

The Differences Entrenched in Indian Constitution and American Constitution – A Comparative Interpretation

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Abstract – In an effort to recognised and analyse legal texts written in the developing world, many of us trained in the developed world have questions to the degree cultural disparities can impact how we treat the role of interpretation. Before we get to grips with the text at question, we must recognised the suitability to use our usual interpretive methods and the usual interpretation of legal requirements in order to render material produced in a social and political sense which is drastically different. The position of meaning is of special significance because the text of the developed world was focused on an American model. The above situation motivates an unimaginative argument in our commonly-placed understanding and the unimaginative assumption ties the legal terminology of a one-dimensional connotation to which we bind it. As a result, the related qualitative variations could not be taken into consideration. The present article discusses the complexity of the constitutional dimensions and their meaning.

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MAJOR CHARACTERISTICS OF THE INDIAN CONSTITUTION'S AND ITS RELATIONSHIP TO THE US CONSTITUTION

The Indian Constitution is one of the world's longest. It explicitly includes clauses on the Government system and the protection of human life not unlike the constitutions of many western countries. It also aims to eliminate historical policies, which, on the basis of faith and ethnicity in particular, have fostered discrimination and injustice. The following explains its excellent qualities.

The Indian Constitution was drafted by an intermittent Legislative Assembly between 1946 and 1950.[1] Documents created during this period demonstrate the specific basis of major sections of the Indian Constitution on Western models. The Chairman of the Constituent Assembly said in his initial speech that the Assembly must offer further importance to the Constitution of the United States[2] Beyond every other place. The Assembly Committee was responsible for the preparation of the Indian Constitution and copied extensively from British and American models.[3] Granville Austin said the British and American model dedication was hardly shocking considering two variables.[4]

1. In the latter time of British rule, India had fruitful experience with the representative democracy.
2. The British and American representative systems of government were widely regarded

in the years directly after World War II because of the Nazi and Fascist loss.

The institutional features of the Indian Constitution contain aspects of the British legislative structure and the American federal system. The central government of India consists of a Parliament fulfilling the regulatory role,[5] a Prime Minister in agreement with the Council of Ministers who carries out the Administrative function,[6] and a judiciary which exercises both the national and state governments' judicial role.[7] The governments of the Indian states are organised just like their national governments.[8]

The clauses of the Indian Constitution on human freedoms, regarded as the "fundamental rights," is based on the United States Constitution Bill of Rights.[9] Some of the safeguards provided are identical to their American equivalents. For example, the section on constitutional rights of the Indian Constitution contains assurances of fair treatment of the law[10] and freedom of expression and assembly privileges.[11] It also requires protection of life and freedoms rights,[12] reminiscent with the American due process promise.[13]

Other clauses on human rights were adapted to resolve Indian issues in particular. Thus, while the Indian Constitution's religious rights loosely resemble the free exercise and establishment clauses of the United States Constitution,[14] They are adapted to the unique circumstances of India. For starters, the Indian Constitution guarantees "the right to freely

profess, exercise and encourage religion"[14] is restricted explicitly by the provision which requires the Government to pass legislation that provides for social welfare and change, or to open to all groups and parts of Hindus religious institutions of a public character." [16]

The Directive Principles of the Indian Constitution are intended to 'protect the welfare state.' They discuss a number of topics such as job prospects, income allocation, and the provision of free and compulsory education for children under the age of fourteen.

The Indian framers did not restrain their attempts towards social justice to the ideals of the Directive. Some other clauses indicate framers' intention to reform the Indian culture. Many of these clauses aim to eradicate caste or theological preferential care. [16] The most critical is probably the clause abolishing the tradition of "untouchability." The desires of the framers are expressed by adding clauses banning segregation in category.

Religion or caste dependent. Article 25 refers to the use of Hindu facilities in religious practises which categorise "groups or segment of Hindus." [18] is repudiated.

They contained a set of provisions intended to ensure the social development of historically marginalised castes, groups or Indian communities and citizens of British heritage. [19]

THE DIFFERING OBJECTIVES OF THE INDIAN AND AMERICAN CONSTITUTIONAL DRAFTERS AND THEIR EFFECT ON CONSTITUTIONAL INTERPRETATION

The revolutionary mission of the Indian draughtsmen was summed up by Jawaharal Nehru in his speech in the Constituent Assembly, that his first duty was "to liberate India through a new constitution, feed hungry people and sweets, and offer every Indian the maximum chance to establish themselves according to his potential.." [20]

The scholarly commentaries claim, much like the comments made by the representatives of the Constituent Assembly and the text of the Indian Constitution, that the draughtsmen's key concern is the transformation of Indian culture. But they still decided to make laws that were deemed appropriate in terms of the social and economic backwardness of some parts of society. [21]

About the significant parallels between Indian and U.S. constitutions about both the governmental system and the relationship of the citizen with the state, the U.S. draughtsmen also refused to take up the challenge of constructing the Constitution from a transformative viewpoint. Compared to the large reform programme of the Indigenous Framers, the American approach to the challenge of establishing a stable system of government was reasonably conservative to bring about reforms in Indian culture.

There is, of course, no unanimity on the agenda of the American framers. The traditional interpretation is that the United States Constitution was drawn up in the Articles of Confederation to correct faults, especially in regards to commerce and exchange.

In the constitutional conference the dispute between the federalists and the anti-federalists broke down politically. Given the arguments of the anti-federalists that the US citizens might be tyrannised by a centralised government with a strong leader and a powerful Senate. The federalists believed that a powerful central government would not contribute to dictatorship since the political structure was established by the citizens and not by their representatives or the states in which they lived. The Federalists so firmly trusted in the power of the constitution to restrict dictatorship, that the incorporation of a written bill of rights in the Constitution was needless. [22]

TESTING AMERICAN METHODS INTERPRETION TO THE INDIAN CONSTITUTION

The radically different goals of the constitutional framers in America and India render the analysis of the Indian Constitution a questionable activity by the use of American interpretative methods.

In this determination, the threshold problem regarding what it implies to apply to the American systems regarding statutory analysis must first be discussed. The foregoing describes briefly the key types of analysis used by the US Supreme Court in addressing constitutional problems and addresses some of the major scholarly studies on constitutional interpretation.

The interpretive approaches applied by the Supreme Court in the broader area of scholarly research are approximately interpretative and non-interpretative. [23]

The most important part of the characteristic function of interpretative methods is to define the essence of the Constitution in the walls of the Constitution. Unlike the latter, the non-interpretivist approaches are focused on the rules of common law, existing conditions, contextual conditions or established values when evaluating the US Constitution. Any interpretative techniques of constitutional design very simply take this constraint to the constitutional document.

An interpretative approach does not necessarily contribute to the strongly concrete understanding of the constitutional document. Different reviews of constitutional issues apply to analogies generated from its language or the lack of those documents. Probably the most fitting description of this approach comes from the US Supreme Court's *McCulloch v. Maryland* case. [24] In that instant event, Chief Justice Marshall inferences or rather the absence of the text

of the Constitution and the form of the Constitution for the purpose of determining legislative forces.

While it is right to conclude that one would anticipate an essential function, the salient features of the non-interpretivist approach are not restricted to the constitutional documents, whether they are articulated or inferred. A non-interpretivist system thus enables virtues to be manifest in constitutional analysis and can also be embedded in constitutional texts. Substantial evidence for this opinion is accessible both in the case law and in the comments. Many of the seminal rulings of the U.S. Supreme Court are focused on non-interpretative grounds.

The ability of the Supreme Court to apply non-interpretivist standards is well demonstrated by the Court's case law on the Bill of Rights and the changes leading to the civil war.

"Our contemporary signature metaphor is the 'living Constitution,' a constitution with clauses implying limitations to government in the name of fundamental rights but which is insufficiently precise to enable the judiciary to explain the evolution and modification of the substance of these rights over time."^[25] Many judgments of the Supreme Court more specifically focused on a non-interpretivist approach to constitutional law emphasise legal liberty and independence from legislative intervention.^[26]

The Framers' reluctance to use the Document as a framework for substantive democratic change culminated in a firm desire for individual liberty and for independence from government intervention in issues that fell outside of the legislative sphere being incorporated into the United States Constitution. For the same cause, many federalists found a bill of rights excessive.

The usage of non-interpretative analyses is surely not confined to an earlier period. The contemporary cases of secrecy demonstrate how the Court employs this study to further the ideals of individual liberty and independence from government intervention. In *Griswold against Connecticut*,^[27] In deciding that a State should not extend a restriction on the usage of contraception in the marital sense, the majority focused on both the right to secrecy accompanying a Bill of Rights and the sanctity of marriage. In addition, the Court also expressly designated the interest provided statutory rights in privacy cases as human autonomy. In *Moore v. East Cleveland Area*,^[28] The Court released a City Resolution limiting the possession of housing to single "families" and strictly identifying "families" in order to exempt several extended family arrangements. These cases indicate that when the Court reads principles in the Constitution from a non-interpretive method, centred on natural law, American practise or evolving situations, in order to determine the significance of the document, the beliefs usually represent the central American ideas retained by the

framers about the proper role of government in individual lives.

Given the recent origins of the Indian Constitution and the existence of numerous sources in connexion with the purpose of the Indian Framers, it is in a sense surprisingly difficult to describe the principles underlying the Indian Constitution. The challenge is that the facelift of American and Indian constitutional practices and speeches will blur gaps in the importance of common words. As a result, various understandings of a word or concept may result in a material misinterpretation of the Indian Constitution by an American reader even if the reader is acquainted with the constitutional history of India. The contrasting American and Indian interpretations on what "absolute rights" entails highlight this argument.

Initial analysis of the debates of the Indian Legislative Assembly shows that the Indian framers have often followed an American understanding of the utter holiness of certain privileges in forming their clauses on human rights of the United States Constitution. Therefore, the representatives of the Assembly stressed the position of the judiciary in guaranteeing individual freedoms,^[29] An American reader is likely to imagine a judiciary which, regardless of a perceived need of politics, considers itself as the guardian of constitutionally protected individual liberty to abrogate certain rights. The perceived sanctity of constitutionally guaranteed privileges and the position of courts in protecting those rights is essential to America's conception of the judicial function.

Instead of trying to create particular zones of sovereignty, the framers envisaged a constitutional document that would shield persons from government intervention only in such a way that such security would not unduly hinder the underlying reformist aims of the Indian Constitution.^[30] At least several Supreme Court judges tend to hold this narrow interpretation of the degree to which the Indian Constitution safeguards human freedoms from the political domain. aggression.^[31] This mixture of fundamental rights protections is also shown by many express terms of the Indian constitution, such as that which allows several constitutional provisions to be changed by a parliamentary super-majority vote.^[32] And that prevents the formal invalidation of such laws on agrarian reform on the basis of conflict with the rules on human rights.^[33] So the debates of the constituent assembly, some decision laws and the constitution text all indicate that in the US and Search Term Begin India Search Term Stop, considering similarity in the rhetoric and constitutional phrases of the framers, the term "absolute rights" and the connexion of the judiciary to the political classes in connexion to the defence of such rights differed.

CONCLUSION

The US and India constitutions were achieved after a tumultuous charge against the British Empire. Both were thus the product of a required reconsideration of government-society ties. The framers of the American Constitution had multiple objectives and had confidence in the predominant social order and restricted the scope of the Constitution to public relations and denoted a desire for preserving individual liberty and restricting government intervention in private relations. In India, however, the diverse social conditions represented a road to progressive transition. Therefore it should be remembered that although the Indian Constitution is inspired by the British and American iterations, the framer's expectations were substantially different from those of the American Constitution.

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2. Constituent Assembly Debates 4 (Dec. 9, 1946) (statement of Dr. Sachchidananda Sinha).
3. Granville Austin, The Indian Constitution: Cornerstone of a Nation 34 (1966).
4. Id. at 40.
5. Article 79-88 of the Indian Constitution.
6. The Indian Constitution provides for a President, but that person Best Section End Best Section Begin does not carry out the executive function. Article 52-62 (presidency), and 74-75 (Council of Ministers). M.P. Jain., Indian Constitutional Law, (Nagpur: Wadhwa, 2003)
7. Article 124-147 of the Indian Constitution.
8. Part VI of the Indian Constitution.
9. P.M. Bakshi, The Constitution of India: Selective Comments 2 (1992). See also U.S. Const . amends. I-X
10. Article 14 of the Indian Constitution.
11. Article 19 of the Indian Constitution
12. Article 21 of the Indian Constitution
13. U.S. Const . amends. V & XIV.
14. Article 25-28 of the Indian Constitution
15. Article 25(1) of the Indian Constitution
16. Article 25(2)(b) of the Indian Constitution
17. Caste refers to the hierarchical segmentation of Hindu society on the basis of birth. For a brief summary of its principal characteristics, see G.S. Ghurye, Features of the Caste System, in Social Stratification 35-48 (Dipankar Gupta ed., 1992). Preventing discrimination on the basis of religion was of particular importance to the Indian framers due to the longstanding hostility between Hindus and Muslims on the Indian subcontinent.
18. Article 25(2)(b) of the Indian Constitution. This provision presumably was intended to permit the government to outlaw the longstanding practice of excluding untouchables and other low caste Hindus from virtually all Hindu temples.
19. Article 330-342 of the Indian Constitution
20. II Constituent Assembly Debates 316 (Jan. 22, 1947).
21. P.M. Bakshi, The Constitution of India: Selective Comments 2 (1992).
22. U.S. Const. amends. I-X (1791)
23. Thomas C. Grey, Do We Have an Unwritten Constitution?, 27 Stan. L. Rev . 703 (1975)
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27. 381 U.S. 479 (1965)
28. 431 U.S. 494 (1977)
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30. IX Constituent Assembly Debates 1191-96 (Sept. 10, 1949) (statement of Jawaharal Nehru).
31. Minerva Mills Ltd. v. Union of India, 1980 A.I.R. (S.C.) 1789, 1847 (Bhagwati, J.) and Kesavananda v. State of Kerala, 1973 A.I.R. (S.C.) 1461, 1628-29 (Hedge & Mukherjea, J.J.).
32. Article 368 of the Indian Constitution
33. Article 31 A of the Indian Constitution

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