
JUDGMENTS AS LITERATURE: CAN THE STYLE OF A JUDGMENT AFFECT THE LEGITIMACY OF THE LAW?

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ABSTRACT

Judicial authority depends upon reasons, but those reasons are communicated through choices of language, structure and voice. This essay examines how judicial style influences the perceived legitimacy of adjudication, with particular reference to Indian constitutional judgments. It contrasts restrained, doctrinal writing with judgments that employ metaphor, poetry, moral language and narrative, drawing upon decisions such as *Suresh Kumar Koushal*, *Navtej Singh Johar*, *Puttaswamy* and *Joseph Shine*. It argues that literary techniques can make constitutional reasoning more accessible and responsive to lived experience, while excessive rhetoric may obscure doctrinal weakness or personalise institutional authority. Judicial style therefore forms part of the manner in which courts justify the exercise of legal power.

Introduction

A judgment performs an unusual task. It resolves a dispute through the coercive authority of the State, yet it is expected to persuade its readers that the exercise of that authority is justified. The court cannot rely upon the result alone. It must explain why one interpretation prevailed, why one right outweighed another, or why an individual may legitimately be deprived of liberty, property or legal protection. The judgment therefore occupies a space between command and argument. Its authority is legal, but its legitimacy is partly constructed through language.

This makes style more than an aesthetic choice. The vocabulary a judge adopts, the story through which facts are organised, the metaphors used to explain a right, and even the decision to quote a poet or philosopher affect the kind of authority the judgment projects. James Boyd White's account of law as a form of rhetoric is useful here. For White, legal language participates in the creation of a community between speaker and audience. Judicial writing accordingly does something beyond communicating a rule. It establishes a relationship between the court, the litigants and the larger constitutional public.¹ Richard Posner similarly treated judicial writing style as connected to a judge's conception of the judicial role itself.²

The important question, then, is not whether judgments can be considered literature. That comparison is too broad to be especially useful. The better question is whether the literary choices within a judgment influence how judicial authority is received. Indian constitutional adjudication provides unusually rich material for such an inquiry. The Supreme Court has produced judgments ranging from terse and doctrinal opinions to decisions filled with metaphor, philosophy, poetry and moral language. The difference between these forms can alter what the Court appears to be doing when it speaks in the name of the Constitution.

I. The Authority of Restraint

Minimalist judicial writing derives much of its authority from restraint. Short sentences, careful treatment of precedent and limited pronouncements create an impression that the judge is applying law rather than announcing a personal philosophy. This stylistic instinct has a

¹ James Boyd White, *Law as Rhetoric, Rhetoric as Law: The Arts of Cultural and Communal Life*, 52 U. Chi. L. Rev. 684, 684–85 (1985).

² Richard A. Posner, *Judges' Writing Styles (And Do They Matter?)*, 62 U. Chi. L. Rev. 1421 (1995).

doctrinal counterpart in Cass Sunstein's account of judicial minimalism, which favours narrow and relatively shallow decisions that leave larger disagreements unresolved where their resolution is unnecessary.³ Stylistic minimalism and doctrinal minimalism are distinct, although they often reinforce each other. A concise judgment can announce a radical rule, while a lengthy judgment may ultimately decide a very narrow question. Yet restraint of expression can still communicate something about the judicial role. It suggests that courts possess authority because their decisions emerge from legal materials that constrain them.

There is an intuitive democratic appeal to this style. Judges are unelected. A judgment written in restrained doctrinal language can therefore reassure its audience that the court has remained within the boundaries of adjudication. The judge appears as the interpreter of an existing legal order rather than its principal author.

The difficulty is that restraint can also conceal judgment. Every decision involves choices about which facts deserve emphasis, which precedent is controlling and which conception of a right should prevail. Sparse reasoning can make those choices less visible without making them disappear.

The contrast between *Suresh Kumar Koushal v. Naz Foundation* and *Navtej Singh Johar v. Union of India* is instructive. In *Koushal*, while restoring Section 377 of the Indian Penal Code, the Supreme Court relied in part on the fact that LGBT persons constituted only a “minuscule fraction” of the country's population and referred to the “so-called rights” of LGBT persons.⁴ The language is relatively compressed. Yet its brevity performs its own rhetorical work. The constitutional claim appears small because the affected population is described as small. Questions involving identity, humiliation, intimacy and the history of criminalisation are reduced to the constitutional validity of a statutory classification.

Navtej Singh Johar, four years later, speaks in a markedly different register. The opinions discuss dignity, identity, constitutional morality, historical discrimination and transformative constitutionalism. The judgment opens through references to Goethe, Schopenhauer and John Stuart Mill. Justice Indu Malhotra's opinion concludes that “history owes an apology” to members of the LGBT community and their families for the persecution they had suffered.⁵

³ Cass R. Sunstein, *One Case at a Time: Judicial Minimalism on the Supreme Court* 10–11 (1999).

⁴ *Suresh Kumar Koushal v. Naz Found.*, (2014) 1 S.C.C. 1 (India).

⁵ *Navtej Singh Johar v. Union of India*, (2018) 10 S.C.C. 1 (India).

The language consciously enlarges the frame through which Section 377 is understood.

The difference between *Koushal* and *Navtej* therefore lies partly in what their styles permit the reader to see. In the former, homosexuality can appear as a category within criminal law. In the latter, criminal law becomes part of a longer story about citizenship, identity and exclusion. The doctrinal conclusion changed, but so did the narrative in which that doctrine was placed.

II. When the Constitution Speaks Through Metaphor

Metaphor is especially powerful in constitutional adjudication because abstract rights need language through which they can be imagined. Privacy, dignity, liberty and equality do not describe physical objects. A court inevitably relies upon concepts and images to give these guarantees shape.

In *Justice K.S. Puttaswamy (Retd.) v. Union of India*, for example, privacy was described as the “constitutional core of human dignity.” The judgment speaks of privacy as preserving an individual’s “zone of choice and self-determination” and describes dignity and privacy as being woven together within a plural culture.⁶ These are doctrinal propositions, but their force comes partly from metaphor. A “zone” suggests a protected space into which State power cannot casually enter. A “core” places privacy near the centre of constitutional personality. The metaphors make the right cognitively accessible before its precise doctrinal limits have been worked out.

Metaphor can therefore contribute to legitimacy by allowing constitutional reasoning to travel outside the professional legal community. A citizen may never read the doctrinal history of Article 21, but can understand the claim that there is a sphere of life which belongs to the individual. Constitutional law becomes capable of entering public language.

Robert Cover’s work on “nomos and narrative” offers a broader explanation for this phenomenon. Legal norms acquire meaning within narratives that locate them in a social world.⁷ A constitutional court cannot sustain a right merely by announcing its doctrinal ingredients. It often has to explain the kind of political community in which that right exists

⁶ *Justice K.S. Puttaswamy (Retd.) v. Union of India*, (2017) 10 S.C.C. 1, ¶¶ 322–23 (India).

⁷ Robert M. Cover, *The Supreme Court, 1982 Term: Foreword: Nomos and Narrative*, 97 Harv. L. Rev. 4, 4–5 (1983).

and the kind of individual the Constitution recognises.

This is especially visible when courts deal with groups whose experiences were previously absent from dominant legal narratives. Kalpana Kannabiran has observed that *Navtej* draws upon song, poetry, performance and emotion as part of its constitutional engagement with queer experience.⁸ The literary quality of the judgment can consequently be understood as an attempt to expand the vocabulary through which the legal subject is recognised.

III. Storytelling, Moral Language and the Judicial Voice

The literary element becomes even clearer in *Joseph Shine v. Union of India*, which struck down the offence of adultery under Section 497 of the Indian Penal Code. Justice D.Y. Chandrachud's opinion is organised under headings including “Gender: the discursive struggle,” “Confronting patriarchy,” “The Good Wife,” “The entrapping cage” and “Denuding identity: women as sexual property.”⁹

These headings do not merely index legal propositions. They tell the reader how to understand the statute. Section 497 becomes part of a story about the legal construction of marriage and the historical subordination of women. Describing the model of the legally obedient wife as an “entrapping cage” transforms an abstract equality challenge into a conflict between constitutional personhood and a social role imposed by patriarchy.

The effect is deliberate. A traditional doctrinal judgment might have invalidated Section 497 because its classification between men and women failed Article 14 scrutiny. *Joseph Shine* goes further by explaining the conception of women that made the classification possible. Its moral vocabulary becomes part of the reasoning.

Such writing can strengthen the legitimacy of constitutional adjudication where the law itself has participated in exclusion. A judgment dealing with centuries of criminalisation or legally sanctioned inequality may appear strangely incomplete if it speaks only in the language of classifications and tests. Acknowledgment can itself perform a constitutional function. When Justice Malhotra writes in *Navtej* that history owes an apology, the Court recognises that law was part of the injury. The sentence does no independent doctrinal work, yet it changes the

⁸ Kalpana Kannabiran, ‘What Use Is Poetry?’ *Excavating Tongues of Justice Around Navtej Singh Johar v. Union of India*, 31 Nat'l L. Sch. India Rev. 1, 1–31 (2019).

⁹ *Joseph Shine v. Union of India*, (2019) 3 S.C.C. 39 (India).

institutional posture of the Court. The Court speaks as an institution capable of recognising historical error.

James Boyd White's comparison between judicial opinions and poems becomes useful at this point. His argument was not that the two forms are interchangeable, but that both require attention to voice, structure, language and the relationship a text creates with its reader.¹⁰ A judgment tells its audience what kind of speaker the court understands itself to be. It may speak as technician, guardian, moral critic or constitutional educator. Each voice makes a different claim to legitimacy.

IV. The Danger of Beautiful Judgments

There is, however, a serious danger in equating eloquence with good judging. Literary language can illuminate reasoning. It can also distract from its absence.

The problem is particularly stark in criminal law. Judicial descriptions of an accused as monstrous, depraved or beyond redemption can influence the moral atmosphere in which punishment is assessed. Scholarship on death penalty decisions of the Indian Supreme Court has demonstrated how narrative and rhetorical devices have helped construct offenders as figures of extraordinary evil, making severe punishment appear almost inevitable.¹¹

The evolution of the death penalty doctrine illustrates the risk. *Bachan Singh v. State of Punjab* restricted capital punishment to the “rarest of rare” cases.¹² Later judgments invoked ideas such as the “collective conscience” of society while determining whether death was justified.¹³ These expressions are memorable precisely because they are rhetorically powerful. Their evocative quality can, however, create an illusion of precision. What counts as the collective conscience? Who speaks for it? How does a court measure when it has been shocked sufficiently to justify an irreversible punishment?

Here, rhetorical force may weaken rather than strengthen legal legitimacy. The metaphor can begin doing work that doctrine ought to perform. Emotional description of the crime can

¹⁰ James Boyd White, *The Judicial Opinion and the Poem: Ways of Reading, Ways of Life*, 82 Mich. L. Rev. 1669, 1669–70 (1984).

¹¹ Rajgopal Saikumar, ‘To Shock the Conscience’: Rhetoric in Death Penalty Judgements of the Supreme Court of India, 42 S. Asia: J. S. Asian Stud. 694, 694–710 (2019).

¹² *Bachan Singh v. State of Punjab*, (1980) 2 S.C.C. 684 (India).

¹³ *Machhi Singh v. State of Punjab*, (1983) 3 S.C.C. 470 (India).

substitute for a structured inquiry into sentencing principles.

The same concern applies to quotations from literature. A poem may capture grief, oppression or freedom more effectively than judicial prose. Yet the cultural authority of a famous writer cannot itself establish a constitutional proposition. Poetry can illuminate the stakes of an argument. It cannot relieve the court from demonstrating how that argument follows from text, precedent and constitutional principle.

There is an additional institutional difficulty. Highly personalised writing makes judgments memorable, but constitutional authority belongs to a court rather than to the literary personality of an individual judge. When the distinctive voice of the author overwhelms the legal reasoning, the reader may begin to associate justice with particular judges rather than institutional method. Charisma is an unstable basis for judicial legitimacy.

The coercive character of adjudication makes this distinction especially important. Robert Cover famously insisted that legal interpretation occurs in a field of pain and coercion. Judicial words can culminate in imprisonment, deprivation of property or other exercises of State force.¹⁴ A judgment is therefore unlike a literary essay even when it employs the techniques of one. Its language accompanies legal power.

V. Style as a Discipline of Legitimacy

The choice between minimalism and literary judgment-writing is therefore a false binary. Courts need neither colourless prose nor ornamental eloquence. The better standard is whether style serves the reasons that justify the decision.

A restrained judgment can be legitimate when restraint produces doctrinal clarity and makes the boundaries of judicial intervention visible. It becomes problematic when brevity removes human experience from the constitutional question or disguises contested choices as mechanical applications of law. A literary judgment can strengthen legitimacy when metaphor clarifies an abstract right, narrative restores experiences erased from legal doctrine, or moral language explains the constitutional values underlying a decision. It becomes weaker when quotations decorate propositions that remain unsupported or rhetoric supplies certainty that

¹⁴ Robert M. Cover, *Violence and the Word*, 95 Yale L.J. 1601, 1601–02 (1986).

legal reasoning cannot.

The contrast between *Koushal* and *Navtej* ultimately demonstrates why style cannot be dismissed as packaging. Each judgment constructed the constitutional dispute differently. One reduced the relevance of a minority partly through numerical insignificance. The other placed the same minority within a constitutional story of dignity, autonomy and equal citizenship. The difference was doctrinal, but it was also literary. The language helped determine what counted as legally visible.

Judicial legitimacy depends upon reasoned justification, but reasoning never reaches the public in a linguistic vacuum. It arrives through stories, metaphors, descriptions and choices of voice. The style of a judgment tells the reader who the judge believes the reader to be. It reveals whether the litigant is approached as a legal category or a human subject, whether precedent is treated as inherited command or continuing conversation, and whether constitutional authority is presented as technical expertise or a shared moral enterprise.

The best judicial prose therefore does not become literary for its own sake. It uses literary intelligence as a form of judicial discipline. It chooses words with an awareness that words frame facts, construct subjects and shape the authority that a court claims. A judgment may derive its formal validity from the Constitution and the office of the judge. The willingness of a constitutional community to regard that judgment as worthy of authority is influenced by something harder to codify: how the court explains itself when it exercises power.