

LEGAL POSITIVISM AND ITS IMPLICATION ON THE INDIAN CONSTITUTION

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Abstract

Legal positivism is one of the most influential schools of jurisprudence in modern legal theory. It emphasizes that the validity of law depends primarily on its source and institutional authority, rather than its moral content. According to positivist thinkers, law derives legitimacy from recognized legal procedures and institutions, not from moral ideals such as justice or fairness. This perspective contrasts with natural law theory, which maintains that law must be grounded in moral principles in order to possess legitimacy.¹

The constitutional framework of India offers a significant context for examining the application and limitations of legal positivism. The Indian Constitution functions as the supreme law of the land, establishing the foundation for legislative authority, executive governance, and judicial interpretation. In this sense, the constitutional structure reflects positivist legal reasoning, as legal validity depends on conformity with the Constitution.²

However, the development of Indian constitutional jurisprudence demonstrates that the judiciary often goes beyond strict positivist reasoning. Through doctrines such as the Basic Structure Doctrine, the expansion of fundamental rights, and the recognition of constitutional morality, courts have incorporated broader principles of justice, liberty, and democratic governance into constitutional interpretation.

Landmark judgments of the Supreme Court of India have played a crucial role in shaping this evolution. Cases such as *Kesavananda Bharati v. State of Kerala* and *Maneka Gandhi v. Union of India* illustrate how constitutional interpretation may integrate both positivist and normative principles. These decisions demonstrate that while the Constitution remains the ultimate legal authority, its interpretation often requires courts to consider broader values embedded in the constitutional framework.

This research paper examines the theoretical foundations of legal positivism and evaluates its implications within the Indian constitutional system. By analyzing constitutional provisions, jurisprudential theories, and landmark judicial decisions, the paper explores the extent to which positivist legal reasoning influences Indian constitutional law and how it interacts with broader principles of justice and democracy.

Key Words: Legal Positivism, Constitutional Supremacy, Basic Structure Doctrine, Judicial Review, and Indian Constitutional Law.

Introduction

1.1 Meaning and Scope of Jurisprudence

Jurisprudence refers to the philosophical study of law and legal systems. It seeks to examine

the nature, origin, purpose, and functioning of law within society. Different schools of jurisprudence attempt to explain the foundation of legal authority and the relationship between law and society.

Historically, several major schools of thought have emerged in jurisprudence, including natural law theory, legal positivism, sociological jurisprudence, historical jurisprudence, and legal realism. Among these, legal positivism has played a central role in shaping modern legal systems by emphasizing the importance of institutional authority and formal legal structures.³

Legal positivism attempts to separate the existence of law from its moral evaluation. According to this view, a rule may be legally valid even if it is morally unjust. The determination of legal validity therefore depends on whether a rule has been created according to recognized legal procedures within a particular legal system.

1.2 Development of Legal Positivism

The foundations of legal positivism were developed primarily in the nineteenth and twentieth centuries by scholars who sought to analyze law as a distinct social institution. Among the most influential contributors were John Austin, H. L. A. Hart, and Hans Kelsen.

Austin proposed the command theory of law, which defined law as a command issued by a sovereign authority and enforced through sanctions. According to Austin, the sovereign possesses ultimate political authority, and legal rules derive their legitimacy from the sovereign's power to enforce obedience.⁴

While Austin's theory provided a systematic explanation of legal authority, critics argued that it oversimplified the functioning of modern legal systems. Contemporary legal systems consist not only of commands but also of complex institutional rules governing legislative procedures, judicial interpretation, and constitutional authority.

In response to these limitations, H.L.A. Hart introduced a more sophisticated analysis of legal systems in his influential work *The Concept of Law*. Hart argued that legal systems consist of both **primary rules**, which regulate

conduct, and **secondary rules**, which govern the creation and interpretation of primary rules.⁵

Another important contribution to legal positivism came from Hans Kelsen, whose **Pure Theory of Law** conceptualized legal systems as hierarchical structures of norms. According to Kelsen, each legal rule derives its validity from a higher norm within the legal hierarchy, ultimately culminating in a foundational norm known as the **Grundnorm**.⁶

1.3 Legal Positivism and Constitutional Democracies

Modern constitutional democracies demonstrate many features consistent with positivist legal theory. Constitutions serve as the supreme legal authority, establishing the framework within which all laws must operate.

In India, the Constitution performs this function by defining the powers of the legislature, executive, and judiciary. Laws enacted by Parliament and state legislatures derive their validity from constitutional authority. Any law inconsistent with the Constitution may be declared invalid through judicial review.⁷

However, constitutional interpretation often involves broader considerations of justice, fairness, and democratic principles. Courts frequently interpret constitutional provisions in ways that extend beyond their literal wording, demonstrating the limits of strict positivist reasoning.

1.4 Purpose of the Study

This study aims to examine the relationship between legal positivism and the Indian constitutional framework. It seeks to analyze the extent to which positivist legal theory influences constitutional interpretation and governance in India.

2. Research Objectives

The primary objectives of this research are:

1. To examine the theoretical foundations of legal positivism.

2. To analyze the influence of legal positivism on the Indian constitutional framework.
3. To evaluate the role of the judiciary in interpreting constitutional provisions.
4. To assess the limitations of legal positivism in protecting constitutional rights.
5. To analyze the evolution of constitutional interpretation in India.

3. Literature Review

The development of legal positivism has been widely discussed in jurisprudential literature.

3.1 Command Theory of Law

Austin's command theory defined law as a command issued by a sovereign authority and backed by sanctions. According to this theory, citizens obey legal rules because of the threat of punishment.⁸

Although Austin's theory clarified the relationship between law and political authority, critics argued that it failed to explain the role of constitutional limitations and democratic institutions.

3.2 Hart's Concept of Law

Hart's theory emphasized that legal systems operate through a combination of primary and secondary rules. The most important secondary rule is the **rule of recognition**, which identifies the criteria for determining valid legal rules within a legal system.⁹

The concept of the rule of recognition has particular relevance in constitutional systems, where the constitution functions as the ultimate criterion for legal validity.

3.3 Kelsen's Pure Theory of Law

Kelsen's theory proposed that legal systems are structured hierarchically, with each legal rule deriving its authority from a higher rule. At the apex of this hierarchy lies the Grundnorm.

In constitutional systems, the constitution effectively performs the role of the Grundnorm, validating all subordinate laws.¹⁰

4. Research Methodology

This research adopts a **doctrinal method** of legal research, which involves analyzing legal principles derived from constitutional provisions, statutes, and judicial decisions.

Primary sources include the Constitution of India and judgments of the Supreme Court. Secondary sources include academic books, legal commentaries, and scholarly articles.

Doctrinal research is particularly suitable for jurisprudential studies because it allows detailed examination of legal doctrines and judicial reasoning.¹¹

5. Legal Positivism and the Indian Constitutional Framework

5.1 Constitutional Supremacy

The Indian Constitution establishes the principle of **constitutional supremacy**, meaning that all laws and governmental actions must conform to constitutional provisions. The Constitution serves as the highest legal authority within the Indian legal system and provides the foundational framework for the functioning of all state institutions. Article 13 explicitly provides that any law inconsistent with fundamental rights shall be void.¹² This provision ensures that legislation enacted by Parliament or state legislatures cannot override the guarantees provided under Part III of the Constitution.

The principle of constitutional supremacy reflects a central feature of legal positivist theory. According to positivist jurisprudence, the validity of legal rules is determined by their **source within the legal system and their conformity with established legal procedures**. In the Indian constitutional framework, the Constitution acts as the ultimate legal source from which all subordinate laws derive their legitimacy. Any statute, executive order, or administrative action must therefore conform to the Constitution in order to be considered legally valid.

This hierarchical structure of legal norms closely resembles the theoretical model proposed by Hans Kelsen in his Pure Theory of Law. Kelsen conceptualized legal systems as hierarchical structures in which each legal norm derives its authority from a higher norm. At the apex of this hierarchy lies the ****Grundnorm****, or foundational norm, which provides the ultimate basis of legal validity. In the context of the Indian legal system, the Constitution effectively performs the role of the Grundnorm by serving as the ultimate source of legal authority.

Constitutional supremacy also ensures the limitation of governmental power. By clearly defining the powers of the legislature, executive, and judiciary, the Constitution prevents the concentration of authority within any single branch of government. The doctrine of separation of powers further reinforces this structure by allocating specific functions to each branch while maintaining a system of checks and balances.

Furthermore, constitutional supremacy protects the fundamental rights of citizens by placing substantive limits on governmental authority. Fundamental rights such as equality before the law, freedom of speech and expression, and protection of life and personal liberty are guaranteed by the Constitution and cannot be arbitrarily restricted by ordinary legislation. Through Article 13, the Constitution explicitly declares that laws inconsistent with these rights are void to the extent of their inconsistency. This ensures that constitutional rights remain superior to legislative enactments.

In addition to safeguarding individual rights, constitutional supremacy also reinforces the democratic character of the Indian state. Since the Constitution represents the collective will of the people expressed through the Constituent Assembly, it serves as the ultimate source of political legitimacy within the Indian legal order. All governmental authority ultimately flows from the Constitution, and no institution may exercise powers beyond those granted by it.

Thus, the principle of constitutional supremacy reflects the positivist understanding of law as a system of norms validated by institutional authority while simultaneously functioning as a mechanism for protecting democratic governance and individual rights.

5.2 Judicial Review

Judicial review represents one of the most important mechanisms for maintaining constitutional supremacy. Articles 32 and 226 empower courts to review the constitutionality of laws and governmental actions.¹³ These provisions allow individuals to approach constitutional courts for the enforcement of their fundamental rights and provide the judiciary with the authority to invalidate laws that violate constitutional provisions.

Judicial review plays a central role in ensuring that all branches of government operate within the limits prescribed by the Constitution. By examining the legality of legislative and executive actions, courts act as guardians of the Constitution and protect the supremacy of constitutional norms. The power of judicial review therefore functions as a critical safeguard against the misuse or abuse of governmental authority.

In the Indian constitutional system, the Supreme Court and High Courts exercise this power through writ jurisdiction. Under Article 32, the Supreme Court has the authority to issue writs such as habeas corpus, mandamus, prohibition, quo warranto, and certiorari for the enforcement of fundamental rights. Similarly, Article 226 empowers High Courts to issue writs not only for the enforcement of fundamental rights but also for other legal purposes.

From a positivist perspective, judicial review demonstrates how legal validity is determined through institutional mechanisms established within the legal system. Courts derive their authority to review laws from the Constitution itself, which formally grants them the power to interpret constitutional provisions and

determine whether legislative or executive actions are consistent with them.

At the same time, judicial review also highlights the interpretative role of the judiciary in constitutional governance. While courts apply constitutional provisions as the supreme law of the land, they must often interpret these provisions in order to resolve disputes involving complex legal and constitutional questions. This interpretative function allows courts to shape the development of constitutional law over time.

The exercise of judicial review has significantly influenced the evolution of Indian constitutional jurisprudence. Through landmark decisions, the judiciary has expanded the scope of fundamental rights, clarified the distribution of powers between the Union and the states, and ensured the protection of democratic institutions. Judicial review has therefore become an essential component of constitutional governance in India.

Moreover, judicial review reinforces the rule of law by ensuring that governmental actions remain subject to legal scrutiny. No authority, including the legislature and the executive, is above the Constitution. By subjecting governmental actions to judicial examination, the courts ensure that power is exercised in accordance with constitutional principles and legal procedures.

Thus, judicial review serves both as a mechanism for enforcing constitutional supremacy and as a tool for maintaining the integrity of the constitutional order.

6. Landmark Constitutional Cases

6.1 Kesavananda Bharati v. State of Kerala

The Supreme Court's decision in *Kesavananda Bharati v. State of Kerala* represents one of the most significant judgments in Indian constitutional history.

In this case, the Court was required to determine the extent of Parliament's power to amend the Constitution under Article 368. The issue arose in the context of constitutional

amendments that sought to curtail property rights and strengthen the authority of the state in implementing socio-economic reforms.

Prior to this judgment, the Supreme Court had delivered conflicting decisions regarding the scope of Parliament's amending power. In earlier cases such as **Golak Nath v. State of Punjab**, the Court had taken the view that Parliament could not amend fundamental rights. The constitutional amendments that followed attempted to overturn this limitation and reassert parliamentary supremacy.

In *Kesavananda Bharati*, a thirteen-judge bench of the Supreme Court was constituted to resolve this constitutional controversy. The Court ultimately held that while Parliament possesses broad powers to amend the Constitution, these powers are not unlimited. Parliament cannot alter the ****basic structure of the Constitution****.¹⁴

This decision fundamentally reshaped the nature of constitutional amendment in India by introducing substantive limits on parliamentary authority.

Stronger Analysis of the Basic Structure Doctrine

The Basic Structure Doctrine represents a unique constitutional innovation that has had a profound impact on Indian constitutional law. It reflects a delicate balance between ****constitutional flexibility and constitutional permanence****. On the one hand, the Constitution must remain adaptable in order to respond to changing social, political, and economic conditions. On the other hand, certain fundamental principles must remain protected to preserve the identity and integrity of the constitutional system.

From a positivist perspective, the doctrine presents an important theoretical challenge. Strict legal positivism would suggest that constitutional amendments enacted in accordance with the procedures prescribed by the Constitution should be considered legally valid. Under Article 368, Parliament has the authority to amend the Constitution through a specified legislative process. If this process is

followed, a positivist interpretation might conclude that the amendment is valid regardless of its substantive content.

However, the Basic Structure Doctrine departs from this strictly procedural approach by imposing substantive limitations on constitutional amendments. According to the doctrine, certain foundational principles of the Constitution cannot be altered or destroyed even through the formal amendment process. These principles collectively form the **“basic structure”** of the Constitution.

Although the Supreme Court did not provide an exhaustive list of basic structure elements, several core principles have been identified through subsequent judicial decisions. These include:

- * democracy
- * rule of law
- * separation of powers
- * judicial review
- * federalism
- * secularism
- * the protection of fundamental rights

By protecting these foundational principles, the judiciary ensures that constitutional amendments cannot undermine the essential identity of the Constitution. The doctrine therefore acts as a safeguard against the concentration of political power and protects the democratic character of the Indian state.

The Basic Structure Doctrine also reflects the judiciary’s role as the ultimate interpreter of the Constitution. By recognizing implicit limitations on the amending power, the Court affirmed that constitutional authority is not solely derived from procedural legality but also from the preservation of fundamental constitutional values.

Furthermore, the doctrine has played a crucial role in maintaining the balance of power between different branches of government. Without such limitations, a parliamentary

majority could potentially alter the constitutional framework in ways that weaken democratic institutions or erode fundamental rights. The Basic Structure Doctrine therefore functions as a safeguard against constitutional abuse.

From a jurisprudential perspective, the doctrine demonstrates how constitutional interpretation may integrate normative considerations into legal reasoning. While the Constitution remains the ultimate legal authority, courts interpret it in light of its underlying principles and values. This interpretative approach illustrates the dynamic nature of constitutional law and highlights the interaction between positivist legal structure and broader constitutional ideals.

The continued application of the Basic Structure Doctrine in later cases such as *Minerva Mills* and *I.R. Coelho* confirms its enduring importance in Indian constitutional jurisprudence. It remains one of the most powerful judicial doctrines for protecting constitutional democracy in India.

6.2 Maneka Gandhi v. Union of India

The Supreme Court’s judgment in *Maneka Gandhi v. Union of India* expanded the interpretation of Article 21.

The Court held that the procedure established by law must be **“fair, just, and reasonable”**, effectively introducing substantive due process into Indian constitutional law.¹⁵

6.3 Minerva Mills Ltd. v. Union of India

In *Minerva Mills Ltd. v. Union of India*, the Court reaffirmed the Basic Structure Doctrine and emphasized the importance of maintaining a balance between Fundamental Rights and Directive Principles.¹⁶

6.4 ADM Jabalpur v. Shivkant Shukla

The decision in *ADM Jabalpur v. Shivkant Shukla* remains one of the most controversial judgments in Indian constitutional history.

The Court held that during the Emergency, citizens could not challenge unlawful detention

through habeas corpus petitions. The decision has been widely criticized as an example of excessive reliance on positivist reasoning without sufficient regard for fundamental rights.¹⁷

6.5 Justice K.S. Puttaswamy v. Union of India

In Justice K.S. Puttaswamy v. Union of India, the Supreme Court recognized the right to privacy as a fundamental right under the Constitution.

The judgment emphasized that constitutional interpretation must reflect principles of human dignity, liberty, and autonomy.¹⁸

7. Criticism of Legal Positivism

Legal positivism has faced substantial criticism from various legal philosophers.

7.1 Separation of Law and Morality

One of the central criticisms is that legal positivism separates law from morality. Critics argue that this separation may allow unjust laws to exist within a legal system.

For example, historically oppressive laws have often been legally valid despite violating fundamental principles of justice.

7.2 Natural Law Perspective

Natural law theorists argue that law must conform to moral principles in order to possess legitimacy. According to this perspective, unjust laws should not be considered valid laws.

Natural law theory therefore emphasizes the relationship between law and morality.

7.3 Ronald Dworkin's Critique

Ronald Dworkin criticized legal positivism by arguing that legal reasoning involves not only rules but also **principles and moral standards**.¹⁹

According to Dworkin, judges must interpret law in a way that best reflects the moral principles underlying the legal system.

8. Contemporary Relevance

Despite its criticisms, legal positivism continues to play an important role in modern legal

systems. The Indian Constitution still reflects positivist principles through its hierarchical structure and institutional framework.

However, constitutional interpretation increasingly incorporates broader values such as human dignity, equality, and democratic governance.

The Indian judiciary therefore follows a **hybrid approach**, combining positivist legal reasoning with normative constitutional principles.

9. Conclusion

Legal positivism has played a significant role in shaping modern legal systems, including the constitutional framework of India. By emphasizing institutional authority and legal procedures, positivist theory provides a structured framework for understanding the operation of law.

However, the evolution of Indian constitutional jurisprudence demonstrates that strict positivist reasoning alone cannot adequately address the complexities of constitutional governance.

Judicial doctrines such as the Basic Structure Doctrine, the expansion of fundamental rights, and the recognition of constitutional morality illustrate the dynamic nature of constitutional interpretation.

Ultimately, Indian constitutional law reflects a balance between **positivist legal structure and normative constitutional values**, ensuring both legal certainty and protection of fundamental rights.

Footnotes

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3. M. P. Jain, *Indian Constitutional Law* (8th ed.).
4. John Austin, *The Province of Jurisprudence Determined* (1832).
5. H. L. A. Hart, *The Concept of Law*.

6. Hans Kelsen, *Pure Theory of Law*.
7. INDIA CONST. art. 32.
8. Austin, supra note 4.
9. Hart, supra note 1.
10. Kelsen, supra note 6.
11. H. M. Seervai, *Constitutional Law of India*.
12. INDIA CONST. art. 13.
13. INDIA CONST. art. 226.
14. Kesavananda Bharati v. State of Kerala, (1973) 4 SCC 225.
15. Maneka Gandhi v. Union of India, (1978) 1 SCC 248.
16. Minerva Mills Ltd. v. Union of India, (1980) 3 SCC 625.
17. ADM Jabalpur v. Shivkant Shukla, (1976) 2 SCC 521.
18. Justice K.S. Puttaswamy v. Union of India, (2017) 10 SCC 1.
19. Ronald Dworkin, *Taking Rights Seriously* (1977).
20. Durga Das Basu, *Introduction to the Constitution of India*.



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