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ROLE OF JUDICIAL DISCRETION IN PROCEDURAL JUSTICE: A COMPARATIVE ANALYSIS BETWEEN INDIAN AND AMERICAN SYSTEMS

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ABSTRACT

Judicial discretion has been the nexus of defining the outlines of procedural justice because it assumes the role of a balancing between the inflexibility of law and the achievement of justice. In India and the United States, courts use judicial discretion to make legal procedures more adaptable to the circumstances of each specific case to bring about justice not just administrative, but fair. Nevertheless, such discretion is applied in a wide range in these two jurisdictions. Indian judicial system, based on the tradition of common law gives the judges wide discretionary capital in the procedural affairs, including adjournments, bail, and sentencing, according to the principles of natural justice and equity.¹ The American system, which is similarly based on common law, on the contrary, places more emphasis on procedural due process under the Constitution, thus restricting judicial discretion with respect to precedent and statutory requirement.² The study will involve comparison of the nature of influences of judicial discretion on procedural fairness technologies in the two systems to assess whether discretion fosters or eradicates stability and predictability in the court decisions.³ Finally, the paper also emphasizes the fragility of judicial freedom and procedural homogeneity and concludes that the balance must be struck by discretion which is important in ensuring the legitimacy and moral authority of the judicature in both legal regimes.⁴

Keywords: Judicial Discretion, Procedural Justice, Comparative Legal Analysis, Rule of Law, Due Process.

¹ *State of Rajasthan v. Balchand*, (1977) 4 SCC 308 (India).

² *United States v. Booker*, 543 U.S. 220 (2005).

³ H.L.A. Hart, *The Concept of Law* 126–28 (2d ed. 1994).

⁴ M.P. Jain, *Indian Constitutional Law* 1243–45 (8th ed. 2018).

INTRODUCTION

Judicial discretion is one of the most crucial and, at the same time, one of the most sophisticated aspects of the contemporary legal systems. It permits judges to give meanings, employ and, in some instances, reform procedure based on the circumstances and merits of a particular instance. It is based on the philosophy that although law is codified, it cannot even tell every situation that presents itself in seeking justice. In this way, discretion is a process whereby judges make the law humane by making sure that justice is not constrained by formalities of the procedure but it oil and responds to changing needs of society and circumstances.⁵ Judicial discretion is especially a matter in procedural justice, which relates to the fairness of the procedures through which legal judgments are offered as opposed to the outcomes of the processes.⁶

Judicial discretion in India occurs in several procedural phases: even when it comes to making bails; adjournments; sentencing; and even interpretations of procedural laws. Using the ideas of natural justice and the constitutional provisions within Article 14 and 21, an Indian court uses its discretion to make sure that the process does not turn into a subjugation tool or time-waster.⁷ On the other hand, in the United States, the procedural due process doctrine provided by the Fifth and Fourteenth Amendments functions as check on unreasonable judicial conduct within the constitution. Although American judges also have loose discretion, they are subject to more rigid procedural restraints established by statutes, Federal Rules of Criminal and Civil Procedure and binding precedents.⁸

The paper discusses the issue of whether judicial discretion leads to procedural justice or unpredictability and biasness, and explores the issue of tension between judicial independence and procedural uniformity.⁹ Therefore, the present comparative analysis does not only bring forward the structural divergence between the two systems but also shows why the scope and restrictions on discretion of the judiciary has far reaching effects on delivering justice as such.

⁵ Ronald Dworkin, *Taking Rights Seriously* 31–33 (1977).

⁶ Tom R. Tyler, *Why People Obey the Law* 98–102 (2006).

⁷ *Maneka Gandhi v. Union of India*, (1978) 1 SCC 248 (India).

⁸ *Mathews v. Eldridge*, 424 U.S. 319 (1976).

⁹ H.M. Seervai, *Constitutional Law of India* 2136–38 (4th ed. 2013).

RESEARCH OBJECTIVES

1. To review the constitutional, statutory and jurisprudential boundaries to judicial discretion in India and the United States.
2. To make comparisons of the way the two legal systems strike the balance between judicial independence and procedural consistency in delivering justice.
3. To test the effect of judicial discretion on equity, equality and predictability in judicial hearings.
4. In order to provide the recommendations on building an ideal balance between the freedom of the judicial system and the protection of procedures, providing the full realization of discretion as the means of justice, but not arbitrariness.

RESEARCH QUESTIONS

1. Which are the main constitutional and statutory restrictions upon the exercise of judicial discretion in India and in the United States, and what are the differences in both the extent and a field of operations?
2. Does judicial discretion maximize or minimize predictability, consistency, and transparency of judicial results in both jurisdictions?
3. What has been the impact of seminal judicial decisions in India and the United States on the interpretation and scope of judicial discretion about the procedural issue?

HYPOTHESIS

The hypothesis of this research is that judicial discretion as undertaken under the confines of the constitutionally regulated procedures creates a better process system because it creates fairness and fairness, but when applied without moderation or consistent application, arbitrariness and loss of societal trust in the courts arise.¹⁰ It also assumes that Indian system is more committed to substantive justice by broadening discretion of the judicial system as opposed to the American system that is more committed to procedural fairness by committing to restrained judicial powers.¹¹ Therefore, comparative analysis reveals that both regimes are aimed at the same goal, which is justice, but via different channels experienced as a result of historical, constitutional and cultural factors.¹²

¹⁰ John Bell, *Judicial Discretion* 14–15 (1st ed. 1983).

¹¹ M.P. Jain, *Indian Constitutional Law* 1241–1244 (8th ed. 2018).

¹² Aharon Barak, *The Judge in a Democracy* 61–63 (2006).

RESEARCH METHODOLOGY

The current research is a qualitative methodology and comparative approach to the doctrine, which is based on the interpretation of the statutes, constitutional provisions, and judicial precedents in India and the United States.¹³ The study also uses primary sources, including the opinions of the Supreme Courts of both countries and the available procedural law, the Code of Civil Procedure, 1908, and the Federal Rules of Civil Procedure.¹⁴ Further, one will discuss secondary sources, such as the academic commentaries, articles in law reviews, and comparative legal studies to find out patterns, limitations, and changing judicial trends.¹⁵ Comparison/analytic design is used to depict the differences and similarities in judicial actions, and exemplifies use of discretion on procedural justice outcomes. There is also the methodology of analyzing case studies of landmark decisions like *Maneka Gandhi v. Union of India* and *Mathews v. Eldridge*, making a cross-jurisdictional consideration of the doctrine of fairness, equity, and due process.¹⁶

LITERATURE REVIEW

Academic arguments related to judicial discretion and procedural justice have been developed in various aspects: philosophical, constitutional, and institutional. The openness of law is an essential feature of applying rules that the application should allow discretion because H.L.A. Hart believed in the indeterminacy of the law even where the statutes remained indeterminate and so gave the judges discretion to avert.¹⁷

Ronald Dworkin, however, also stated that discretion should be limited by moral and constitutional principles incorporated in the legal system, to remove arbitrary decision making.¹⁸ M.P. Jain and H.M. Seervai have decided in the Indian context that the empowerments of constitutional guarantees in Articles 14 and 21 give the judges authority to make sure that procedural law is justified by fairness and reasonableness.¹⁹

¹³ Mark Van Hoecke, *Methodologies of Legal Research: Which Kind of Method for What Kind of Discipline?* 4 *Eur. J. Legal Stud.* 1, 6 (2011).

¹⁴ *The Code of Civil Procedure*, No. 5 of 1908, INDIA CODE (1908); *Fed. R. Civ. P.* (United States).

¹⁵ Upendra Baxi, *The Indian Supreme Court and Politics* 27–29 (1980).

¹⁶ *Supra* 7.

¹⁷ H.L.A. Hart, *The Concept of Law* 128–30 (2d ed. 1994).

¹⁸ Ronald Dworkin, *Taking Rights Seriously* 31–33 (1977).

¹⁹ H.M. Seervai, *Constitutional Law of India* 2136–2138 (4th ed. 2013).

Courts The pronouncements of the courts including *Maneka Gandhi v. Union of India*²⁰ broadened interpretation of policy set by law to encompass the notion of due process as a change towards substantive procedural justice. On the other hand, the American model based on the works of Laurence Tribe and Cass Sunstein curbs judicial discretion with constitutional due process and stare decisis, which is a procedural consistency in its application.²¹

Research by scholars like Upendra Baxi and Harold Koh has compared the lawmaking judiciaries of India and America and pointed out that the judiciary in India is more a constitutional guardian employing the expansive interpretation doctrine, whereas the judiciary in America is a more restraining system.²²

This literature therefore shows that there is a background antagonism between judicial discretion as a tool of justice and a source of inequity, depending on the restrictions placed on its use. The theoretical foundation of the current project is this duality, as it focuses on evaluating the presence in both systems in terms of the idea of strengthening procedural justice with the help of calibrated discretion.

ANALYSIS

CONCEPTUAL FRAMEWORK OF JUDICIAL DISCRETION AND PROCEDURAL JUSTICE

The concept of judicial discretion is one of the most volatile elements of the judicial process as a tool, by which the judges can interpret and employ the law by seeking justice. It is defined as the authority that is given to the judges to make decisions based on their judgment, conscience and legal arguments in cases where statutes or cases fail to give a directive.²³ This form of discretion, however essential to the flexibility, leads to accountability.

Fundamentally, judicial discretion is due to the fact that law is never absolute and cannot fully span out all the factual differences. The open texture theory of law as formulated by H.L.A. Hart underlines the fact that the rules in law are not self-enforcing and that cases of uncertainty

²⁰ Supra 7.

²¹ Laurence H. Tribe, *American Constitutional Law* 664–68 (2d ed. 1988); Cass R. Sunstein, *Legal Reasoning and Political Conflict* 42–44 (1996).

²² Upendra Baxi, *Courage, Craft and Contentions: The Indian Supreme Court in the Eighties* 52–53 (1985); Harold Hongju Koh, *Transnational Legal Process* 179–182 (1996).

²³ John Bell, *Judicial Discretion* 3–5 (1st ed. 1983).

have to be interpreted judicially.²⁴ In this way discretion becomes a source of the filling in between the general standards of the law and particular factual scenarios.²⁵

The judicial discretion in the Indian law is constitutionally supported by Article 14 and 21 that jointly articulate equal treatment before the law and right to life and personal freedom.²⁶ Supreme Court of India in such landmark cases like *Maneka Gandhi v. Union of India*, has broadened the interpretation of section of procedure established by Law to be fair, reasonable and with due process, and as such has made procedural justice consistent with substantive justice.²⁷

Conversely, American legal tradition restricts the discretion of the judiciary by an overemphasis on procedural due process using the Fifth and Fourteenth Amendments to the U.S. Constitution.²⁸ The doctrine of due process obstructs the deprivation of any person of life, liberty, or property under not any less than uniform and predictable codified procedural statutes, especially the Federal Rules of Civil and Criminal Procedure.²⁹ By the standards of *Mathews v. Eldridge*³⁰, the U.S. Supreme Court presented a balancing test to establish fairness of procedural protection.

THE JUDICIAL DISCRETION IN INDIA: CONSTITUTIONAL AND STATUTORY TINGES

Judicial discretion in India takes center stage in justice administration, given the fact that the judiciary has the power to interpret and apply the law in line with the peculiarities of the individual case. The Indian legal system, which is based on the common law tradition, puts considerable discretionary authority on judges in order to make sure that justice rather than pure procedural inflexibility, is being served. but this discretion is not absolute--it exists under the conditions of the Constitution of the country, of the laws, and of established judicial precedents.³¹ Indian judiciary has constantly pointed out that discretion has to be used to deliver justice, fairness and equity instead of using personal inclination or arbitrary interpretation.

²⁴ H.L.A. Hart, *The Concept of Law* 127–29 (2d ed. 1994).

²⁵ *Supra* 18.

²⁶ INDIA CONST. arts. 14, 21.

²⁷ *Supra* 7.

²⁸ U.S. CONST. amends. V, XIV.

²⁹ *Fed. R. Civ. P.* (United States).

³⁰ *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976).

³¹ M.P. Jain, *Indian Constitutional Law* 1239–1243 (8th ed. 2018).

Indian judicial discretion has their constitutional basis chiefly on Articles 14 and 21 of the Constitution. Article 14 provides equality that is placed before the law and protection of laws that are equivalent, and assures that judicial discretion is even handed and unbiased.³² Article 21, that upholds the right to life and personal liberty has developed in the way that procedural fairness has become a necessary part of justice. The historic *Maneka Gandhi v. Union of India*³³ case decision changed the interpretation of the term procedure established by law and considered that any procedure was required to be fair, reasonable, and just.

Judicial discretion is also important in civil law. The Code of Civil Procedure, 1908 (CPC) gives discretion to the court of law on the issue of awarding injunctions, adjournments, and costs. Section 151 of CPC maintains the inherent powers of the court to issue such orders as it may deem necessary to the end of the justice or to guard against abuse of process of the court.³⁴ This is to allow flexibility among the judges to shape procedures whenever there are exceptional situations so that the technicality does not hinder justice. An example of it is in *Manohar Lal Chopra v. Rai Bahadur*³⁵, the Supreme Court reiterated the effectiveness of judicial discretion as part of procedural justice in that the courts have the mandate to interpret procedural law in a way that is compatible with fair justice and equity.

Simultaneously, the Indian courts have come up with measures in order to guard against misuse of discretion. In *State of Punjab v. Gurdial Singh*³⁶, the Supreme Court cautioned that discretionary powers could not be acted out of bad faith or extraneous considerations.

The discretionary authority is also indicated in Articles 32 and 136 of the constitution where the Supreme Court has the power to do as it pleases.³⁷ Article 32 authorizes the Court to grant writs to enforce the fundamental rights whereas Article 136 advocates special leave to appeal against any judgment or order made by any court in India. The broadness of Article 136 permits the Supreme Court to use discretion to accept appeals on considerations on substantial justice and not rigid rules.³⁸

³² INDIA CONST. art. 14.

³³ Supra 7.

³⁴ The Code of Civil Procedure, No. 5 of 1908, S. 151, INDIA CODE (1908).

³⁵ *Manohar Lal Chopra v. Rai Bahadur Rao Raja Seth Hiralal*, AIR 1962 SC 527 (India).

³⁶ *State of Punjab v. Gurdial Singh*, (1980) 2 SCC 471 (India).

³⁷ INDIA CONST. arts. 32, 136.

³⁸ *Pritam Singh v. State*, AIR 1950 SC 169 (India).

In public interest litigation (PIL), which is a special gift of Indian jurisprudence to constitutionalism everywhere, judicial discretion also has an indispensable part to play. The doctrine has been formulated as a result of cases such as *S.P. Gupta v. Union of India*, *PUDR v. Union of India*, increased the access to justice through softening procedural locus standi regulations.³⁹

THE JUDICIAL DISCRETION OF THE UNITED STATES OF AMERICA: CONSTITUTIONAL AND INSTITUTIONAL PRINCIPLES

In the United States, judicial discretion operates within a very organized constitutional and institutional environment aimed at creating a balance of autonomy of the judges against the need of procedural homogeneity. Based on the tradition of the common law, judges have the option to interpret, apply and, in some cases, modify procedural rules in order to promote fairness.

In the United States, constitutional literature of judicial discretion mainly entails the Fifth and Fourteenth Amendments, which stipulate that no trialant would be stripped of his life, liberty, or property without due process of law.⁴⁰ The seminal case of *Mathews v. Eldridge*⁴¹ described a balancing test to be used to decide procedural sufficiency, regarding the interests of individuals against the goals of government and the risk of erroneous deprivation. The provision of the scope of discretion of judges is codified by Federal Rules of Civil Procedure (1938) and Federal Rules of criminal Procedure (1946)⁴², that establish the boundaries of the procedure in the civil and criminal trials. Even though these rules are flexible, they do not demand standard treatment in matters like the admission of evidence, set dates, and measures to non-compliance, yet they provide similar treatment in all jurisdictions.

The purpose of this codification is to reduce the level of inconsistencies and enhance the equal treatment of litigants. However, the discretion of the courts is critical in the interpretation of these rules especially in imposing penalty in accordance with Rule 37, bringing an injunction in accordance with Rule 65 or in the dismissal of cases due to lack of prosecution. The U.S. Supreme Court has made it clear on various occasions that discretion should be informed by

³⁹ *S.P. Gupta v. Union of India*, 1981 Supp SCC 87 (India); *People's Union for Democratic Rights v. Union of India*, (1982) 3 SCC 235 (India).

⁴⁰ U.S. CONST. amends. V, XIV.

⁴¹ *Supra* 33.

⁴² *Fed. R. Civ. P.* (1938); *Fed. R. Crim. P.* (1946).

reason and controlled by law in a way that does not undermine procedural fairness by judicial subjectivity.⁴³ Sentencing is one of the areas of judicial discretion in the United States. In the past, the federal judges were given a broad leeway in terms of imposing punishment depending on individual case circumstances. Nevertheless, the issue of sentencing differences resulted in the passing of the Sentencing Reform Act of 1984⁴⁴ that ended up creating the United States Sentencing Commission and the Federal Sentencing Guidelines.

These principles aimed at standardizing sentencing by establishing a formal outline. These can only be evaluated subjectively indicating the centrality of judicial reasoning in upholding the integrity of processes. In the same vein, discretion dominates class certification on Rule 23 of the Federal Rules of Civil Procedure⁴⁵ according to which the judges are to find balance of efficiency and fairness in group litigation. In *Wal-Mart Stores, Inc. v. Dukes*⁴⁶, the Supreme Court insisted affirmed the fact that the discretion of judges cannot prevail in the cases, over which the statutory requirements dominate the stage.

In *Marbury v. Madison*, Chief Justice John Marshall Daniel founded the judicial review and limited the judiciary, at the same time, to the interpretation of the law and not its creation.⁴⁷ This doctrine makes sure that the judicial discretion is a complement of both the legislature and the executive branches, rather than a competitor.⁴⁸

CONCLUSION

The foundations of a just and fair system of law are both the judicial discretion and procedural justice. The comparative study on both the Indian and the American judicial systems shows that even though they are convergent in a number of ways; they are divergent in the way they apply discretion in the mechanisms of the process. Although both jurisdictions recognize the necessity of the judicial discretion, the extent the institutional constraints they set on them to stop their abuse differ between them.

Judicial discretion is one method of substantive justice in a dynamic and varied society in India.

⁴³ *United States v. Burr*, 25 F. Cas. 30, 35 (C.C.D. Va. 1807).

⁴⁴ Sentencing Reform Act of 1984, Pub. L. No. 98-473, 98 Stat. 1987.

⁴⁵ *Fed. R. Evid.* 403 (United States).

⁴⁶ *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338 (2011).

⁴⁷ *Marbury v. Madison*, 5 U.S. (1 Cranch) 137 (1803).

⁴⁸ *Planned Parenthood of Se. Pa. v. Casey*, 505 U.S. 833, 854 (1992).

The Articles 14 and 21 as interpreted by the Supreme Court has given the concept of procedural justice more expansive moral and constitutional consequences so that the law is not simply followed but experienced as fair. The judiciary also tends to take an activist role and take the discretion of filling the gaps in the legislature and administration.

In the comparative study, it can be seen that judicial discretion, as essential as it may be, has to be practiced within clearly defined procedural parameters. The substantive justice that the Indian judiciary has been searching has occasionally become a sword with two sides serving to bring justice to the individual but at the same time causing systemic instability and time wastage.⁴⁹

In comparison, the procedural rigidity of the American model guarantees that the discretion promotes fairness and not ignores it in the form of its consistency. In this connection, the American solution seems to be less pragmatic in safeguarding institutional legitimacy and timely adjudication although it sometimes constrains judicial creativity.

Therefore, the dilemma facing India is not the curtailing of judicial discretion, but rather to punish it, through codifying adjournment parameters, providing orders that are reasoned and that discretion should be made subject to measures of accountability. An open, temporal model of discretion would help reduce procedural justice as an abstract concept into the quantifiable responsibility of the judiciary. Arbitrariness and delay cannot be sustained according to procedural justice in the ultimate analysis. Judicial discretion is legitimate in the sense of being judicial rather than generous. As such, India needs to realign its discretionary system to be both humane and uniform, such that fairness, in fact and in form, will be indeed open to everyone.

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