RELEVANCE OF CONSTITUTIONAL ASSEMBLY DEBATES: EVALUATION OF THE INTERPRETATIONAL FUNCTIONALITY IN THE LIGHT OF PROPERTY OWNERS ASSOCIATION CASE

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ABSTRACT

This article examines the enduring significance of the Constituent Assembly Debates (CAD) in influencing contemporary interpretations of India's Constitution, utilizing the recent Supreme Court decision in Property Owners Association v. State of Maharashtra as a focal point. Fundamentally, it addresses the persistent challenge of reconciling the original intent of the Constitution's framers with the evolving needs of society. The paper establishes the historical context by revisiting the establishment of the Constituent Assembly in 1946, emphasizing CAD as a comprehensive record of the insightful deliberations that encapsulate the ethos of India's independence. Nevertheless, it prompts critical inquiries regarding CAD's current applicability, particularly given its historical context and the "lost context," especially in judicial reviews where unelected judges may overturn legislation enacted by elected bodies, a phenomenon known as the counter-majoritarian difficulty.

A central focus of this analysis is the examination of constitutional interpretation theories. The document delineates originalism, which adheres strictly to the text and the framers' intent through textualism and intentionalism, in contrast to non-originalism, which permits flexibility for the public good through pragmatism or natural law. The paper posits that these are not immutable categories; in practice, their boundaries frequently converge. Constitutional Assembly Debates (CAD) play a crucial role in this context, not as a prescriptive rulebook, but as a guide to ascertain the underlying rationale of provisions, thereby assisting judges in navigating this confluence without exceeding their paperity.

The core of the analysis centres on Article 39(b), a directive principle advocating for the state's distribution of community resources for the common welfare. The primary contention revolves around whether "material resources" encompasses private property, thereby permitting state acquisition. The article chronicles the evolution of jurisprudence: In State of Karnataka v. Ranganatha Reddy (1978), Justice Krishna Iyer's minority opinion boldly

included private assets, underscoring socio-economic justice in the post-independence era. This "Iyer doctrine" influenced subsequent cases such as Sanjeev Coke and Mafatlal Industries, but it was overturned by the 2024 Property Owners Association judgment. In this ruling, Chief Justice D.Y. Chandrachud determined that private resources might qualify if they are genuinely "material," but not automatically, drawing upon CAD excerpts from Dr. B.R. Ambedkar, who opposed the rigid imposition of any specific economic ideology like socialism, instead advocating for adaptability.

It is noteworthy how both Iyer and Chandrachud, while initially adhering to the principle of economic democracy, pragmatically adjusted their interpretations to align with their respective eras, Iyer during periods of nationalization and Chandrachud following the 1991 reforms. This demonstrates that the Constituent Assembly Debates (CAD) serve as a foundational reference for interpretation rather than a restrictive framework. The paper advocates for a "blended" methodology, utilizing originalism as the bedrock, living constitutionalism as the operational framework, and transformative ideals as the guiding principles. This approach ensures the Constitution's evolution while preserving its core essence.

This analysis holds significant contemporary relevance, particularly amidst ongoing discussions concerning economic policies and the scope of judicial paperity. It underscores that constitutions are dynamic instruments designed to promote justice across generations. By presenting the CAD not merely as historical records but as a moral compass, this perspective encourages judges, academics, and citizens to innovatively advance the framers' original vision.

Keywords: Constituent Assembly Debates, Constitutional Interpretation, Article 39(b), Living Constitutionalism, Property Owners Association Case

1. INTRODUCTION

The idea of framing a constitution for India by Indians, or that of a Constituent Assembly was put forth by M N Roy, way back in 1934. Accepted by the British in the 1940 August Offer, and conceptualized by the Cabinet Mission Plan, the formation of the Constituent Assembly in 1946 marked a constitutional moment[1] for India. The Constituent Assembly Debates (CAD), an account of the long-drawn, comprehensive, and painstaking deliberations undertaken by the makers of the Constitution formed the very legacy of this marked moment. Most often, CAD is quoted these days in conjunction with the interpretational exercise of constitutional provisions. One of the major questions concerning the importance of these debates is over its relevance in modern times, considering its antiquity and supposedly 'lost context'. In analyzing this question, the author has set the premise based on the counter-majoritarian difficulty in the judicial process involving constitutional law.

The counter-majoritarian difficulty questions the sanctity of judicial review over legislations made by elected representatives backed by popular will by an unelected judiciary.[2] Placing this dilemma in the context of constitutional interpretation, one may find CAD to be an authority conferring extended public approvals as CAD is a manifestation of popular will. Even this proposition is not devoid of concerns. Such an argument raises at least two issues:

1. *Firstly,* the constituent assembly fails to qualify as a body representing popular will for it was never formed on popular mandate;
2. *Secondly*, even if the first issue is addressed, how can the popular will of its makers be accounted for the popular will of the succeeding generations upon whom the interpretations will have a bearing?

A strict reading of the concept of public will render the first concern affirmative. However, considering the general approval of indirect elections as representative in democratic establishments, the constituent assembly can be said to have enjoyed popular will. As Ambedkar puts it, the validity of constituent assembly derives from the absence of the rule of party discipline, which in effect led to debates, deliberations, and differing opinions, thereby accounting for diversity.[3] Further, the sanctity of constituent assembly is projected by Ambedkar in his discussions on limited amending power thus:

Parliament will have an axe to grind while the Constituent Assembly has none. That explains why the Constituent Assembly though elected on the limited franchise can be trusted to pass the Constitution by simple majority and why Parliament though elected on adult suffrage cannot be trusted with the same power to amend it.

The future Parliament if it met as a Constituent Assembly, its members will be acting as partisans seeking to carry amendments to the Constitution to facilitate the passing of party measures which they have failed to get

[1] Conceived by Bruce Ackerman, constitutional moments refer to informal constitutional change marked by public-minded mass political deliberations. Though a 'formal' exercise in terms of its legal trajectory, the constituent assembly of India came into being as an opposition to the established institutions of the British era, as a culmination of the reactionary responses of the national movement, questioning the rationale of the British authority, and enjoying constituent power to manifest a new constitution thereby marking a constitutional moment.

[2] Michael J Klarman, *Constitutional Fact/Constitutional Fiction: A Critique of Bruce Ackerman's Theory of Constitutional Moments*, 44(3) STANFORD LAW REVIEW 759 (1992).

[3] C.A. Deb. Vol. XI, 25.11.1949.

through Parliament by reason of some Article of the Constitution which has acted as an obstacle in their way[4]

Thus, the recourse and reliance on CAD as an interpretative tool may help the judges in addressing the challenge of counter-majoritarian difficulty. However, the pertinent question is the quantum and scope of such reliance to be placed on CAD. Thus, the premise of the paper is formed based on the second concern.

There exists various theories and approaches in interpreting constitutional provisions and these theories in their working accord differing levels of reliance to CAD and its normative tenets. The paper explores this premise by subjecting the judgment in *Property Owners Association v. State of Maharashtra*[5] to an analysis of the interpretation approach employed in the same to understand the relevance of CAD.

2. CONSTITUTIONAL INTERPRETATION: APPRAISAL OF VARIOUS THEORIES

Constitutional theorists identify at least two schools of constitutional interpretation, viz., originalism and non-originalism.[6] While there have been attempts to distinguish these theories, conflicts exist in terms of identifying features barring cardinally determinative ones.[7]

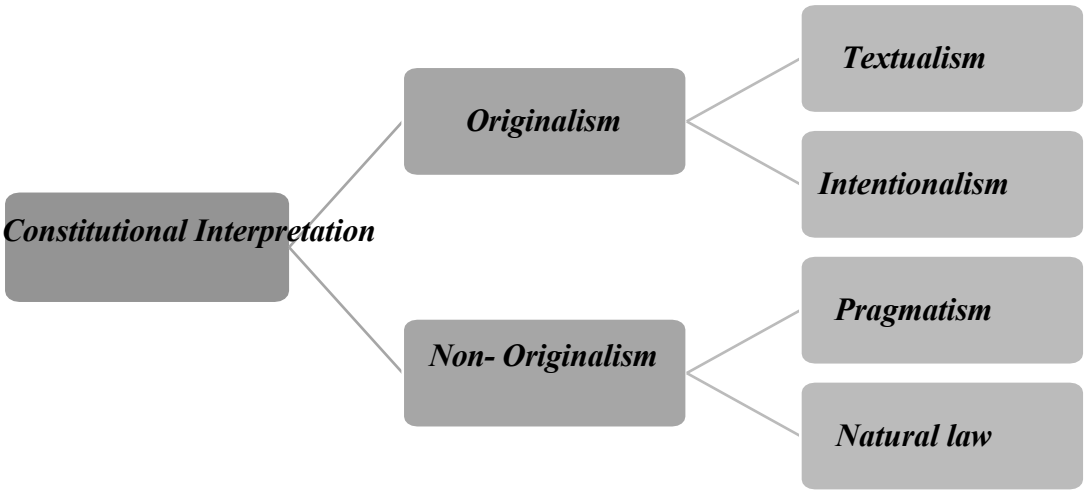

Fig 1: *Various theories of interpretation of constitutional provisions*

While textualism refers to the approach involving the formulation of constructions based on the text and structure of the Constitution,[8] intentionalism believes in the ability of judges to determine the collective intent of the makers of the Constitution.[9] Both these approaches preach an originalist model giving weight to the historical meaning of the text. Non-originalism on the other hand cannot be seen as completely negating the original meaning of the text, however allows departures where originalist meaning may be counteractive in realising public good.[10]

[4] C.A. Deb. Vol. VII, 04.11.1948.
[5] Property Owners Association v. State of Maharashtra, 2024 INSC 835.
[6] *Theories of Constitutional Interpretation*, EXPLORING CONSTITUTIONAL CONFLICTS, available at http://law2.umkc.edu/faculty/projects/ftrials/conlaw/interp.html (last visited Nov. 19, 2024).
[7] Lawrence Rosenthal, *Originalism in Practice*, 87(3) INDIANA LAW JOURNAL 1183 (2012).
[8] Michael C Dorf, *The Majoritarian Difficulty and Theories of Constitutional Decision Making*, 13(2) JOURNAL OF CONSTITUTIONAL LAW 284 (2010).
[9] *Id.*
[10] Mitchell N Berman, *Constitutional Interpretation: Non-Originalism*, 6(6) PHILOSOPHY COMPASS 408 (2011).

The intention here is not to establish either of these approaches as the 'right' one. Rather, it is the author's opinion that such distinctions are merely formal, and in their practical contexts, such formal distinctions are often blurred. However, irrespective of the approach being adopted, CAD enjoys relevance, but with differing consequences. The study focuses on this juncture.

3. RELEVANCE OF CONSTITUENT ASSEMBLY DEBATES: ASSERTIONS AND ISSUES

In addressing the topic, the author was curious over particularly two questions on the relevance of CAD and its functionality.

1. *Firstly*, are CAD to be considered merely as a guiding interpretational tool wherein it can be resorted to decipher the rationale and normative tenets of a particular provision in formulating its construction, or
2. *Secondly*, are CAD to be construed as a determinant directive in the process of interpretation, i.e., to say, are we to confine ourselves to the contours of CAD in interpreting a provision and subject the formulated construction to the test as to whether it is aligning with the ideas and postulates emanating from the debates.

Thus, the dilemma essentially lingers on the debates between originalism and non-originalism.

In a *stricto sensu* understanding, the first assertion borrows elements of originalism, but such an approach is resorted to only in preliminary stages with hardly any consequences along its prongs. Whereas, the second assertion favours the policy of originalist interpretation. Thus, in essence, the judges may have three identifiable recourses:

1. Originalistic interpretation favoring the second assertion, thereby leaning towards intentionalism;
2. Interpretation acknowledging the original intent, but not affirming it, but rather a creative interpretation that doesn't necessarily negate it. The author wishes to call this 'textualism with an undertone of intentionalism'; and
3. Interpretation directed in an altogether new path with hardly any reference to the original intent, favoring non-original or pragmatic interpretation.

With the cementing of the living tree doctrine, it is an undisputed premise that the textualist approach in constitutional interpretation is to be the exception rather than the norm as it fails to capture the philosophical ripples of constitutional provisions. Therefore, the dilemma essentially lingers on the debate between intentionalism and pragmatism. Against this backdrop, an analysis of the interpretation of Art. 39(b) is attempted, focusing on the adopted interpretational approaches and their implications.

Article 39(b): Dilemmas, Controversies and Evolution of Jurisprudence

Article 39(b) of the Constitution falls within Part IV and reads thus:

The State shall, in particular, direct its policy towards securing –

..

(b) that the ownership and control of the material resources of the community are so distributed as best to subserve the common good

The constitutional questions arising out of Article 39(b) are of particular importance. While it falls within the ambit of Part IV of the Constitution, which is, constitutionally speaking,

unenforceable,[11] the implications of the provisions are worth addressing for at least two reasons: *firstly,* the principles laid down in the Part including that under Art. 39(b) are fundamental in the governance of the country, to be applied by the State in their legislative process as a matter of mandate; and *secondly*, the insertion of Art. 31C guaranteeing protection to laws furthering Art. 39(b) and (c) from the claims of unconstitutionality u/Arts. 14 and 19, effectively confer a 'qualified privilege of fundamentality' to Art. 39(b) and (c).

Before delving into the appraisal of the various interpretations accorded to the concepts within Art. 39(b), it becomes imperative that the objective of the provision is understood. The provision aims at achieving an egalitarian social order, ensuring social and economic justice,[12] furthering the ideal of political democracy.[13] The controversies on the application of Art. 39 (b) revolves around the fulcrum of construction of the term 'material resources'. The inclusion criteria to be adopted as per the interpretation would determine the scope of resources that could be subjected to acquisition by the State. The tussle between owners of private properties and the state over nationalisation efforts forms the focal point of the surrounding dilemma.

This debate has been reignited by the 9-bench decision in the matter of *Property Owners' Association v. State of Maharashtra*[14] which effectively overruled a plethora of decisions of the Apex Court on the point. In the matter, the majority categorically ruled that private resources may fall under the definition of 'material resources' u/Art. 39(b) depending on the nature of the resource being 'material' and thereby taking away the unwavering right of the State to acquire every privately owned property to serve the common good.

For a better appreciation of the discussion to follow, an understanding of the jurisprudential evolution on this issue is essential. In the matter of *State of Karnataka v. Ranganatha Reddy*[15] though the majority upheld the constitutionality of nationalisation of transport companies, specifically refrained from interpreting the scope of 'material resources' u/Art. 39(b), Krishna Iyer, J. in his minority opinion, brought private resources within the ambit of the phrase. A move condemned as going against judicial discipline in the *Property Owners Association*, in the matter of *Sanjeev Coke Manufacturing Co. v. Bharat Coking Coal Ltd. & Anr.*,[16] the minority opinion in *Ranganatha Reddy* was relied on. Further in *Maftlal Industries Ltd. v. Union of India,*[17] the Supreme Court again confirmed the Krishna Iyer rule, which the 9-judge bench in the latest decision ruled to be an *obiter dicta*.

Now, what did the constitution makers envisage as 'material resources' and what were the rationale and approaches adopted by Krishna Iyer, J. and D Y Chandrachud, J. in *Ranganatha Reddy* and *Property Owners Association* respectively?

[11] INDIA. CONST. Art. 37; In Minerva Mills v. Union of India (AIR 1980 SC 1789), the Supreme Court held that the harmony between fundamental rights and directive principles is an essential feature of the basic structure.
[12] Kesavananda Bharati v. State of Kerala, AIR 1973 SC 1461 (¶¶ 596, 712-3, 1161, 1166, 1199, 1304, 1943, 2119).
[13] C.A. Deb. Vol. XI, 25.11.1949, Dr B R Ambedkar: "Political democracy cannot last unless their lies at the base social democracy" – Thus, for Ambedkar, political democracy was the 'means' to achieve social and economic democracies, rooted in the principles of equality, fraternity and liberty, and not a mere 'end' in itself.
[14] Property Owners Association v. State of Maharashtra, 2024 INSC 835.
[15] State of Karnataka v. Ranganatha Reddy, AIR 1978 SC 215.
[16] Sanjeev Coke Manufacturing Co. v. Bharat Coking Coal Ltd. & Anr., AIR 1983 SC 239.
[17] Maftlal Industries Ltd. v. Union of India, 1997 (5) SCC 536.

4. RANGANATHA REDDY V. PROPERTY OWNERS' ASSOCIATION: ANALYSIS OF INTERPRETATIONAL APPROACHES THROUGH THE LENS OF CAD

It is observable that both judges reached their decisions giving emphasis to the idea of economic democracy and justice. However, certain nuances in their reasoning vary their approaches.

The seeds of Art. 39(b) had been sown long back in the 1931 Indian National Congress Declaration wherein economic freedom conforming to the principles of justice was identified as a pre-requisite to achieving political freedom, thereby calling for reorganization of economic life.[18]

In ***Ranganatha Reddy***, upholding the 'philosophy and core values' of the Constitution, **Krishna Iyer, J.** maintained that:

Constitutional problems cannot be studied in a socio-economic vacuum, since socio-cultural changes are the source of the new values, and sloughing off old legal thought is part of the process of the new equity- loaded legality

Further, Iyer, J. had relied on the suggestion made by B N Rau, seemingly, a precursor to Art. 31C, that *in a conflict between individual rights and principles intended for the welfare of the state as a whole, the general welfare should prevail over the individual right*.[19]

An analysis of the process reveals interesting observations. Emphasising on the core values and Rau's suggestion, Iyer, J. adopts intentionalism as the primary lens of scrutiny. However, his regard for socio-economic changes takes him down the path of reconciliation of this original intent with contemporary realities.

In ***Property Owners Association***, reliance is placed by **D Y Chandrachud, J.** on Ambedkar's opposition to K T Shah and Damodar Swarup Seth in specifying a particular brand of economic democracy in the constitution in overruling the Iyer doctrine.

Damodar Swarup Seth proposed the *imposition on the State of an obligation to promote the welfare of the people by establishing and maintaining a democratic socialist order*.[20] Whereas, K T Shah sought the insertion of a clause within Art. 39(b) vesting the ownership, control, and management of all natural resources of the country in the government.[21] Opposing such an amendment, Ambedkar maintained that the main object of incorporating the directive principles was to lay down that future governments should strive for the achievement of the ideal of economic democracy, but not to prescribe any particular or rigid method or way, whether individualistic, socialist or communist, to achieve it.[22]

Further, Ambedkar maintained that:

What should be the policy of the State, how the society should be organised in its social and economic side are matters which must be decided by the

[18] 5 B Shiva Rao, The Framing of India's Constitution: A Study 320 (2015).
[19] *Id.* at 327.
[20] C.A. Deb. Vol. VII, 19.11.1948.
[21] *Id.*
[22] *Id.*

people themselves according to time and circumstances. It cannot be laid down in the Constitution itself, because that is destroying democracy altogether

Thus, Chandrachud, J. ruled that the *role of the court is not to lay down economic policy, but to facilitate the 'intent of the framers' to lay down the foundation for an economic democracy*.[23]

Here, Chandrachud, J. too has chosen the same path of intentionalism, a brand of originalism. However, his final ratio citing changed economic realm post-1991 reforms has been reached after much work post the delineation of the intention. Chandrachud's rationale thus works. But does that mean Iyer was wrong? Not necessarily. This is because, from the reading of Ambedkar's rationale, it is understood that w.r.t directive principles, even the makers never intended to employ an originalist approach. Rather a living approach is preferred.

The Lordship had concluded Krishna Iyer's doctrine to be wrong for Iyer, J. identifying socialism as the 'intended' brand of economic democracy, which the author fails to agree with. In this regard, the author concurs with the argument put forth by the minority judgment of B Nagarathna, J. that Iyer, J. didn't conclude socialism as the intent of the constitution makers, but an ideology that would further their intent considering the socio-economic realities of his time.

In a way, both Chandrachud and Iyer, JJ., have taken the originalistic path. Both have aligned their reasoning with the intent of the constitution makers, to achieve economic democracy. Yet both rationales resulted in differing conclusions. This is because both have inclined towards pragmatism, guided by the contemporaneous socio-economic order in their times, thus favouring the reading based on the principles of living constitutionalism[24].

5. CONCLUSION

We may consider each generation as a distinct nation, with a right, by the will of the majority, to bind themselves, but none to bind the succeeding generation, more than the inhabitants of another country.[25]

The judgment in *Property Owners Association* 'breathes and speaks' of intentionalism as the majority judgment heavily relies on Ambedkar's persistent objection to the identification of a particular ideological brand of economic democracy. But is the judgment really aligning with intentionalism or treading towards pragmatism?

The answer would be that the demarcation of originalism and non-originalism is a hoax in practical applications as judicial decisions are always based on a blend of these principles, often guided by living constitutionalism.

In this context, the conception of 'new originalism' gains ground. Distinguishing between 'interpretation' and 'construction' of the constitution, wherein the former purports to decipher the meaning of the constitutional text, the latter amounts to creating legal rules from the text

[23] Property Owners Association v. State of Maharashtra, 2024 INSC 835, ¶214.
[24] A metaphor provided by Carl Friedrich that compares a constitution to a living system. Just like how a living system develops and decays while its basic structure remains the same, a constitutional system undergoes significant alterations with its basic institutional pattern remaining intact. It is defined as a method of interpretation allowing evolution and change adapting to new circumstances without formal amendments.
[25] Thomas Jefferson as quoted by Ambedkar, C.A. Deb. Vol. XI, 25.11.1949.

capable of projecting to practical situations. This new school of thought identifies and acknowledges the limitations of isolated applications of originalist interpretation, calls for the formulation of legal rules backed by the originalist interpretation, and maintains that such extended formulations also fall within the meaning of 'originalism'.[26] In that sense, at least in its practical applications, hardly any difference can be made between originalism and non-originalism. As Peter J Smith puts it, the difference "*depends on whom we ask*".

The author concurs with this view in the sense that the author finds difficulty in tracing distinguishing features strictly and determinatively demarcating the boundaries of the existing theories. The analysis of the judicial process in interpreting and constructing constitutional provisions, reveals that it is always initiated by an originalist action with the 'intent' forming the seed for interpretational inquiry, with pragmatism taking over to address the new age challenges of adopting and adapting the identified intent, thus resulting in a blend of both. It is this blurring distinction that has created the wonders that we admire today in constitutional jurisprudence. Such a blend of intentionalism and pragmatism is nothing but living constitutionalism in a different packet. Thus, a judicial process for interpretational inquiry of constitutional provisions employing a blended mix of intentionalism (originalism) and pragmatism (non-originalism) guided by the tenets of living constitutionalism can serve the ends of transformative constitutionalism.[27]

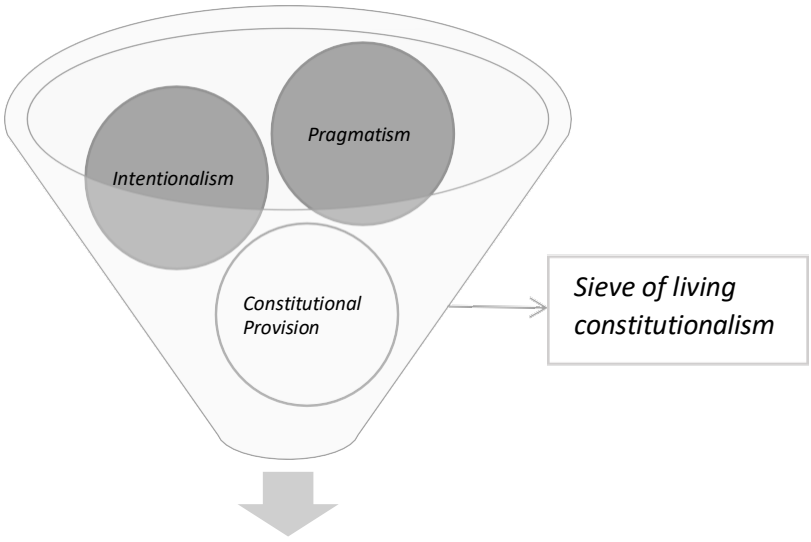

Fig 2: *Author's vision of judicial process for constitutional interpretation*

Thus, originalism forms the foundation, non-originalist ideals of living constitutionalism form the body, and transformative constitutionalism acts as the standard of such pragmatism employed. Now, in this equation, where is CAD factored in?

As rightly pointed out in *S R Chaudhuri v. State of Punjab*[28] and relied on in *Property Owners Association,* CAD is relevant, yet limited in scope. While these debates throw light on the intent

[26] Peter J Smith, *How Different Are Originalism and Non-Originalism?*, 62 HASTINGS L.J. 707 (2011).
[27] R Randall Kelso, *Contra Scalia, Thomas, and Gorsuch: Originalists Should Adopt a Living Constitution*, 72 U. MIA. L. REV. 112 (2017).
[28] S R Chaudhuri v. State of Punjab, (2001) 7 SCC 126.

behind various provisions (forming the starting point of originalist inquiry), these principles do not control the meaning of the provision (which is often formed through a pragmatic inquiry). Further, the construction of legal rules is achieved through a living constitutionalism approach, for which CAD may act as an evaluative yardstick.

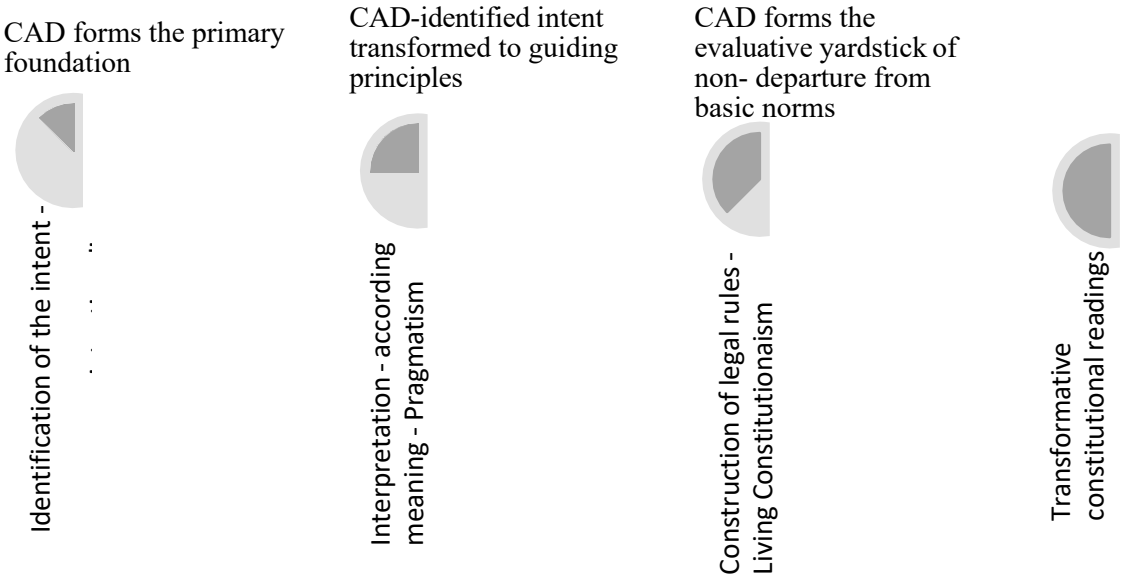

Fig 3: *Relevance of CAD in the interpretation of the Constitution*

In conclusion, theoretical conjectures serve the purpose of academic fervor and critical evaluations of their applied dynamics. However, servility to them shouldn't come at the cost of serving justice because the constitution makers never intended to impose them on their successors, rather only wanted to inculcate, uphold, and build on the constitutional morality they envisaged for us.

> *We may consider each generation as a distinct nation, with a right, by the will of the majority, to bind themselves, but none to bind the succeeding generation, more than the inhabitants of another country.*[29]

> *If we wish to preserve the Constitution in which we have sought to enshrine the principle of Government of the people, for the people, and by the people, let us resolve not to be tardy in the recognition of the evils that lie across our path and which induce people to prefer Government for the people to Government by the people, nor to be weak in our initiative to remove them. That is the only way to serve the country, I know of no better*.[30]

[29] Thomas Jefferson as quoted by Ambedkar, C.A. Deb. Vol. XI, 25.11.1949.
[30] C.A. Deb. Vol. XI, 25.11.1949.