmes's famous observation that 'the life of the law has not been logic; it has been experience' captures the realist insight that law should be read and applied with an eye to consequences and lived experience. In the Indian context, realism is not imported wholesale; rather, it is adapted to a constitutional culture that privileges social justice, equality and the protection of dignity through expansive readings of fundamental rights.

Historical Development of Realist Approaches in India

The Indian judiciary's shift towards pragmatic, purposive interpretation can be linked to the post-independence constitutional project. Early constitutional adjudication often adhered to more textual or formal approaches, but from the 1950s onwards - and more decisively from the 1970s - the Supreme Court began to read fundamental rights in ways that protected substantive liberties. Landmark decisions such as *Maneka Gandhi v. Union of India* (1978) transformed Article 21 from a narrow protection into a robust guarantee of life and personal liberty, which must be read with Articles 14 and 19 to ensure substantive due process. The intellectual posture of the Court in such matters reflects realist intuitions: the Constitution must be interpreted to safeguard the lived realities of citizens.

Key Cases and Doctrinal Analysis

K.S. Puttaswamy v. Union of India (2017) marked a constitutional watershed by conclusively recognizing the right to privacy as intrinsic to the rights guaranteed by the Indian Constitution. A nine-judge bench held that privacy is a fundamental right protected under the Constitution, rooted in Article 21 (protection of life and personal liberty) and connected to other rights such as dignity and freedom of speech and expression. The Court's analytical method combined textual analysis, structural reading of the Constitution and attention to contemporary realities - digital technologies, data collection and the unique vulnerabilities they create - to find a

principle that protected individual autonomy and dignity.[1]

The Puttaswamy judgment is illustrative of realist reasoning in several senses. First, the Court explicitly contextualized the right within contemporary technological developments and administrative practices, thereby refusing a historically static view. Second, the opinion synthesized jurisprudential strands - privacy as autonomy, privacy as decisional liberty, and privacy as informational self-determination - into a framework that could be operationalised across different contexts. Finally, the Court adopted a structured proportionality analysis (legality, legitimate state interest, and proportionality) for assessing permissible encroachments on privacy, thereby articulating a pragmatic test that balances competing interests rather than insulating rights from democratic trade-offs.[2]

The subsequent Aadhaar litigation (Justice K.S. Puttaswamy (Aadhaar) case, 2018) applied the privacy doctrine in a difficult policy context: the government's Aadhaar program for biometric identification and direct benefit transfers. The Aadhaar judgment upheld much of the statutory framework for Aadhaar in respect of welfare delivery while emphasizing limitations on intrusive uses of the identification regime and setting out safeguards for data protection, necessity and proportionality. The interplay between the Court's doctrinal protection of privacy and the practical demands of governance in a country of India's scale exemplifies the tension at the heart of realist constitutionalism.[3]

Navtej Singh Johar v. Union of India (2018) is a landmark in the Court's engagement with sexual orientation and substantive equality. A constitution bench read down Section 377 of the Indian Penal Code to exclude consensual sexual conduct between adults in private. The decision drew on a rights-based understanding of dignity, autonomy and equality and paid careful attention to the marginalization and historical stigma experienced by LGBT persons. The judges relied not only on textual or historical arguments but also on social realities - the patterns of discrimination faced by queer persons and the public health and human dignity consequences of decriminalization.[4]

The Court's reasoning in Navtej Singh Johar combined doctrinal tools and socio-legal observation. The judgment emphasized that constitutional rights must be interpreted to secure the lived equality of vulnerable groups. It also explicitly overruled the Suresh Koushal decision (2013), demonstrating the Court's willingness to correct earlier doctrinal errors in light of a more accurate understanding of social facts and constitutional commitments. The Johar

judgment thus illustrates realism's central claim: that law must be sensitive to social conditions and to the practical effects laws have on people's lives.[5]

National Legal Services Authority (NALSA) v. Union of India (2014) is another classic example where the Court recognized the lived realities of a marginalized community. The judgment acknowledged transgender persons as a third gender for legal purposes and emphasized the importance of self-identification, equal protection and affirmative measures to ameliorate social exclusion. By foregrounding the experiences of transgender persons and directing structural reforms, the Court applied a realist sensibility to constitutional protection.[6]

Though not usually labelled 'legal realist' in formal terms, the Court's approach in *Maneka Gandhi v. Union of India* (1978) is a clear antecedent: the decision's expansive reading of Article 21, its insistence that 'procedure established by law' must be fair, just and reasonable, and its fusion of Articles 14, 19 and 21 established a methodology that invited judges to look beyond narrow textualism to the larger values protected by the Constitution.[7]

Doctrinal Themes and Tools of Realist Reasoning in Indian Courts

Several doctrinal techniques recurrently appear where Indian judges pursue realist aims. These include purposive interpretation (reading constitutional guarantees in light of underlying values), the proportionality test for balancing competing interests, the use of substantive equality principles to assess the impact of laws on vulnerable groups, and the willingness to revisit and overrule earlier precedents whose factual or doctrinal bases are undermined by new understandings. Importantly, realist reasoning in India often relies on the Constitution's structural features - especially the centrality of dignity and equality - which provide normative anchors for pragmatic judicial interventions.

Social Impact and Policy Consequences

The doctrinal shifts described above have had important social and policy consequences. The recognition of privacy as a fundamental right ushered in a new constitutional framework for debates about surveillance, data protection and state access to personal information. The Aadhaar litigation and subsequent policy initiatives have spurred legislative and regulatory conversations aimed at creating a statutory data protection regime and clearer rules for state

access to information. Similarly, the decriminalization of consensual same-sex relations created space for legal reform, civil society advocacy, and increased public awareness which, over time, can reduce stigma and enable fuller participation of LGBT persons in civic life.

At the same time, real-world change has been uneven. Legal recognition does not instantly erase social prejudice. Translating constitutional pronouncements into meaningful social transformation requires administrative action, awareness initiatives, anti-discrimination measures and often, additional legislation - areas where courts can point the way but cannot fully substitute for democratic policymaking.

Criticisms, Risks and Institutional Constraints

Judicial deployment of realist reasoning has attracted several critiques. One central criticism is that expansive judicial interpretation risks breaching separation of powers by intruding on legislative or executive domains. Critics argue that courts, absent mechanisms of democratic accountability, may reach policy conclusions better left to elected representatives. Another critique focuses on implementation: landmark rulings may be rhetorically powerful but practically limited if administrative machinery fails to implement them or social attitudes remain hostile. Finally, realism's emphasis on consequences can be accused of indeterminacy - if judges prioritize outcomes, predictability and legal certainty may suffer.

These critiques deserve careful attention. A measured judicial realism need not be activist in a cavalier sense. Instead, courts can insist on procedural safeguards, provide detailed standards for implementation, and defer to legislative expertise on matters of policy design while still enforcing constitutional norms. The balance between protection and restraint is institutional and situational; the goal should be to maintain democratic legitimacy while ensuring that constitutional promises have real-world effect.

Comparative Perspective: American Realism and Indian Adaptation

American legal realism served as the intellectual wellspring for a focus on consequences and social context in adjudication, but the Indian adaptation is distinctive because it is filtered through a written Constitution committed to social justice, equality and affirmative remedies. Unlike classic American realism which often questioned doctrinal constraints more radically, Indian jurisprudence has used realist insights within constitutional frames - developing tests

(such as proportionality) and integrating principles (such as dignity and substantive equality) to justify rights-protective rulings that remain anchored to constitutional text and purpose.

Way Forward: Safeguards and Recommendations

To harness the benefits of realist reasoning while minimizing risks, several recommendations are worth considering: (a) courts should articulate clear doctrinal tests and standards (for example proportionality metrics) that guide lower courts and administrators; (b) judgments should provide concrete implementation roadmaps where remedial orders are made; (c) courts should seek to defer to legislative expertise on technical policy design while policing constitutional limits; (d) there should be regular institutional engagement (through commissions, consultations and legislative hearings) so that judicial interventions are informed by expertise and public deliberation; and (e) judicial training should emphasize empirical methods and socio-legal literacy so that judges can assess social consequences more accurately.

Conclusion

Legal realism, understood as an attentiveness to social realities and consequences, has significantly shaped modern Indian constitutional jurisprudence. Landmark decisions such as *Puttaswamy*, *Navtej Singh Johar* and *NALSA* demonstrate how the judiciary can protect fundamental rights - privacy, dignity, autonomy and equality - by reading the Constitution in light of contemporary needs. While the use of realist reasoning attracts legitimate critiques, the central challenge for Indian constitutionalism is to maintain an accountable, transparent and principled judiciary that secures rights without usurping democratic functions. The path ahead calls for thoughtful judicial craftsmanship, sustained legislative engagement and practical implementation so that constitutional values translate into everyday freedoms for citizens.

Endnotes:

1. K.S. Puttaswamy v. Union of India, (2017) 10 SCC 1.
2. Justice K.S. Puttaswamy v. Union of India (Aadhaar case), (2018) 1 SCC 809.
3. Navtej Singh Johar v. Union of India, (2018) 10 SCC 1.
4. National Legal Services Authority v. Union of India (NALSA), (2014) 5 SCC 438.
5. Maneka Gandhi v. Union of India, AIR 1978 SC 597; (1978) 1 SCC 248.
6. Suresh Kumar Koushal v. Naz Foundation, (2013) 1 SCC 1.
7. Oliver Wendell Holmes Jr., The Common Law (1881).
8. Upendra Baxi, The Indian Supreme Court and Politics (Oxford, 1980).

Footnotes

[1] Oliver Wendell Holmes Jr., *The Common Law* (1881). Holmes's aphorism that 'the life of the law has not been logic; it has been experience' captures the realist insight that judges should consider practical consequences in interpretation.

[2] Upendra Baxi, *The Indian Supreme Court and Politics* (Oxford, 1980). Baxi's work analyses the transformation of the Indian Supreme Court into a central actor in protecting constitutional values and social justice.

[3] *K.S. Puttaswamy v. Union of India*, (2017) 10 SCC 1. A nine-judge bench of the Supreme Court of India held that the right to privacy is intrinsic to the right to life and personal liberty under Article 21 and is protected by the Constitution.

[4] *Justice K.S. Puttaswamy v. Union of India (Aadhaar)*, (2018) 1 SCC 809. The Court applied privacy doctrine to the Aadhaar program, upholding the validity of certain provisions for welfare delivery while emphasising limitations, necessity and proportionality.

[5] *Navtej Singh Johar v. Union of India*, (2018) 10 SCC 1. A constitution bench read down Section 377 IPC to exclude consensual sexual conduct between adults in private, invoking principles of dignity, autonomy and equality and overruling *Suresh Koushal* (2013).

[6] *National Legal Services Authority v. Union of India (NALSA)*, (2014) 5 SCC 438. The Court recognised transgender persons as a 'third gender' and affirmed rights to self-identification and equal protection.

[7] *Maneka Gandhi v. Union of India*, AIR 1978 SC 597; (1978) 1 SCC 248. The decision transformed Article 21 jurisprudence and established that 'procedure established by law' must be fair, just and reasonable.

[8] *Suresh Kumar Koushal v. Naz Foundation*, (2013) 1 SCC 1. This two-judge decision upheld the constitutionality of Section 377 IPC; it was subsequently revisited and partially overruled by *Navtej Singh Johar* (2018).

[9] For an accessible discussion of the Puttaswamy judgment and the three-part proportionality test (legality, legitimate state interest/necessity, proportionality), see: Supreme Court Observer commentary and plain-English summaries of the case.

[10] On the social and policy implications of decriminalisation and the limits of judicial remedies, see contemporary socio-legal literature and reports by NGOs working on LGBT rights and transgender equality in India.