
BEYOND ORIGINALISM AND LIVING CONSTITUTIONALISM: IN SEARCH OF A 'MIDDLE PATH' IN INDIAN JURISPRUDENCE

Amit Yadav, Geeta Institute of Law, Panipat

ABSTRACT

This paper offers a nuanced perspective on the Indian Constitution, framing it as '*The Dynamic Dharma*'—a timeless truth that transcends a mere static legal code by demanding continuous interpretation to remain relevant to each new generation. It grounds this dynamic nature in *A.V. Dicey's 'Rule of Law' doctrine*¹, which mandates the absolute supremacy of regular law over arbitrary power, equality before the law for all citizens and officials, and the predominance of a deep legal spirit derived from judicial decisions.

The paper examines the ²conflict between '*originalism*' and '*living constitutionalism*' in constitutional interpretation, noting that originalism fixes meaning at drafting while living constitutionalism advocates dynamic adaptation to evolving societal values. It analyzes the application of living constitutionalism in the Indian legal system, where the judiciary treats the Constitution as a dynamic document, and introduces "*living originalism*" as a hybrid approach reconciling both methodologies through dynamic interpretation of original intent.

In the specific context of India, where the Constitution holds the status of supreme law, these principles are critical mechanisms for preventing tyranny, restraining the misuse of state power, and ensuring justice³. The tension in maintaining this legal supremacy is analyzed through two competing interpretive philosophies: '*originalism*', which seeks to honor the unchanging foundational authority through strict adherence to the framers' initial intent, and '*living constitutionalism*', which posits that the law's supremacy can only be maintained by adapting its meaning and application to reflect evolving contemporary societal values. The ongoing interplay

¹ A V Dicey, I *The Law of the Constitution* 112-115 (Macmillan, England, 8th edition., 1915), supports originalism's stability by upholding foundational principles while influencing living constitutionalism's adaptability

² Lawrence B. Solum, "Originalism Versus Living Constitutionalism: The Conceptual Structure of the Great Debate" (2019) 113:6 Northwest. Univ. Law Rev.1243 at 1254

³ S.P. Sathe, *Judicial Activism in India: Transgressing Borders and Enforcing Limits* (Oxford University Press, 2002); H.M. Seervai, *Constitutional Law of India*, Vol. 1 (Universal Law Publishing, 2013); and Justice K. Ramaswamy in *I.R. Coelho v. State of Tamil Nadu*, (2007) 2 SCC 1

between these two approaches ensures the Constitution remains both revered and functional.

INTRODUCTION

Freedom, or individual liberty, has long been recognized as a foundational principle of democratic societies, originating from the philosophical traditions of classical liberalism⁴. As an inherent right, liberty allows individuals to think, express, and act independently—provided such actions do not curtail the rights of others. The importance of this principle is reflected in the structure of democracies, where citizen choice, participation, and open discourse shape governance outcomes.

While existing scholarship affirms the centrality of freedom in democratic states, recent debates highlight tensions between individual rights and the majority will, especially in diverse societies like India. ⁵The Fundamental Rights articulated in *Part III* of the Indian Constitution are a direct embodiment of these principles, offering constitutional safeguards that attempt to reconcile liberal values with democratic decision-making. However, scholarly disagreement persists regarding the appropriate scope of judicial intervention in protecting these freedoms. Advocates of ‘*originalism*’ argue for judicial restraint and adherence to historical intent, while ‘*living constitutionalists*’ contend that evolving societal realities demand flexible, adaptive interpretation of rights.

Despite extensive commentary on liberty and democracy, ⁶the dynamic interaction between individual freedoms and majoritarian governance in the Indian context remains under-explored, especially through the lens of competing constitutional theories. This research aims to examine ⁷how India’s constitutional framework negotiates these tensions, balancing the imperatives of liberty and democracy, and the implications of originalist versus living constitutionalist judicial approaches. By addressing this gap, the study seeks to contribute to contemporary debates on constitutional liberalism and its application in pluralistic societies.

⁴ Adam Smith, I *The Wealth of Nations* 1-10 (England, 1st edition 1776), aligns with the organism’s emphasis on the foundational principles while supporting the constitutionalism’s adaptability to ensure freedom evolves with the economic changes.

⁵ Constitution of India, 1950, s. Article 19.

⁶ S. Krishnaswamy, “Is the Indian Constitution Liberal?”

⁷ “Constitution and Constitutionalism in India

“Restricting Constitution To Originalist Interpretation Is Unjust, It's a Living Document”-***CJI DY Chandrachud*****“Originalism Vs. Living Constitutionalism”**

India's model of constitutional democracy demands a careful balance between the majority's authority and protective measures for weaker groups. Without appropriate safeguards, unchecked majoritarianism may marginalize vulnerable sections, endangering the nation's inclusive democratic ethos. ⁸Provisions such as *Article 15*, prohibiting discrimination, and ⁹*Article 46*, which promotes the social and economic welfare of disadvantaged groups, highlight the tension between majority rule and social inclusivity.

Interpretation approaches carry significant impact. The originalist approach keeps judicial discretion limited to the Constitution's text, while living constitutionalism permits the judiciary to adapt rights and protections in response to emerging social inequalities. The structure of the Indian Constitution draws from ancient societal ideals—emphasizing duty, honor, and order, along with freedom, beauty, and growth—to build a comprehensive vision. Articles such as *51A*¹⁰ on Fundamental Duties, and rights under *Articles 19*¹¹ and *32*¹², underscore the need for both rigor and flexibility in interpretation.

The originalist reading of ¹³*Article 30* ensures the framers' intent to safeguard minority rights by permitting religious and linguistic communities to establish educational institutions. Judicial activism, through evolving interpretations of *Article 30*, broadened protections for minority institutions by recognizing societal changes and the need for inclusiveness. In landmark decisions, including the ¹⁴*Azeez Basha v. Union of India (1968)*, the meaning of “*establish and administer*” was debated. Subsequent judgments by the Supreme Court affirmed that minority status for institutions cannot be denied merely due to their establishment by legal statutes, applying these constitutional protections to pre- and post-Constitutional era institutions alike.

⁸ Constitution of India, 1950, s. Article 15

⁹ Constitution of India, 1950, s. Article 46.

¹⁰ Constitution of India, 1950, s. Article 51A.

¹¹ Constitution of India, 1950, s. Article 19.

¹² Constitution of India, 1950, s. Article 32.

¹³ Constitution of India, 1950, s. Article 30.

¹⁴ *Azeez Basha v Union of India* [1968] SCR 662

“Originalism”

Originalism derives from the notion of the term “*original*,” referring to something in its initial form—created, framed, or established. Constitutional framers draft constitutions with the purpose of ensuring governance aligns with their prescribed principles. Originalism, therefore, requires that the Constitution be interpreted and understood in light of the framers’ original intent and the plain meaning of its text.¹⁵ The concept of constitutional interpretation is often divided between two broad approaches: *originalism and the doctrine of a dynamic or living constitution*. The former rejects the latter’s flexible, evolving view of constitutional meaning, instead emphasizing the interpretation of the Constitution as it stood at the time of ratification.

This interpretive method accords primacy to the Constitution’s language and the framers’ intentions as binding authorities.¹⁶ *True originalism* asserts that the original meaning of constitutional text should either be the exclusive objective of judicial interpretation or, at the very least, take precedence over any subsequent or alternative meanings that might emerge. Under this view,¹⁷ the legal significance of constitutional provisions must be derived strictly from their original sense as understood at the time of their framing or adoption. Consequently, *originalism* posits that constitutional application in contemporary disputes should, as far as possible, reflect the document’s meaning at the moment of its formation.

Proponents argue that an interpreter must adhere to the framers’ intent and the understanding prevalent among readers of that historical period. However, there remains internal debate on how best to ascertain that original meaning. Many jurists rely on the plain meaning of constitutional language, applying general rules of syntax and considering the wider context and audience to resolve ambiguity. Where only one reasonable interpretation emerges, that interpretation is upheld as the faithful reading of the text.¹⁸

Since its revival in modern constitutional thought, originalism has evolved through three principal phases: an initial focus on the framers’ intent, a subsequent emphasis on public meaning, and a more recent orientation toward the Constitution’s legal meaning. A

¹⁵ Rev. TJ Denley, “Originalism v. Dynamic Constitutionalism: Implications of Religious Beliefs on Constitutional Interpretation” (2023) 23 U. Md. L.J. Race Relig. Gender & Class 21 at 54.

¹⁶ Stephen, Sachs, “Originalism as a Theory of Legal Change” (2015) 38 Harv J L & Pol’y 817 at 819

¹⁷ Christopher J. Peters, “What Lies Beneath: Interpretive Methodology, Constitutional Authority, and the Case of Originalism” (2013) Brigh. Young Univ. Law Rev. 1251 at 1259.

¹⁸ John O. McGinnis & Michael B. Rappaport, “The Constitution and the Language of the Law” (2018) 59:4 Wm. & Mary L. Rev. 1321 at 1353

contemporary variation—textualism, notably championed by Justice Antonin Scalia—advocates decision-making strictly in accordance with the Constitution’s original text. Critics, however, contend that originalism can be arbitrary and susceptible to subjective interpretation. Judicial conformity to prevailing societal or institutional pressures may compromise impartiality, fostering decisions that erode public trust in the objectivity and integrity of the legal system.¹⁹

“Living Constitutionalism”

The Constitution acts as the foundational legal structure established through various laws that support the smooth functioning of government. Modifying this framework can be difficult, often hindered by political factors and other practical limitations. Nonetheless, as societal needs evolve, maintaining a dynamic and adaptable constitutional approach becomes necessary—this is the core idea behind the concept of a “living constitution.”²⁰ The term “*living constitution*” was introduced by Roscoe Pound in 1908, referencing Justice Marshall’s efforts to interpret the Constitution in a way that keeps it relevant and responsive to contemporary issues. Justice Holmes likened words to “the skin of an idea,” suggesting that constitutional language—like living skin—should be flexible and capable of renewal to address ongoing changes. Even though the United States Constitution contains only about 6,000 words, courts have generated vast interpretations and clarifications to address its open-ended provisions²¹.

Justice William Brennan emphasized the importance of embracing ambiguity when applying constitutional concepts to present-day situations, considering this uncertainty a strength rather than a weakness. The Framers embedded fundamental principles after confronting significant abuses by the Crown, creating a framework that both protects and limits the interpretation of certain processes, occasionally anchoring society to past ideals²².

Modern legal scholars use “*living constitutionalism*” in various ways. Contemporary living constitutionalism often rejects rigid originalism and proposes that constitutional interpretation should adjust to shifting social contexts, emphasizing evolution within judicial reasoning²³.

¹⁹ S. Cornell, “Reading the Constitution, 1787-91: History, Originalism, and Constitutional Meaning” (2019) 37:3 Law & Hist Rev, 823 at 834.

²⁰ R. Pound, “Mechanical Jurisprudence” (1908) 8 Colum. L. Rev., 605 at 610.

²¹ H. Lee McBain, “The Living Constitution” (1927) The Workers Education Bureau Press.

²² J. William, Brennan, Jr., “The Constitution of the United States: Contemporary Ratification” (1986) 27 South Tex. Law Rev, 433 at 441.

²³ C. Michael Dorf, “The Majoritarian Difficulty and Theories of Constitutional Decision Making” (2010)

This perspective maintains that constitutional law is heavily influenced by judges' perceptions of current social values. *Living constitutionalism* encourages courts to consider modern ideas and attitudes when interpreting constitutional provisions. Critics argue that this approach sometimes allows courts to prioritize the rights of certain individuals or groups over the broader interests of the legislative majority, using the living constitution framework as justification.²⁴

“Constitution is not a mere lawyer’s document. It is a vehicle of life and its spirit is always the spirit of age” - Dr BR Ambedkar

Indian Constitutional Approach Towards ‘Originalism’

India’s Constitution came into force on January 26, 1950. Within the first decade of its operation, the Constitution underwent approximately eight amendments. The framework allows Parliament to modify constitutional provisions with a two-thirds majority, though changes to *Part III (Fundamental Rights)* do not require ratification by state legislatures. The principal constitutional question was whether these amendments could be classified as “law” under *Article 13(2)*.²⁵

The Supreme Court addressed this in *Shri Sankari Prasad Deo v. Union of India*²⁶, where it ruled that amendments enacted through Article 368—including those affecting Fundamental Rights—fall exclusively within Parliament’s authority, with no explicit constitutional limits provided. Amendments were held not to be “laws” within *Article 13*’s scope, thereby permitting Parliament to alter Fundamental Rights by constitutional amendment.²⁷ The Court did not find convincing evidence that the framers intended to shield Fundamental Rights from all constitutional amendment.

A textual approach focusing on the plain meaning of the constitutional language was applied again in *Sajjan Singh v. State of Rajasthan*²⁸, reaffirming Parliament’s power to amend any constitutional provision, including Fundamental Rights. The 17th Amendment exemplified that such amendments lie outside *Article 13*’s purview. Article 13(2) voids any state action that

13:46 J Const. Law. 283 at 292.

²⁴ Miller v. Civil City of South Bend, 904 F.2d 1081, 1105 (7th Cir. 1990).

²⁵ Constitution of India, 1950, s. Article 13.

²⁶ Shri Sankari Prasad Deo v. Union of India, AIR 1951 SC 458.

²⁷ Dr. Aman Ullah & Samee Uzair, "Basic Structure of Constitution: Impact of Kesavananda Bharati on Constitutional Status of Fundamental Rights" (2011) 26 South Asian Studies 299 at 301

²⁸ Sajjan Singh vs. State of Rajasthan AIR 1964 SC 845.

abridges Fundamental Rights, while Article 368 vests Parliament with the authority to amend the Constitution, subject to evolving judicial doctrine such as the “basic structure” theory, which places implicit limits on altering core constitutional features.

Subsequently, the issue resurfaced before an eleven-judge bench in *I.C. Golak Nath v. State of Punjab*²⁹. Departing from earlier positions, the Court held that Parliament could not amend the Fundamental Rights enshrined in the Constitution. This judgment marked a significant advance in safeguarding citizens’ rights, preceding the formal development of the basic structure doctrine, and rejected prior decisions in *Shankari Prasad and Sajjan Singh*. The Golak Nath Court expanded the definition of “law” under Article 13(3) to include constitutional amendments, reasoning that Parliament’s amendment power could not override protected rights.³⁰ This approach reflected an originalist perspective but relied on a broad interpretation of constitutional intent and public interest.³¹

With diverging judicial opinions on Parliament’s power to amend, a thirteen-judge bench was constituted for *Kesavananda Bharati v. State of Kerala*³². In this landmark judgment, the Supreme Court established the “basic structure” doctrine, ruling that while Parliament may amend the Constitution, it cannot alter its foundational framework. This doctrine safeguards the core democratic and constitutional principles, preventing amendments that would undermine democracy, the rule of law, and fundamental freedoms. *Kesavananda Bharati* invalidated previous decisions inconsistent with the basic structure concept, anchoring constitutional interpretation in an originalist philosophy that restricts Parliament from eroding primary principles developed through judicial evolution³³.

The judgment further asserted that interpreting the Constitution requires acknowledging its spirit, not just its literal wording. The “*living constitution*” approach means constitutional meaning adapts to social changes and evolving goals.³⁴ The basic structure doctrine, though not explicitly stated in the Constitution, is judicially constructed to preserve the document’s essence. The Supreme Court emphasized that constitutional interpretation must respect its

²⁹ Golak Nath vs. State of Punjab AIR 1967 SC 1643.

³⁰ Niranjana Rai, "Case Analysis on I.C. Golaknath v State of Punjab AIR 1967 SC 1643" (2021) II:II Indian Journal of Law & Legal Research 1

³² His Holiness Kesavananda Bharti Sripadagalavaru vs. State of Kerala and Another, AIR 1973 SC 1461.

³³ Manoj Makireddy, "Case Analysis of Kesavananda Bharathi v State of Kerala" (2021) 3:4 Intl J Legal Sci & Innovation 635 at 641.

³⁴ Rosalind Dixon & David Landau, “Transnational Constitutionalism and a Limited Doctrine of Unconstitutional Constitutional Amendment” (2015) 13:3 Int. J. Const. Law. 606 at 615.

purpose, with greater focus on the social motivations behind enactment than on strict textual readings. Ultimately, the court recognized the basic structural theory as integral to the preservation of India's constitutional identity.

Indian Constitutional Approach Towards 'Living Constitutionalism'

Indian courts have consistently affirmed the Constitution as a dynamic and evolving document. *Articles 21* and *19* are often cited as the most illustrative of this "living" nature, with their interpretation expanding over time. In *A. K. Gopalan v. State of Madras*,³⁵ the scope of *Article 21* was initially narrow, but subsequent judgments have broadened its reach. The *Indra Sawhney & Ors. v. Union of India*³⁶ case, commonly referred to as the Mandal Commission Case, highlighted a structuralist approach, where the Court interpreted *Article 16(4)* not as an exception to the equality clause but as an integral part of it. Another landmark judgment, *S.R. Bommai v. Union of India* (1994),³⁷ dealt with federalism and remains a pivotal ruling. The Supreme Court examined the application of *Article 356*, holding that the President could dissolve a state government if it threatened the Constitution's core principles. This decision emphasized the basic structure doctrine and advocated for a federalist interpretation of *Article 356*, aligning with the Constitution's foundational values.

Public Interest Litigation (PIL): Finding the 'Middle Path' in Judicial Intervention

Public Interest Litigation (PIL) has evolved into a mechanism often utilized to draw public attention to various societal concerns. However, this expanded use sometimes diverts focus from matters genuinely deserving judicial consideration and intervention intended to provide justice to those who are wronged or marginalized. The concept of PIL serves as a connecting bridge between the philosophies of originalism and living constitutionalism, maintaining equilibrium between these two interpretative approaches³⁸. It functions as a judicial tool for protecting fundamental rights envisioned by the framers of the Constitution, shaped over time through judicial activism and interpretative progress. Historically, the essence of PIL lies in upholding constitutional ideals of equality, liberty, and justice as articulated in the Preamble

³⁵ A. K. Gopalan vs. State of Madras AIR 1950 SC 27.

³⁶ Indra Sawhney & Ors. vs. Union of India AIR 1993 SC 477.

³⁷ S.R. Bommai vs. Union of India AIR 1994 SC 1918.

³⁸ Munir MA, "Public Interest Litigation in Supreme Court of India" 1 *Social Science Research Network* 38-42 (2007), which reinforces that PIL serves as a bridge between originalism and living constitutionalism as it adapts to contemporary needs, balancing the rigid interpretations of originalism with the evolving demands of society.

and the fundamental rights, ensuring fair access to justice even for individuals who might otherwise be unable to approach the courts.

At the same time, PIL reflects the spirit of living constitutionalism by allowing the law to respond to evolving societal values and circumstances. The judiciary has expanded the traditional framework of PIL by recognizing the locus standi of individuals or groups to file petitions on behalf of others, especially those who are disadvantaged. Through this, courts have been able to address modern concerns—social, economic, or environmental—that were not explicitly anticipated by the framers of the Constitution.³⁹

Through a combination of judicial activism and social accountability, PIL embodies a middle path that aligns the original aims of the Constitution with contemporary realities. It empowers the judiciary to protect the constitutional rights of citizens while remaining mindful of its boundary between interpretation and legislation. In doing so, it enforces existing legal and constitutional safeguards by integrating the originalist emphasis on established rights with the dynamic approach of living constitutionalism. A prominent example of this synthesis can be seen in *Vishaka v. State of Rajasthan* (1997), a landmark judgment that addressed the absence of legislation on sexual harassment at workplaces. The case, stemming from the assault on Bhanwari Devi, a grassroots activist opposing child marriage in Rajasthan, stands as a significant development in constitutional jurisprudence and the reinforcement of gender justice.⁴⁰

Understanding Context Through the Constitutional Framework and ‘Judicial Precedents’

The Supreme Court grounded its reasoning in the constitutional principles enshrined in *Articles 14 (Right to Equality)*⁴¹, *15 (Prohibition of Discrimination)*⁴², *19 (Freedom of Speech and Expression)*⁴³, and *21 (Right to Life and Personal Liberty)*⁴⁴, along with the Directive Principles of State Policy, particularly *Article 42*, which directs the State to ensure humane

³⁹ Cooper J and Dhavan R, “Public Interest Law” 1 *Blackwell Publishing* 25-50 (1987), argues that PIL empowers courts to address issues like social, economic and environmental concerns that are not covered in the constitution.

⁴⁰ Elihu Lauterpacht and Christopher Greenwood, “VISHAKA v. STATE of RAJASTHAN” 1 *Lotus Publishing* 75-77 (2003), discuss how the marked a pivotal moment in offering a middle path in constitutional interpretation which expanded the scope of fundamental rights by creating guidelines to address sexual harassment at workplace.

⁴¹ Constitution of India, 1950, s. Article 14

⁴² Constitution of India, 1950, s. Article 15

⁴³ Constitution of India, 1950, s. Article 19

⁴⁴ Constitution of India, 1950, s. Article 21

working conditions.⁴⁵

These provisions represent an originalist view of the Constitution, reflecting fidelity to its foundational framework without encroaching upon legislative functions. Recognizing the absence of statutory protection against workplace harassment and the evolving social scenario, the Court formulated the *Vishaka* Guidelines to address this legal gap. Notably, it did so without altering the constitutional text but by employing interpretive tools within its judicial domain. This judicial initiative demonstrates the principle of living constitutionalism, where the Constitution is viewed as a dynamic instrument responsive to societal change. The case stands as an archetype of judicial activism—where the judiciary protects fundamental rights while staying within constitutional confines and avoiding legislative substitution. It further established a precedent for utilizing *Public Interest Litigation (PIL)* as a mechanism to address profound social issues within constitutional boundaries.

In *Property Owners Association v. State of Maharashtra (2024)*⁴⁶, the Supreme Court examined the broader interpretative scope of *Article 39(b)*, which mandates that the material resources of the community be distributed to serve the common good. The central question concerned whether privately owned property could be classified as “material resources of the community.” Drawing upon earlier judgments such as *State of Karnataka v. Ranganatha Reddy (1978)*⁴⁷ and *Sanjeev Coke Manufacturing Co. v. Bharat Coking Coal Ltd. (1983)*⁴⁸, both attributing communal value to certain private assets, the Court clarified that only private resources serving a substantial public purpose—like natural resources, mines, or radio frequencies—qualify under this term. Personal assets lacking communal benefit fall outside the provision’s ambit. The verdict, decided in a 7:2 majority, saw Justices B. V. Nagarathna and Justice Dhulia dissenting, arguing that extending *Article 39(b)* to encompass all private property would dilute the constitutional protection under *Article 300A*.

This judgment effectively balances originalist and living constitutionalist perspectives by

⁴⁵ Constitution of India, 1950, s. Article 42

⁴⁶ *Property Owners' Association v. State of Maharashtra*, (1991) SCC Online, explores the interpretation of Article 39(b) of the Indian Constitution, which emphasised the state’s role in ensuring that material resources benefit the public good

⁴⁷ *State of Karnataka v Ranganatha Reddy*, (1977), (4 SCC 471).

⁴⁸ *Sanjeev Coke Manufacturing Co v Bharat Coking Coal Ltd* [1983] 1 SCR 1000.

crafting what the Court termed a “*Middle Path*”⁴⁹. The ruling introduced a pragmatic “*Middle Path Test*” to discern whether a resource constitutes a community asset or private property—evaluating factors such as its nature, public impact, potential monopoly, scarcity, and implications of private ownership. The Court also invoked the Public Trust Doctrine, developed in *M.C. Mehta v. Kamal Nath* (1996)⁵⁰, emphasizing the State’s duty to safeguard communal resources like water bodies and natural assets in the public interest.

In *Jamiat Ulama-i-Hind v. State of Uttar Pradesh and Others* (2022)⁵¹, the Court reaffirmed that any demolition activity must strictly adhere to due legal process, ensuring compliance with *Articles 14* and *21* of the Constitution. It cautioned against the misuse of administrative powers to undermine lawful procedures or to target particular communities or individuals.

Grounded in the philosophy of *living constitutionalism*, the judgment acknowledged that constitutional interpretation must evolve to meet emerging challenges, striking a balance between maintaining public order and upholding fundamental rights. By insisting upon procedural fairness and accountability, the Court maintained equilibrium between the State’s regulatory authority and the individual’s constitutional protections.

Uniform Civil Code (UCC): ‘Balancing Tradition and Reform’

One of the most debated and significant topics in society is the Uniform Civil Code (UCC), which aims to establish common laws governing inheritance, marriage, divorce, and adoption for all citizens. Currently, different religious communities follow their own personal laws, which often results in discrimination and exploitation, especially of minority groups such as women.⁵² The UCC, anchored in *Article 44* of the Indian Constitution under the Directive Principles of State Policy, was incorporated by the framers with the intention to foster national unity and uphold secularism through equality by applying uniform laws regardless of religion⁵³. Fundamentally, the UCC seeks to protect individual rights and ensure equality through a cohesive legal framework.

⁴⁹ Gursimran Kaur Bakshi, 'Wealth Inequality is Still Enormous; Views of Krishna Iyer & Chinnappa Reddy Have not Lost Relevance Justice Sudhanshu Dhulia in Dissent', Live Law, 7 November 2024, accessed on November 12, 2024

⁵⁰ *M.C. Mehta v Kamal Nath* (1996) 8 SCC 462

⁵¹ *Jamiat Ulama-i-Hind v State of Uttar Pradesh* [2022] AHC-LKO 2715 (DB).

⁵² Nivedita Menon, 'A Uniform Civil Code in India: The State of the Debate' (2014) 40(2) *Feminist Studies* 480-486

⁵³ Constitution of India, 1950, s. Article 14

However, with societal progress and the rising demand for gender equality, the application of *Article 44* is also influenced by the concept of living constitutionalism, which interprets the Constitution in light of contemporary values such as gender justice and inclusive rights. Hence, the UCC as a living document must balance traditional personal laws with modern principles of justice and equality.

An inclusive approach for reforming the UCC can be achieved by upholding its core values of equality and unity while respecting religious and cultural diversity⁵⁴. A practical example is the implementation of uniform laws in Uttarakhand, which prohibits polygamy and sets the minimum age of marriage at 21 for all individuals regardless of gender. This model offers a potential solution to address current social issues.

The landmark case of *Mohd. Ahmed Khan v. Shah Bano Begum and Ors*⁵⁵ is often cited in discussions about *Article 44* and the UCC's relevance today. This judgment highlighted the significance of the UCC without undermining personal laws. It addressed the practice of triple talaq, which adversely affected Muslim women, providing them gender justice and emphasizing the need for uniformity in personal laws. This case exemplifies the fusion of original constitutional values with living constitutionalism, as seen in the 2017 abolition of triple talaq and the subsequent enactment of the *Muslim Women (Protection of Rights on Marriage) Act, 2019*⁵⁶.

Comparative Perspectives: 'Unveiling Parallel and Contrasts'

The constitutional interpretations in India, as well as in countries such as the United States, Canada, and South Africa, prominently feature the concepts of originalism and living constitutionalism. Each nation has developed its unique approach to these doctrines based on its historical background, constitutional structures, and societal needs.

For example, the United States typically follows originalism, where conservative judges believe the Constitution should be read according to the original meaning understood at the time of its adoption. This method limits judicial discretion and prevents judges from imposing

⁵⁴ Werner Menski, 'The Uniform Civil Code Debate in Indian Law: New Developments and Changing Agenda', Cambridge University Press, 2019.

⁵⁵ Mohd Ahmed Khan v Shah Bano Begum (1985) 2 SCC 556.

⁵⁶ India. Muslim Women (Protection of Rights on Marriage) Act 2019, No 19 of 2019.

their personal or contemporary views in decisions⁵⁷. A leading originalist, the late Justice Antonin Scalia, argued that constitutional changes should come through formal amendments rather than reinterpretation by courts. A notable case reflecting this perspective is the U.S. Supreme Court's decision in "*Thomas E. Dobbs v. Jackson Women's Health Organization*,"⁵⁸ which overturned the earlier "*Roe v. Wade*" ruling⁵⁹. The Court held that the Constitution does not explicitly guarantee a right to abortion, emphasizing that constitutional protections must be deeply rooted in the nation's history. This case exemplifies the U.S. judiciary's inclination toward originalism⁶⁰.

Conversely, living constitutionalism regards the Constitution as a living document that evolves alongside societal changes. Advocates like Justice Stephen Breyer argue that constitutional interpretation should reflect current social realities. This approach was evident in the landmark case "*Obergefell v. Hodges*"⁶¹ where Justice Anthony Kennedy upheld the right to same-sex marriage, highlighting that evolving understandings of marriage are part of a dynamic society and emerging freedoms relevant to new generations. In Canada, originalism plays a lesser role in constitutional interpretation. The Canadian constitutional framework emphasizes principles such as minority protection, federalism, the rule of law, and parliamentary democracy. Canadian courts prioritize the Charter of Rights and Freedoms, enacted in 1982, which focuses on individual rights from a modern standpoint rather than strictly adhering to the framers' original intent.

Therefore, Canadian jurisprudence embraces a living constitutionalism approach through purposive interpretation of the Charter, taking into account societal changes⁶². A significant ruling in this context is "*R. v. Morgentaler*"⁶³ which affirmed women's reproductive rights by removing restrictive conditions on abortion access, emphasizing personal autonomy and limiting state interference in such intimate decisions related to bodily integrity and health. As a result, Canada currently maintains no federal abortion law, deferring regulation to medical professionals rather than criminal law, reflecting its commitment to living constitutionalism.

⁵⁷ Originalism as a Political Practice: The Right's Living Constitution [2006-2007] 75 Fordham L Rev 545

⁵⁸ Dobbs v Jackson Women's Health Organization [2022] 597 US 215.

⁵⁹ Roe v Wade (1973) 410 US 113.

⁶⁰ 'Overruling Roe v. Wade: An Analysis of the Proposed Constitutional Amendments' [1973-1974] 15 BCL Rev 307

⁶¹ Obergefell v Hodges (2015) 576 US 644

⁶² 'Toward a Canadian Originalism' [2018-2019] 49 Advoke Q 422.

⁶³ R v Morgentaler [1988] 3 SCR 463

South Africa presents a distinct form of originalism, focused not on preserving historical interpretations but on fulfilling the transformative aims of the Constitution. Created in 1996 to overcome racial segregation and institutionalize inclusivity, the South African Constitution enshrines principles such as equality, human dignity, and social justice. Originalism here means fidelity to these constitutional goals⁶⁴.

South African courts mainly adopt a living constitutionalism approach to address evolving societal needs and promote inclusivity. ⁶⁵A landmark case in this spirit is "*Government of the Republic of South Africa v. Grootboom*", where the court recognized the right to adequate housing as fundamental to individual dignity. South Africa's constitutional approach is thus a blend, combining transformative originalism with living constitutionalism to pursue social justice in contemporary circumstances.

Conclusion: "Finding Balance – Charting India's 'Middle Path'"

The exploration of freedom as an essential democratic value reveals its profound complexity within India's constitutional framework, where the interplay of originalist and living constitutionalist approaches shapes the protection and evolution of individual liberties. India's Constitution, rooted in both historical intent and dynamic societal needs, exemplifies a nuanced model accommodating majority rule while safeguarding minority rights and social justice. Judicial doctrines like the basic structure and mechanisms such as Public Interest Litigation embody this balance, ensuring the Constitution remains both an enduring legal foundation and a responsive instrument for contemporary challenges. Comparative insights from other democracies underscore that constitutional interpretation must carefully navigate between fidelity to original principles and adaptability to evolving social realities, fostering inclusive governance and the ongoing realization of constitutional ideals.

The United States tends to prioritize the originalist approach to constitutional interpretation, emphasizing the text and intent of the framers. In contrast, Canada leans more toward living constitutionalism, which allows the constitution to evolve with societal changes. South Africa, however, uniquely integrates both approaches, focusing on justice and transformative constitutional goals. It safeguards the rights of historically marginalized groups while remaining committed to the broader objective of societal transformation as envisioned by its

⁶⁴ 'Framework Originalism and the Living Constitution' [2009] 103 NW UL Rev 549

⁶⁵ *Government of the Republic of South Africa v Grootboom*.

Constitution.

In India, the challenge is to navigate between the originalist and living constitutionalist perspectives. This has led to the adoption of a middle path—a hybrid model that combines the stability offered by originalism with the adaptability of living constitutionalism. This approach, sometimes described as constitutional liberalism, helps preserve foundational constitutional values such as the supremacy of law, individual freedom, and minority rights. At the same time, it enables judicial interpretations to respond to the evolving needs of society. Such a balanced method not only upholds principles of duty, order, and honor but also embraces ideals of freedom, creativity, and social progress, fostering harmony in a diverse democracy.

Research Questions and Answers

1. In what ways does the interplay between originalism and living constitutionalism manifest in Indian constitutional jurisprudence and what are the practical consequences for legislative and judicial action?

- A. The interplay between originalism and living constitutionalism in Indian constitutional jurisprudence manifests as a dynamic balance where the courts recognize the Constitution's original intent while adapting its application to contemporary social realities, resulting in pragmatic judicial activism that influences legislative actions to align laws with evolving societal values.

2. What do you mean by Originalism?

- A. Originalism under constitutional law is a theory of legal interpretation that holds that the Constitution should be understood and interpreted based on the original meaning or intent of its text at the time it was adopted or ratified. originalism is about interpreting the Constitution as it was originally understood to preserve legal stability and fidelity to the text's historical meaning.

3. What do you mean by Living Constitutionalism?

- A. Living constitutionalism is a theory of constitutional interpretation that holds the Constitution's meaning is dynamic and can evolve over time. Unlike originalism, which seeks to interpret the Constitution based on its original meaning at the time it was

written, living constitutionalism allows for the Constitution to adapt to contemporary values, social norms, and evolving understandings of rights and liberties. living constitutionalism views the Constitution as a living document that must be interpreted flexibly to respond to changing societal needs and contemporary understandings of justice and liberty while maintaining the Constitution's core principles.

4. What are the key differences between originalism and living constitutionalism as methods of constitutional interpretation?

A. Originalism anchors interpretation in the historical, fixed meaning of the Constitution, promoting stability and changes through amendments, while living constitutionalism embraces a flexible, evolving interpretation responsive to contemporary realities and societal progress through judicial interpretation.

Originalism:

- Interprets the Constitution's meaning as fixed at the time of its drafting and ratification.
- Embraces the "Fixation Thesis," maintaining that the text's meaning is constant, unaffected by evolving social values.
- Limits judicial discretion to interpretations consistent with the historical context, emphasizing legal stability and democratic legitimacy.
- Changes to the Constitution should come through formal amendments, not judicial reinterpretation.
- Focuses on what a reasonable person at ratification would have understood.
- May overturn judicial precedents that conflict with original meaning but allows limited adherence for stability.

Living Constitutionalism:

- Regards the Constitution as a dynamic, evolving document that adapts to current societal needs and values.

- Rejects fixation and constraint principles, allowing interpretations reflecting present-day circumstances.
- Views the Constitution as intentionally broad and open-ended, permitting varied interpretations over time.
- Gives significant weight to precedent as reflective of evolving norms.
- Provides flexibility to address modern challenges, such as expanding rights or new technologies.
- Criticized for potential judicial overreach by imposing personal values, risking democratic legitimacy.

5. What are the theoretical justifications for judicial restraint (originalism) and for flexible constitutional interpretation (living constitutionalism) in the context of protecting individual liberty in India?

- A. Judicial Restraint (Originalism) focuses on limiting judicial intervention by respecting the original intent of the Constitution's framers and the fixed meaning of its text, except through formal amendments. It promotes stability, predictability, and the separation of powers, deferring policy decisions to legislatures. This approach upholds adherence to precedent (*stare decisis*), ensuring consistent interpretation of rights while curbing judicial activism. It protects individual liberty by safeguarding core constitutional values within defined legal bounds, avoiding arbitrary expansion of rights. Historically, landmark cases like *Kesavananda Bharati* highlighted judicial restraint by limiting judicial power to alter the Constitution's basic structure, reflecting a cautious and minimalistic judicial role that respects democratic principles and avoids political interference.

Flexible Constitutional Interpretation (Living Constitutionalism), by contrast, views the Constitution as a dynamic, evolving document that must adapt to changing social, political, and technological realities. It supports broad, purposive interpretations of constitutional provisions to protect contemporary individual liberties, including rights unforeseen by the Framers such as privacy and equality for marginalized groups. Indian

judiciary's activism following key cases like *Maneka Gandhi* and *K.S. Puttaswamy* exemplifies this approach by expanding fundamental rights through flexible interpretation. This approach justifies judicial intervention to uphold justice, liberty, dignity, and equality, ensuring the Constitution remains relevant in a complex modern society. Critics warn about potential judicial overreach, but advocates argue that this adaptability is essential for effectively safeguarding liberty in a democracy.

6. How do living constitutional and originalist approaches differ in their treatment of ambiguous or open-ended constitutional provisions?

- A. Originalism anchors constitutional interpretation to fixed historical meanings to restrain judicial flexibility, while living constitutionalism embraces ambiguity as a tool for the Constitution to remain relevant and responsive to societal changes.

The living constitutional and originalist approaches differ fundamentally in their treatment of ambiguous or open-ended constitutional provisions. Originalists hold that the Constitution's meaning is fixed at enactment and interpret ambiguous texts by the original public meaning in historical context, aiming to limit judicial discretion and remain faithful to the framers' intent. In contrast, living constitutionalists view the Constitution as a dynamic document that adapts to modern societal values, allowing judicial interpretation to evolve the law to address contemporary issues and moral considerations, even if that means diverging from original meanings.

Key differences are:

- Originalists resolve ambiguity by original fixed meaning; living constitutionalists allow evolving interpretations.
- Originalists limit judicial discretion to historical intent; living constitutionalists permit judicial discretion guided by current societal needs.
- Originalists require formal amendments for change; living constitutionalists embrace judicial interpretation for legal evolution.
- Originalists focus on fidelity to framers' intent; living constitutionalists prioritize flexibility for unforeseen challenges.

7. How has the living constitution approach influenced the protection or expansion of rights in modern constitutional jurisprudence?

- A. The living constitution approach is a dynamic constitutional interpretation method that allows constitutional provisions to evolve in response to contemporary societal needs and values. It has significantly influenced the expansion and protection of individual rights, enabling courts to broaden fundamental rights beyond the original framers' intentions. In India, this is evident in the Supreme Court's progressive interpretation of Article 21, which now includes rights such as privacy, dignity, livelihood, and a healthy environment, as seen in landmark cases like *Maneka Gandhi v. Union of India* (1978) and *K.S. Puttaswamy v. Union of India* (2017). The approach ensures constitutional protections remain relevant to modern challenges by incorporating changing social, economic, and technological contexts.

This doctrine has enabled courts in other jurisdictions like the United States to reflect evolving societal values, as demonstrated in rulings like *Obergefell v. Hodges* (2015) for same-sex marriage and *Brown v. Board of Education* (1954) for racial equality. Theoretically, the living constitution provides flexibility for the judiciary to uphold liberty and social justice amid societal changes, though it also raises concerns about judicial overreach. Overall, it maintains the constitution's relevance by adapting protections to new realities and ensuring fundamental rights keep pace with societal evolution.

8. How does the doctrine of “living constitution” complement or conflict with the “basic structure” doctrine in interpreting constitutional amendments?

- A. The living constitution doctrine facilitates constitutional growth and relevance through evolving interpretation, while the basic structure doctrine protects the inviolable core principles by restricting amendment powers. This relationship is pivotal in India, where the Supreme Court uses both doctrines to maintain constitutional democracy, fundamental rights, and judicial review, ensuring the constitution adapts to contemporary needs without eroding its foundational framework.

The doctrine of the "living constitution" and the "basic structure" doctrine interact in constitutional law in a complex, complementary, and conflicting manner concerning

constitutional amendments.

The living constitution doctrine sees the constitution as a dynamic document that evolves with societal changes, allowing flexible interpretation based on contemporary values. This ensures the constitution remains relevant over time, empowering judges and lawmakers to adapt constitutional application to present-day contexts.

The basic structure doctrine, established by the Indian Supreme Court in *Kesavananda Bharati v. State of Kerala* (1973), restricts Parliament's power to amend the constitution by protecting essential features—its "basic structure"—from alteration or destruction. These features include supremacy of the constitution, rule of law, separation of powers, judicial review, federalism, secularism, fundamental rights, and national unity. The doctrine maintains constitutional stability by preventing arbitrary or extreme amendments even with legislative approval.

How They Complement Each Other:

- The living constitution promotes evolution and adaptability of constitutional interpretation to contemporary needs.
- The basic structure doctrine serves as a safeguard that limits amendment powers to preserve the constitution's foundational principles.
- Together, they balance flexibility and protection—allowing the constitution to evolve while securing its core identity and democratic framework.

How They Conflict:

- The living constitution's broad interpretive scope can bring dynamic change, supporting judicial activism and evolving social demands.
- The basic structure doctrine limits Parliament's amendment powers by invalidating changes that threaten fundamental constitutional principles.
- Thus, the doctrine acts as a conservative check, sometimes constraining the adaptability encouraged by the living constitution, creating a tension between

constitutional flexibility and rigidity.

9. In what ways has the judicial approach to Article 21 contributed to the concept of the Constitution as a "living document"?

- A. The judicial approach to Article 21 of the Indian Constitution has profoundly shaped the concept of the Constitution as a "living document" by expansively interpreting this provision to adapt to changing societal contexts and protect new dimensions of fundamental rights essential for human dignity. Initially, Article 21 was narrowly seen as protection against arbitrary state action, focusing on physical survival. Over time, the Supreme Court broadened "life" to mean living with dignity and included rights to livelihood, health, education, privacy, a clean environment, and digital access.

A landmark case, *Maneka Gandhi v. Union of India*, marked a shift to a purposive interpretation requiring that the "procedure established by law" under Article 21 be just, fair, and reasonable, linking procedural safeguards to substantive due process. The judiciary's recognition of privacy as part of Article 21 further shows its responsiveness to technological and social changes. Judicial creativity continues to expand Article 21 rights in line with evolving societal values, such as digital access and protection from modern oppression forms, reinforcing the Constitution's vitality as a living instrument.

In summary, the judiciary's progressive interpretation of Article 21 exemplifies the Constitution's dynamic nature, constantly evolving to secure justice, liberty, and dignity in new societal realities, thus affirming its role as a living document.

10. How does Public Interest Litigation serve as a bridge between the philosophies of originalism and living constitutionalism in Indian constitutional law?

- A. The judicial approach to Article 21 of the Indian Constitution has profoundly shaped the concept of the Constitution as a "living document" by expansively interpreting this provision to adapt to changing societal contexts and protect new dimensions of fundamental rights essential for human dignity. Initially, Article 21 was narrowly seen as protection against arbitrary state action, focusing on physical survival. Over time, the Supreme Court broadened "life" to mean living with dignity and included rights to livelihood, health, education, privacy, a clean environment, and digital access.

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In summary, the judiciary's progressive interpretation of Article 21 exemplifies the Constitution's dynamic nature, constantly evolving to secure justice, liberty, and dignity in new societal realities, thus affirming its role as a living document.

11. In what ways has the concept of living constitutionalism influenced the interpretation and implementation of Article 44 with respect to gender justice and individual rights?

- A. The concept of living constitutionalism has influenced the interpretation of Article 44 of the Indian Constitution by promoting a dynamic and evolving understanding of the Uniform Civil Code (UCC). Living constitutionalism allows the judiciary and legislature to adapt the UCC to contemporary values such as gender justice and protection of individual rights, unlike originalism, which confines interpretation to the Constitution's original intent. Article 44, as part of the Directive Principles of State Policy, directs the State to endeavor to secure a uniform civil code for all citizens, intending to replace diverse personal laws with a single legal framework promoting equality and justice.

This approach stresses reforming personal laws that currently discriminate against women, addressing issues in marriage, divorce, inheritance, and maintenance that perpetuate gender inequality. Judicial activism, such as banning triple talaq and legislating protections for Muslim women, exemplifies living constitutionalism's impact on advancing gender justice under the UCC framework. It balances the uniformity goal with sensitivity to religious freedom while ensuring individual rights like dignity, equality, and non-discrimination are protected.

In summary, living constitutionalism shapes Article 44's implementation to prioritize

gender justice by unifying discriminatory personal laws and framing UCC as an evolving instrument guaranteeing equal rights while respecting cultural and religious diversity. This dynamic interpretation, supported by judicial and legislative reforms, helps realize Article 44's transformative promise of gender justice and individual rights in India's pluralistic society.

12. How does the Indian judiciary balance originalism and living constitutionalism in interpreting fundamental rights under the Constitution of India?

- A. The Indian judiciary strikes a balanced, middle-path approach between originalism and living constitutionalism in interpreting fundamental rights. It respects the Constitution's original intent while allowing its principles to evolve with contemporary societal needs through judicial activism and public interest litigation (PIL). This approach upholds core constitutional values and adapts interpretations to modern challenges without encroaching on legislative functions.

Originalism in Indian jurisprudence focuses on interpreting the Constitution according to the framers' original intent and the text's fixed meaning, preserving legal certainty and limiting judicial discretion. In contrast, living constitutionalism treats the Constitution as dynamic, enabling expansion of fundamental rights to address new social and technological realities, as seen in landmark cases like *K.S. Puttaswamy* (right to privacy).

The middle path combines these approaches by respecting the Constitution's original text while using tools like PIL and judicial activism to protect rights in line with current social values, exemplified by cases such as *Vishaka* (workplace sexual harassment). The judiciary maintains safeguards to prevent abuse of power, warning against both rigid originalism and unchecked living constitutionalism to avoid inflexibility or judicial overreach.

In summary, the Indian judiciary carefully balances fidelity to constitutional text with flexible interpretations to protect and expand fundamental rights in a manner consistent with democratic values and legislative boundaries.

13. What ways do originalist and living constitutionalist approaches influence judicial

protection and evolution of fundamental freedoms under the Indian Constitution?
How effective is the "middle path" or constitutional liberalism in this context?

- A. Originalist and living constitutionalist approaches influence judicial protection and evolution of fundamental freedoms under the Indian Constitution in distinct ways. The originalist approach emphasizes interpreting constitutional provisions according to the framers' original intent, thereby limiting judicial discretion to expand protections beyond the explicit text. It safeguards the original values and structure of the Constitution, often ensuring stability and predictability in law. For instance, it plays a crucial role in preserving the fundamental rights explicitly intended by the Constitution's drafters and supports doctrines like the Basic Structure to prevent alteration of core constitutional values. In contrast, the living constitutionalist approach views the Constitution as a dynamic and evolving document that must be interpreted in light of contemporary societal needs and changes. This approach supports judicial activism and enables the judiciary to expand and adapt fundamental freedoms to address modern challenges, social inequalities, and new dimensions of rights not explicitly covered by the original text. Landmark cases such as *Maneka Gandhi v. Union of India* and *K.S. Puttaswamy v. Union of India* reflect this approach, interpreting fundamental rights expansively to include procedural fairness and the right to privacy. The "middle path" or constitutional liberalism in the Indian context seeks to balance the stability of originalism with the flexibility of living constitutionalism. It combines respect for the Constitution's core principles with judicial innovation that adapts the law to evolving social contexts. This hybrid approach is evident in judicial mechanisms like Public Interest Litigation (PIL), which upholds the original constitutional goals while allowing the judiciary to address contemporary issues affecting fundamental rights. This middle path aims to preserve the rule of law and the supremacy of constitutional values while ensuring justice and social equity in a changing society. Overall, the living constitutionalist method has proven effective in broadening the protection of fundamental freedoms in India by enabling the judiciary to respond proactively to societal transformations. However, the originalist perspective ensures that such expansion does not undermine the constitutional framework's basic structure. The middle path or constitutional liberalism effectively mediates between these approaches by maintaining constitutional fidelity while promoting meaningful legal evolution.

The summarized distinction between originalist and living constitutionalist approaches and their influence on judicial protection of fundamental freedoms in India reveals a nuanced balance. The originalist approach emphasizes interpreting the Constitution according to its original intent, thereby limiting judicial discretion and safeguarding core principles, stability, and predictability. The living constitutionalist approach advocates for an adaptable interpretation aligned with contemporary societal needs, thus enabling the judiciary to extend and evolve fundamental rights in response to modern challenges.

Originalist Approach

Core principle: Interpretation based on the original meaning at the time of framing.

Impact: Ensures stability, maintains the constitution's original values, and supports doctrines like the Basic Structure to prevent core modifications.

Example in India: It plays a role in preserving explicitly intended fundamental rights and the original framework of the Constitution.

Living Constitutionalist Approach

Core principle: The Constitution is viewed as a living document that adapts to societal changes for continued relevance.

Impact: Promotes judicial activism, broadens the scope of fundamental rights, and addresses new social issues such as privacy and digital rights.

Example in India: Landmark judgments like *Maneka Gandhi v. Union of India* and *Puttaswamy v. Union of India* demonstrate the expansion of rights like privacy and procedural fairness, adapting constitutional protections to modern realities.

The Middle Path in India

Nature: A hybrid approach combining respect for constitutional stability with judicial innovation.

Mechanism: Public Interest Litigation (PIL) exemplifies this, balancing original

constitutional goals with adaptation mechanisms to contemporary issues.

Objective: To uphold the rule of law and constitutional supremacy while ensuring justice and social progress.

Overall Impact

The living constitutionalist method has been crucial in expanding the scope of fundamental rights to meet societal changes, like privacy in the modern digital era.

The originalist perspective offers a check on arbitrary expansion, maintaining the constitutional framework's integrity. These approaches collectively shape India's constitutional evolution, with the middle path ensuring a balanced, pragmatic, and adaptable interpretation in line with societal needs.

14. How does the Indian model of constitutional interpretation compare to the predominantly originalist approach in the United States and the living constitutionalist approach in Canada, especially regarding the protection of individual liberties and social justice?

- A. The Indian model of constitutional interpretation adopts a distinctive middle path that blends originalism and living constitutionalism, differing from the United States' predominantly originalist approach and Canada's living constitutionalist approach. It balances protecting individual liberties with adapting to societal changes through the Basic Structure Doctrine, which safeguards fundamental constitutional principles from amendment. This flexible yet principled method allows the judiciary to uphold individual rights under Articles 14, 19, and 21 while evolving constitutional meanings to promote social justice in a pluralistic society.

In contrast, the US approach focuses on originalism, interpreting the Constitution based on the framers' original intent to constrain judicial discretion and protect individual liberties, especially through the Bill of Rights. However, this approach is sometimes criticized for limiting adaptation to modern social justice needs.

Canada's approach uses living constitutionalism via the "living tree doctrine," viewing the Constitution as an evolving text to expand rights progressively and reflect

contemporary values, particularly through the Charter of Rights and Freedoms. This promotes social justice and individual autonomy while maintaining legal predictability.

In summary, India's middle path allows dynamic judicial responses to social change without abandoning foundational constitutional values, balancing stability and progress in protecting rights and advancing social justice. This nuanced approach distinguishes it from the more rigid US originalism and the more flexible Canadian living constitutionalism.

15. How do evolving judicial interpretations under Articles 19 and 21 of the Indian Constitution illustrate the dynamic tension between originalist constraints and living constitutional adaptation?

- A. The evolving judicial interpretation of Articles 19 and 21 of the Indian Constitution reflects a dynamic tension between originalist constraints and a living constitutional approach. Initially, Article 19 guaranteed specific freedoms to citizens, and Article 21 protected life and personal liberty broadly but separately. Early rulings viewed these articles as distinct, with Article 19's rights limited to citizens and Article 21 providing procedural protections to all persons.

A landmark shift occurred with the *Maneka Gandhi* case (1978), which integrated the two articles by holding that Article 21's right to life and personal liberty encompasses rights under Article 19, requiring procedural fairness and incorporating other constitutional principles like equality (Article 14). This established a broader and more inclusive protection of rights.

The originalist view adheres to the framers' original intent and fixed meanings, while the living constitution theory views the Constitution as evolving to address emerging societal values and rights unknown at adoption, such as privacy and digital rights. Indian jurisprudence under these Articles exemplifies a balance: maintaining core original meanings while expanding their scope dynamically in response to contemporary social, economic, and legal developments.

Examples of this dynamic interpretation include judicial expansion of Article 21 to cover human dignity and privacy, conjunctive reading of Articles 19 and 21 to ensure

laws restricting rights are reasonable and fair, and the influence of international norms. Indian courts increasingly apply a "living originalism" or "dynamic constitutionalism" approach, respecting the Constitution's basic structure while adapting its application to new realities.

In sum, the judicial evolution of Articles 19 and 21 showcases how Indian constitutional law manages the interplay between originalist textual meaning and adaptive living constitutionalism to strengthen fundamental rights for present-day challenges.

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