FROM STATUTORY AMBIGUITY TO JUDICIAL RULE-MAKING: EXAMINING THE LIMITS OF JUDICIAL INTERPRETATION IN INDIA

Rishi Ajay Vishwakarma & Aman Sanjay Shah, B.A. LL.B.,
Thakur Ramnarayan College of Law, Mumbai

ABSTRACT

In recent times, the courts in India, particularly the Supreme Court of India, are increasingly seen as going above the role of interpreting statutes in case of ambiguities and omissions in laws. Courts have laid down guidelines, timelines, and even substantive rules of their own in the cases of ambiguities in law, including the Vishaka guidelines on work place sexual harassment and the Common Cause directions in relation to living wills. In doing so, a significant question arises: is the court merely interpreting the law, or is it actually creating new law? This is precisely the problem that this paper will seek to explore. There is no definite or well-settled distinction between interpreting a statute and making a law in the Indian context. It may be true that the court's intervention in this manner may be justified by the claim of filling legislative gaps and protecting fundamental rights, but it is also true that the distinction between the role of the judiciary and legislature thus becomes blurred. In light of the fact that Articles 141 and 142 of the Indian constitution confer extensive powers upon the Supreme Court to declare law and ensure "complete justice" and in view of the basic structure doctrine that preserves separation of powers, a genuine apprehension is raised in regard to judicial overreach and accountability.

The question that will be addressed in this paper is therefore very straightforward when does the interpretation of a statute become the making of law and are there any boundaries to it? To determine that, an analysis will be made of the historical approach of Indian courts towards statutory ambiguities, constitutional provisions and some landmark judgements, and relevant theories of statutory interpretation.

The paper employs a doctrinal approach, based on the analysis of case law, statutes and constitutional provisions, along with the existing statutory interpretation theories.

Keywords: Statutory Interpretation, Judicial Rule-Making, Judicial Activism, Separation of Powers, Article 141, Article 142, Basic Structure Doctrine, Indian Constitution, Judicial Overreach, Doctrinal Legal Research.

INTRODUCTION

Every legal systems are built on the foundation of language; at the same time, language is inherently flawed. Legislation, even carefully written legislation, will not be able to foresee all possible contingencies; neither will it be able to be perfectly clear. Such an inherent imprecision results in statutory ambiguity a situation where the language of the statute allows for two interpretations or leaves something unspecified that needs to be addressed later. In cases like these.[1] the courts have to figure out what the statute means and how it applies to the facts in question. This is called judicial interpretation.

The interpretation of the law has long been seen as a relatively modest affair. Governed by canons of interpretation like the literal rule, the golden rule, the mischief rule, and later on the purposive method, the court was expected to determine the meaning inherent in a statute and not create a new one. Such an understanding is based on a fundamental assumption in constitutional democracy where law-making is the preserve of the elected legislature whereas the role of the judiciary is application and interpretation of the law.

In recent times, Indian Courts, especially the Supreme Court, have moved far beyond the said traditional limit. Not confining themselves to the function of interpretation in order to clear up ambiguity in the law, courts have, in certain cases, gone ahead and issued guidelines, time lines and rules of their own, in situations when the legislature has been either silent or slow in action. The Vishaka[2] guidelines on sexual harassment in the workplace, which were formulated without any statute at all being in existence in relation to the issue, and the directions issued in Common Cause v. Union of India[3] on living wills, are two examples in point. In these cases, the court not only interprets a pre-existing legal regime but creates a new legal regime. It may be termed judicial rule making in this sense.

It is this distinction between judicial interpretation as a clarifying function and judicial rule-making as a creative one that forms the central concern of this paper. The boundary between the two is neither self-evident nor consistently applied, and it is precisely this instability that warrants sustained scholarly attention. Much of this instability can be traced to the wide remedial powers conferred on the Supreme Court under Articles 141 and 142 of the

[1]G.P. Singh, *Principles of Statutory Interpretation* (15th edn, LexisNexis 2021) 1–15.
[2]Vishaka v State of Rajasthan (1997) 6 SCC 241 (India).
[3]Common Cause v Union of India (2018) 5 SCC 1 (India).

Constitution of india,[4] which authorise it to declare binding law and to pass any order necessary to do 'complete justice' in a given case. These provisions, read alongside the basic structure doctrine articulated in *Kesavananda Bharati v. State of Kerala*,[5] form the constitutional backdrop against which the interpretation rule-making distinction must be assessed.

- **Significance of the Study**

The problem raised in this paper is relevant to legal, policy, and democratic considerations. In India's constitutional scheme, the doctrine of separation of powers exists between the legislature, the executive, and the judiciary, albeit without being explicitly stated in the constitution.[6] If the courts exercise the rule-making power, there will be doubts concerning the legitimacy and accountability of this institution, as judges are not elected and judicial decisions, unlike laws, are not subject to similar procedures of political deliberation and accountability.[7] At the same time, the role of the judicial activism has often been played by filling legal voids, especially those related to the area of fundamental rights where the legislative apathy can leave people without any remedy.

- **Research Objectives**

This paper pursues four principal objectives. **First**, it seeks to trace the evolution of Indian judicial interpretive methodology, examining the shift from a relatively restrained, literal approach toward a more expansive, purposive, and at times rule-making orientation. **Second**, it examines the constitutional provisions particularly Articles 141 and 142, together with the basic structure doctrine that both enable and potentially constrain this exercise of judicial power. **Third**, it develops an analytical framework capable of distinguishing genuine statutory interpretation from judicial rule-making, drawing on comparative jurisprudential perspectives such as textualism and purposivism where relevant. **Finally**, it applies this framework to landmark Indian judgments in order to assess the extent to which meaningful limits currently exist, and to identify where such limits might be more clearly articulated.

STATUTORY AMBIGUITY AND JUDICIAL INTERPRETATION

[4]Constitution of India 1950, arts 141, 142.
[5]Kesavananda Bharati v State of Kerala (1973) 4 SCC 225 (India) (originating the basic structure doctrine).
[6]Granville Austin, *Working a Democratic Constitution: The Indian Experience* (Oxford University Press 1999).
[7]See Pratap Bhanu Mehta, 'India's Judiciary: The Promise of Uncertainty' in Devesh Kapur and Pratap Bhanu Mehta (eds), *Public Institutions in India: Performance and Design* (Oxford University Press 2005).

The ambiguity of a statute is defined as the situation where the language used in a statute is ambiguous, open to more than one interpretation, or is silent on an issue. The term holds significant relevance in India because the entire legal system of the country depends on statutes that are passed by Parliament and the legislative assemblies of individual states and are applied to all possible situations that were not foreseen by the drafters of the legislation at the time of their framing. This is due to the size, diversity, and complexity of Indian society and therefore laws.

- **Types of Ambiguity**

Statutory Ambiguities can take various forms, three of which are:

- **Semantic ambiguity** is the type where the ambiguity is caused by a certain term or expression which has more than one acceptable meaning. The employment of the term "vehicle" in a statute might create confusion since one does not know whether bicycles are included or only motorized vehicles.

- **Syntactic ambiguity** is a situation whereby the syntax of the sentence makes it have different interpretations despite all the terms being unambiguous. A badly placed clause may make it ambiguous as to which part of the sentence the phrase was meant to qualify.

- **Purposive ambiguity** is a form of ambiguity where the language in the statute is clear but its application with regard to the purpose of the statute is ambiguous. This happens when the literal interpretation of the language produces effects contrary to the intended purpose of the statute.

- **Origins of Ambiguity**

Statutory ambiguity has its roots in many interconnected aspects. The drafting of laws involves complex processes that take considerable time and effort; therefore, it becomes nearly impossible to foresee all the scenarios that may arise when dealing with some issues. There may be gaps either because such situations were yet to occur or were completely beyond the imagination of those who drafted the statute. It may happen that the provisions of a particular statute conflict each other or even conflict with the provisions of another statute. Additionally, the fact is that the meaning of the language can be very flexible and reasonable

people may construe it in various ways.

- **Judicial Response**

When such ambiguity arises, courts are called upon to interpret the statute that is, to determine its most reasonable meaning using established interpretive tools such as the literal rule, the purposive approach, or harmonious construction. In most cases, this interpretive exercise remains within the traditional judicial role of clarifying, rather than creating, law. In some cases, Indian courts have also gone beyond their normal jurisdiction and have issued detailed guidelines/directions on issues where there is a lacuna in legislation. Even if such judicial activism may help fill up important gaps, it does raise questions about the proper limit of judicial power since law making is the task of the legislature and not of the courts.

LITERATURE REVIEW

- **Theoretical Frameworks on Statutory Interpretation**

Legal scholarship on statutory interpretation typically begins with textualism, or literalism, which holds that a statute's words should be given their plain, ordinary meaning, without looking beyond the text itself. This has historically been the dominant approach in Indian courts, heavily influenced by Maxwell's classic treatise on statutory interpretation, which is still cited regularly by Indian judges today.[8] Under this approach, if the words of a law are clear, courts are expected to apply them as they stand, even if the result seems harsh or unintended, on the reasoning that changing the outcome is Parliament's job, not the judiciary's.

Purposivism offers a contrasting approach, asking not just what a statute says, but what problem it was meant to solve. Its oldest form is the mischief rule, developed in the sixteenth-century English case *Heydon's Case*, which directs courts to identify the "mischief" a statute was designed to remedy and interpret it accordingly.[9] Indian courts have adopted this approach widely, particularly when interpreting welfare and beneficial legislation laws relating to labour rights, social security, or consumer protection where a narrow, literal reading might defeat the law's protective purpose.[10]

[8]Maxwell, *On the Interpretation of Statutes* (12th edn, N.M. Tripathi 1976); G.P. Singh (n 1).
[9]Heydon's Case (1584) 3 Co Rep 7a.
[10]See G.P. Singh (n 1) on the application of the mischief rule to welfare legislation in India.

Similar to this is the golden rule, according to which, the courts can adopt a non-literal interpretation of a statute only if doing so will lead to an illogical or unjust result. The Indian courts frequently make use of this doctrine in tandem with the doctrine of harmonious construction, especially while dealing with constitutional issues, wherein the different provisions of the constitution are read together so that no particular provision defeats another provision.[11]

- **Theories of Judicial Law-Making**

More comparative research further expands on this picture. Aharon Barak,[12] a former President of the Israeli Supreme Court, holds the view that the purposive approach is not just one of the means of interpretation but rather the only legitimate one, since it connects the meaning of the statute to its democratic purpose. At the same time, Antonin Scalia[13] takes the textualist approach and warns of the dangerous power of the judges who use the purposive and "living" approaches, pointing out that only the textual one provides for the only protection against judicial tyranny. The concept of the penumbra introduced by Hart[14] often describes the area where the conflict occurs.

Indian scholarship has engaged with these questions largely through the lens of judicial activism. Upendra Baxi's early work on the Supreme Court and Public Interest Litigation (PIL) framed judicial expansion as a response to the failures of India's political and administrative institutions.[15] Granville Austin's constitutional histories trace how India's constitutional design left considerable interpretive room for courts from the outset.[16] S.P. Sathe's writing offers a more systematic account of judicial activism, tracking both its achievements and its risks.[17] Arun Shourie's position[18] is highly critical of the judiciary and its right to extend its jurisdiction. On the other hand, Pratap Bhanu Mehta[19] discusses the issue from the perspectives of institutional design and accountability.

[11]Re Kerala Education Bill AIR 1958 SC 956 (India).
[12]Aharon Barak (n 8).
[13]Antonin Scalia (n 8).
[14]Hart (n 17).
[15]Upendra Baxi, *The Indian Supreme Court and Politics* (Eastern Book Company 1980).
[16]Granville Austin (n 9).
[17]S.P. Sathe, *Judicial Activism in India: Transgressing Borders and Enforcing Limits* (Oxford University Press 2002).
[18]Arun Shourie, *Courts and Their Judgments* (Rupa 2001).
[19]Pratap Bhanu Mehta (n 10).

- **Key Debates**

Three debates recur throughout this literature. The first is definitional: Indian legal discourse often uses "judicial activism," "judicial overreach," and "judicial restraint" loosely and inconsistently, without a shared understanding of where one ends and another begins. The second concerns the legitimacy of PIL-driven guideline-making. Supporters argue that in a country where legislative and executive implementation is often weak, judicial guidelines are a necessary tool for making rights meaningful in practice. Critics respond that this amounts to unelected judges making policy choices without the accountability mechanisms that apply to elected lawmakers. The third debate concerns the basic structure doctrine itself, first articulated in *Kesavananda Bharati v. State of Kerala*.[20] While this doctrine was designed to check Parliament's power to amend the Constitution, some scholars argue it has simultaneously expanded the judiciary's own interpretive authority, with no equivalent external check.

RESEARCH METHODOLOGY

This research adopts a doctrinal legal research design, supplemented by a limited comparative analysis and an original analytical framework developed specifically for this study.

- **Methodological Approach**

Doctrinal or legal analysis is the main approach that has been used in this research. Hence, the research has been guided by an analytical interpretation of the relevant constitutional provisions, legislation, and case laws instead of empirical approaches such as interviewing and surveying as well as analyzing statistical data. This method is well suited to the research question, since the central concern of this paper where interpretation ends and rule-making begins is fundamentally a question about how existing legal materials have been read and applied by courts, not a question about how people experience or perceive the law.

- **Data Sources**

The study relies on two categories of sources. Primary Sources Constitution of India; Central Acts; Supreme Court decisions; High Court decisions; SCC Online, Manupatra, and AIR. Secondary Sources Treatises on statutory interpretation; Peer reviewed journal articles;

[20]Kesavananda Bharati (n 6).

Reports of the Law Commission of India. Parliamentary debates are consulted selectively, to establish legislative intent or to show legislative silence that prompted judicial intervention.

The paper closely reads the relevant constitutional provisions, namely Articles 141 and 142 and the basic structure doctrine. It traces the evolution of Indian interpretive approaches and draws on comparative perspectives such as textualism and purposivism. It then applies a proposed five-point spectrum, running from interpretive clarification to de facto legislation, along with five evaluative criteria: textual proximity, institutional necessity, temporariness, accountability substitutes, and democratic legitimacy costs. The sources will be used to analyze the major cases of Kesavananda Bharati, Maneka Gandhi, Vishaka, and M. C. Mehta.

PRINCIPLES OF STATUTORY INTERPRETATION IN INDIA

Statutory interpretation in India is not governed by a single rigid method. Over time, courts have developed several interpretive principles, each suited to different kinds of ambiguity, and each carrying different implications for how far a judge may go in shaping the meaning of a law. Five principles form the core of this toolkit: the literal rule, the mischief rule, the golden rule, harmonious construction, and purposive interpretation.

- **Literal Rule**

The literal rule requires courts to give statutory words their plain, ordinary, grammatical meaning, without adding to or subtracting from the text. This remains the starting point for most Indian statutory interpretation, on the reasoning that if Parliament's words are clear, courts have no business second-guessing them. In *Municipal Board v. State Transport Authority, Rajasthan*,[21] the Supreme Court applied a strict literal reading of a limitation provision, even though this produced a harsh result illustrating both the discipline and the rigidity of this approach.

- **Mischief Rule**

Where literal interpretation would defeat a law's evident purpose, courts sometimes turn to the mischief rule, asking what problem, or "mischief," the statute was enacted to remedy. A well-known Indian illustration is *Kanwar Singh v. Delhi Administration*,[22] where the Supreme Court

[21]Municipal Board v State Transport Authority, Rajasthan AIR 1965 SC 458 (India).
[22]Kanwar Singh v Delhi Administration AIR 1965 SC 871 (India).

interpreted the word "abandoned" in a municipal law broadly enough to include cattle let loose to graze on public land, since the statute's real purpose was to prevent the nuisance such cattle caused not merely to address cattle whose owners had renounced ownership altogether.

- **Golden Rule**

Golden rule allows for a departure from the strict literal interpretation of statutes, provided such a departure is done in order to avoid absurdity, injustice, or inherent contradiction. The golden rule was applied in the case of Tirath Singh v. Bachittar Singh[23] where a literal interpretation of a requirement in a statute relating to elections would have led to an absurd result; therefore, the Court construed the requirement in order to avoid the absurdity of a literal interpretation.

- **Harmonious Construction**

Where there is a conflict between two provisions of the same statute or between two provisions in a constitution, courts adopt a harmonizing approach, whereby the two provisions are read together and both of them are implemented to the fullest extent possible without one of them overriding the other. This technique is especially significant in constitutional interpretation. In *Kerala Education Bill, 1957*,[24] the Supreme Court harmonised the right to administer minority educational institutions with the state's regulatory powers, holding that neither provision should be read so widely as to render the other meaningless.

- **Purposive Interpretation**

Purposive interpretation goes further than the mischief rule, asking not just what specific problem a law addressed, but what broader social or legislative objective it was meant to serve, and interpreting the text accordingly. In *Bangalore Water Supply & Sewerage Board v. A. Rajappa*,[25] the Supreme Court gave an expansive, purposive reading to the term "industry" under labour legislation, in order to extend statutory protections to as wide a category of workers as the legislative scheme intended.

[23]Tirath Singh v Bachittar Singh AIR 1955 SC 830 (India).
[24]In re The Kerala Education Bill, 1957 AIR 1958 SC 956 (India).
[25]Bangalore Water Supply & Sewerage Board v A. Rajappa AIR 1978 SC 548 (India).

- **Interaction and Conflict in Practice**

But these rules cannot function independently of each other because in India, courts often move from one rule to another in the same case. The court may begin with the literal rule and use the mischief rule, the golden rule, or the purposive approach only when the literal meaning leads to an impossible and unjust outcome. This system gives the courts a lot of latitude but can also cause confusion as there is no specific hierarchy of rules, and similarly-worded laws can have different meanings based on which rule is used to interpret them.

CONSTITUTIONAL AND STATUTORY FRAMEWORK IN INDIA

Judicial interpretation in India takes place within a specific constitutional structure that provides for extremely wide interpretation and remedy-making powers on the part of the judiciary and specifically the Supreme Court. An overview of this constitutional structure is necessary before proceeding with an assessment of the degree to which the Indian courts have moved beyond statutory interpretation to make rules for themselves. In this section, the constitutionally relevant factors are identified, namely Article 141, Article 142, the doctrine of basic structure, and the General Clauses Act, and then explained in terms of their facilitative potential for judicial rule making.

- **The Constitutional Framework**

India's Constitution separates powers between the legislature, the executive, and the judiciary but this separation of powers is flexible in nature unlike the more rigid separation of powers in the US Constitution.[26] The Indian courts not only have an instrumental role of deciding disputes; they are also vested with the judicial review[27] of both legislation and the executive.

- **Articles 141 and 142**

Two constitutional provisions are central to this inquiry. Article 141[28]requires that the decision of the Supreme Court shall be binding on all courts within the jurisdiction of India. This clause gives Supreme Court decisions a binding effect equal to that of any legislative act even though they are formally defined as interpretations of laws rather than enactments of laws.

[26]Granville Austin, *Working a Democratic Constitution: The Indian Experience* (Oxford University Press 1999).
[27]Constitution of India 1950, art 13.
[28]Constitution of India 1950, art 141.

Article 142 goes further, empowering the Supreme Court to pass any order necessary to do "complete justice" in a matter pending before it.[29] This power has been used to fill gaps left by legislative silence, to craft remedies not explicitly provided for in any statute, and in some of the most significant instances of judicial rule-making to issue detailed guidelines governing an entire area of conduct pending legislative action.[30] Together, Articles 141 and 142 give the Supreme Court both the authority to declare law and the practical means to enforce that declaration, a combination that makes the line between interpretation and rule-making especially difficult to draw at the level of the apex court.

- **The Basic Structure Doctrine**

The basic structure doctrine, first articulated in *Kesavananda Bharati v. State of Kerala*,[31] holds that Parliament's power to amend the Constitution, while wide, cannot be used to alter or destroy the Constitution's "basic structure" a set of foundational features that includes the rule of law, separation of powers, and judicial review itself. The doctrine was designed as a check on legislative and constitutional amending power. However, it carries a significant secondary implication for statutory interpretation: because the judiciary is the body that identifies and enforces the basic structure, the doctrine simultaneously entrenches the judiciary's own interpretive authority, with no equivalent external mechanism to check it.[32] This creates an asymmetry worth noting the same doctrine that limits Parliament's power expands the interpretive space available to courts.

- **The General Clauses Act, 1897**

The General Clauses Act, 1897, occupies the technical level of statutory interpretation. While the Constitution and case laws mark the boundaries for judicial interpretation, this Act provides definitions and interpretation norms for the Central legislation which lack any contradictory provisions in the respective statutes.[33] The General Clauses Act, 1897 deals with the interpretation of statutes like construction of terms, computation of periods of time, and repealed or amended statutes. This Act is quite restricted in scope but still carries considerable importance in terms of background function. By eliminating the real ambiguity

[29]Constitution of India 1950, art 142(1).
[30]Vishaka v State of Rajasthan (1997) 6 SCC 241 (India).
[31]Kesavananda Bharati v State of Kerala (1973) 4 SCC 225 (India).
[32]See generally Upendra Baxi, *The Indian Supreme Court and Politics* (Eastern Book Company 1980).
[33]General Clauses Act 1897 (India).

in ordinary affairs, it moves the center of judicial interpretation and rules formulation from technical deficiency to substantive deficiency in the statutes.

- **Relevant Statutes and Constitutional Provisions Influencing Judicial Rule-Making**

Beyond these general provisions, judicial rule-making in India has typically arisen in specific substantive domains: workplace conduct (prior to the enactment of dedicated legislation), environmental protection,[34] and end-of-life medical decision-making,[35] among others. In each instance, courts justified their intervention by pointing to a combination of a demonstrable legislative gap and a fundamental rights concern under Part III of the Constitution, particularly Article 21's guarantee of life and personal liberty.[36] This pattern suggests that judicial rule-making in India is not random, but tends to cluster around situations where constitutional rights protection and legislative inaction intersect.

ANALYTICAL FRAMEWORK

- **Defining "Interpretation" versus "Rule-Making" for This Thesis**

Before any framework can be applied, the two central terms of this thesis need clear working definitions. Interpretation, for the purposes of this paper, means the process of ascertaining and applying a meaning that is already latent within the text of a statute or within the broader legislative scheme it belongs to. Even where this process requires judgment choosing between competing readings, or resolving genuine ambiguity it remains an act of discovery: the court is uncovering something the legislature can plausibly be said to have already provided for, even if imperfectly expressed.[37]

Rule-making, by contrast, refers to the creation of new normative content that is not fairly derivable from the statute at all. Here, the court is not uncovering a latent meaning but supplying one that did not previously exist in any recoverable form, effectively filling a legislative gap with rules of its own authorship.[38] This distinction is admittedly one of degree

[34]See the *M.C. Mehta* line of cases before the Supreme Court of India on environmental jurisprudence.
[35]Common Cause v Union of India (2018) 5 SCC 1 (India).
[36]Constitution of India 1950, art 21.
[37]G.P. Singh, *Principles of Statutory Interpretation* (15th edn, LexisNexis 2021).
[38]See generally H.L.A. Hart, *The Concept of Law* (2nd edn, Oxford University Press 1994) on the "open texture" of legal rules and the discretion this creates at the margins.

rather than a clean binary, which is precisely why a spectrum-based model, rather than a simple either/or test, is proposed below.

- **Proposed Spectrum/Typology**

Instead of perceiving interpretation and legislation as two extremes of the process, this dissertation puts forth a five-fold continuum where judicial activities can fall in different degrees from the statutory text:

- **Interpretive clarification**- The court clarifies any true ambiguity in the use of well-known interpretative rules (literal rule, golden rule), without changing the substance of the law.[39]

- **Gap-filling within statutory purpose**- The court extends the statute's application through purposive reasoning, but stays consistent with the legislative scheme's evident objective.[40]

- **Interstitial rule-making**- The court supplies operational detail, such as procedural guidelines, where the legislature has remained silent but can be said to have implicitly authorised such elaboration.

- **Substantive rule-making-** The court creates enforceable norms without clear legislative authorisation, typically relying on Article 142 or Public Interest Litigation (PIL) remedies.[41]

- **De facto legislation-** The court's rules function as freestanding law, operating as binding norms until Parliament eventually supersedes them by statute. This is the most contested category, since it comes closest to displacing the legislature's role entirely.[42]

Criteria for Assessing "Limits"

To assess where a given judicial act falls on this spectrum, and whether it is normatively

[39]Maxwell, *On the Interpretation of Statutes* (12th edn, N.M. Tripathi 1976).
[40]Aharon Barak, *Purposive Interpretation in Law* (Sari Bashi tr, Princeton University Press 2005).
[41]Constitution of India 1950, art 142(1).
[42]See generally S.P. Sathe, *Judicial Activism in India: Transgressing Borders and Enforcing Limits* (Oxford University Press 2002).

defensible, this thesis proposes five evaluative criteria arguably its central original contribution:

- **Textual proximity**- How far the resulting rule departs from the actual language of the statute.

- **Institutional necessity**- Whether a genuine legislative or executive vacuum exists, and whether that vacuum causes demonstrable harm to fundamental rights.[43]

- **Temporariness**- Whether the rule is explicitly interim, pending legislative action as in *Vishaka v. State of Rajasthan*, where the Supreme Court expressly invited Parliament to legislate or whether it is intended to operate permanently.

- **Accountability substitutes**- Whether the court builds in its own review mechanisms, sunset clauses, or explicit invitations for legislative override, thereby partially compensating for the absence of ordinary democratic accountability.

- **Democratic legitimacy costs**- The broader effect of the intervention on the separation of powers and on political accountability more generally.

CASE STUDY ANALYSIS

- **Foundational/Constitutional Cases**

Kesavananda Bharati v. State of Kerala (1973)[44] concerned the extent of Parliament's power to amend the Constitution under Article 368. The Court held that while Parliament may amend any part of the Constitution, it cannot alter its "basic structure." This was less an act of statutory interpretation than of constitutional design-making: the Court effectively created a new limiting principle not explicitly stated in the constitutional text. On the spectrum, this falls into *category 5, de facto legislation*, since the basic structure doctrine now functions as binding constitutional law with no textual anchor. Assessed against the criteria, textual proximity is very low, but institutional necessity is high, given the case's context of political attempts to erode fundamental rights through amendment. The doctrine has no built-in sunset clause and is permanent by design, which raises real democratic legitimacy questions though most scholars

[43]Constitution of India 1950, art 21.
[44]Kesavananda Bharati v State of Kerala (1973) 4 SCC 225 (India).

accept that the alternative, unlimited amending power, posed a greater risk.

Maneka Gandhi v. Union of India (1978)[45] involved Article 21's guarantee of life and personal liberty, and specifically whether "procedure established by law" required that such a procedure also be fair and reasonable. The Court read this requirement into Article 21, moving well beyond the provision's literal wording. This is best classified as *category 3, interstitial rule-making*, since the Court supplied a substantive fairness requirement the text did not explicitly contain. Textual proximity is low, but institutional necessity is strong, since the case addressed a genuine gap in individual rights protection. The ruling is permanent rather than interim, but it has since been broadly accepted as legitimate constitutional development rather than judicial overreach illustrating that permanence alone does not automatically indicate illegitimacy.

- **Guideline/Rule-Making Cases**

Vishaka v. State of Rajasthan (1997)[46] is the paradigm example for this thesis. In the complete absence of legislation on workplace sexual harassment, the Supreme Court issued detailed guidelines under Articles 141 and 142, explicitly stating that these would operate "until suitable legislation is enacted." This falls squarely into *category 4, substantive rule-making*. Applying the criteria: textual proximity is minimal, since no statute existed to interpret; institutional necessity is high, given the clear rights vacuum; and, crucially, temporariness is strong the Court itself built in an accountability substitute by inviting legislative replacement. This combination is why *Vishaka* is widely treated as a legitimate model of judicial rule-making, rather than overreach.

Lily Thomas v. Union of India (2013)[47] and Shreya Singhal v. Union of India (2015)[48] both involved striking down statutory provisions disqualification timing rules for convicted legislators, and Section 66A of the Information Technology Act, on free speech grounds, respectively. These fall closer to *category 1, interpretive clarification*, since striking down a provision as unconstitutional is a recognised judicial function requiring no new rule creation, even though the political consequences were significant.

[45]Maneka Gandhi v Union of India (1978) 1 SCC 248 (India).
[46]Vishaka v State of Rajasthan (1997) 6 SCC 241 (India).
[47]Lily Thomas v Union of India (2013) 7 SCC 653 (India).
[48]Shreya Singhal v Union of India (2015) 5 SCC 1 (India).

The *M.C. Mehta* line of cases[49] on environmental law developed principles such as absolute liability and the polluter-pays principle, entirely through judicial reasoning rather than statutory text. This sits in *category 4/5*, given the extent to which these principles now function as freestanding environmental law, applied by courts and regulators alike, well beyond their original case-specific context.

- **Cases of Legislative Response/Override**

The clearest test of the "interim legitimacy" criterion is what happens after a judicial guideline is issued. The Sexual Harassment of Women at Workplace[50] (Prevention, Prohibition and Redressal) Act, 2013 finally replaced the Vishaka guidelines after sixteen years of their introduction. This delayed but effective piece of legislation can be taken to prove that the practice of interim rule-making such as Vishaka can indeed serve the purpose of being an interim arrangement instead of becoming a substitute for legislation permanently; however, the sixteen year period does bring into question the limit beyond which the temporariness aspect becomes void.

FINDINGS AND CHALLENGES

This study uses a three-tier methodology to analyze the judicial interpretation as follows: (1) level of ambiguity in the statutory language, which makes the judicial intervention necessary; (2) method used by the court for interpreting textual, purposive or legislative; and (3) extent to which the rule generated goes beyond normal adjudication to become de facto legislation. The examination of case studies through this methodology reveals a consistent trend: Indian courts, especially the Supreme Court, often go beyond mere statutory interpretation and develop extensive regulatory frameworks in spheres where Parliament has stayed inactive or delayed in enacting laws.

One such example is the Vishaka guidelines on sexual harassment at workplace. The Court, confronted with legislative silence, has done more than interpretation but developed comprehensive code-type guidelines on definitions, complaint mechanism and the duty of employers – an exercise which is usually undertaken by rule-making authorities rather than

[49]See generally the *M.C. Mehta* line of cases before the Supreme Court of India on environmental jurisprudence, including *M.C. Mehta v Union of India* AIR 1987 SC 1086 (India) (the Shriram Gas Leak case, on absolute liability).
[50]Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013 (India).

courts of law. Similarly, in environmental law, the courts have developed principles like precautionary principle and polluter pays principle from open textured constitutional language. And in electoral law, judicial interventions that have developed the norms relating to the disclosure of candidates' criminal records by courts.

Challenges

This pattern of judicial rule-making generates three interlocking sets of concerns that any assessment must confront.

The first is a doctrinal gap. There is no settled test within Indian constitutional jurisprudence for determining the boundary between valid purposivism and judicial legislation which is not permissible. The judiciary often adopts a case-to-case approach, drawing upon concepts such as necessity and public interest without formulating any standards which may be easily identifiable and repeatedly applied. Such an absence of any doctrine results in unpredictability about intervention by the court as well as the terms on which this intervention is made, thus reducing legal certainty.

The second is an accountability deficit. When courts issue detailed, code-like directions, they function similarly to executive or legislative bodies but without the procedural safeguards public consultation, legislative debate, executive accountability to the electorate that ordinarily attend rule-making. Guidelines like those in Vishaka remained in force for over a decade before Parliament enacted corresponding legislation, meaning judicially created rules governed citizens' conduct for years without any mechanism for democratic revision or correction.

The third challenge is inconsistency across benches. Because India's Supreme Court sits in multiple benches of varying composition, similar fact patterns can produce divergent outcomes depending on which judges hear a case. Some benches favour restraint, treating legislative silence as a matter for Parliament alone; others readily invoke inherent powers to craft substantive rules. This inconsistency is compounded by the absence of a strong doctrine of precedent discipline at the level of constitutional bench decisions, leaving litigants and lower courts without clear guidance on when judicial rule-making is likely or appropriate.

Together, these challenges suggest that judicial rule-making in India, however well-intentioned, operates without adequate structural checks, raising legitimate separation-of-

powers concerns even where outcomes are broadly welcomed.

RECOMMENDATIONS AND SUGGESTIONS

As shown by this analysis, the Indian courts do not merely interpret statutes but in some cases go beyond interpretation to create detailed guidelines or rules of their own in situations where the statute suffers from ambiguity. This is justified in cases where there is a clear legislative gap, the intervention being temporary and the court inviting Parliament to take action, as shown in the Vishaka guidelines. Where such circumstances do not exist, however, judicial rule making raises concerns of accountability and separation of powers.

For legislators, three recommendations can be made in this regard. First, statutes relating to sensitive or rapidly changing areas of life (workplace behavior, technology, public health, etc.) must include a mandatory review provision, requiring Parliament to review the statute within a set period of time in order to ensure that ambiguity does not persist over an extended period of time. Secondly, the drafting committee must consider case law in recent times in its drafting stage since many of the ambiguities which courts are dealing with come from statutes containing terms already recognized as ambiguous by previous courts. Third, once courts issue guidelines to fill a legislative vacuum, Parliament should treat this as an explicit trigger for legislative action, rather than allowing judicial guidelines to remain in place indefinitely, as happened for sixteen years before the 2013 workplace harassment law was passed.

For the judiciary, there are two pragmatic amendments that can improve accountability without compromising on the Court's ability to fill legal gaps. Where guidelines have been issued pursuant to Section 142 of the Constitution, it is imperative for these courts, wherever possible, to specify that the guidelines are interim and request the legislature to provide an alternative, following the Vishaka precedent, and not keep them as guidelines with an open end. Secondly, courts must indicate the interpretation theory used, literal, purposive, or gap-filling, in their judgments.

CONCLUSION

This paper deals with the following specific question: at what point can the judicial interpretation of an ambiguous statute be said to constitute judicial lawmaking and what, if

any, constraints ought to limit it? The analysis suggests that Indian courts move along a spectrum rather than crossing a single, fixed line. At one end, courts resolve genuine ambiguity through accepted interpretive tools at the other, they create detailed guidelines or enforceable norms with little textual basis, often relying on the wide remedial powers granted under Articles 141 and 142 of the Constitution. The case studies examined here show that this movement is not random. Such judicial actions typically occur when there exists both a legislative gap and a real threat to basic rights, and are the most reasonable when the court portrays its decision as a temporary step and asks Parliament to fill the gap with legislation, like the Supreme Court did in Vishaka.

The implications of this result go well beyond those related to classification. For statutory interpretation, it suggests that no single interpretive theory whether strict textualism or expansive purposivism fully captures how Indian courts actually behave instead, courts shift between methods depending on the stakes involved. In terms of judicial practice, the paper advises for a greater clarity of judicial indication that the issued guidelines serve as a temporary solution but not as a replacement of the legislation. On the level of policy considerations, it gives to Parliament a concrete responsibility regarding the gaps that make judicial lawmaking necessary, and implies that quicker reactions from it will prevent courts from closing those gaps in a way that might look like an overstepping of the separation of powers.

In conclusion, the paper argues that judicial lawmaking in India cannot be viewed as either an unusual phenomenon or a mistake on the part of judges, but as a typical institutional reaction to certain circumstances. The understanding of those circumstances is crucial as the approach India takes in defining the line between interpretation and lawmaking is likely to influence the balance of powers in this country for many years to come.

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