

**CONSTITUTIONAL SILENCES AND CREATIVE
INTERPRETATIONS BY THE SUPREME COURT**

Responsible Faculty Instructor:
Hon'ble Mr Justice Uday Umesh Lalit
Adjunct Professor, Jindal Global Law School

Assistant Instructor:
Prof. Parkhi Saxena [parkhi.saxena1@jgu.edu.in]
Assistant Professor, Jindal Global Law School

Credits: 4

Credits Type: Law

Cross-registration: No

Pre-requisites: Students should have successfully completed the core course of Constitutional Law-I

COURSE DESCRIPTION (COURSE VISION):

This elective course offers students the opportunity to examine the voids of the Indian Constitution, the spaces left unsaid and the jurisprudential creativity with which the Supreme Court has stepped in to render justice. The course begins by building a theoretical foundation on the existing Constitutionally defined powers of the Supreme Court and its expansive jurisdiction. This elective will discuss landmark judgments in which the Supreme Court exercised judicial activism by interpreting the basic structure of the Constitution and expanding Article 21 to encompass a wide array of fundamental rights. Further, the modules will discuss creative interpretations of Articles 32 and 142 of the Constitution to devise remedies that were not apparent on the textual surface. The elective also aims to examine the limits and legitimacy of creative interpretation. The delicate threat of judicial activism and judicial overreach will also be discussed, utilising commentaries on Constitutional law. Overall, the elective course will aid the interested students in venturing beyond the regular realms of Constitutional law to explore the role of the Supreme Court in realising Constitutional morality.

TEACHING METHODOLOGY:

This elective course will primarily rely on Supreme Court judgments spanning 75 years. To supplement the critical understanding of concepts, the instructor shall also utilise the excerpts from the commentaries on constitutional law. This will also be supplemented by the faculty instructor's self-reflections from his service to the legal profession, both from the Bar and the Bench.

INTENDED LEARNING OUTCOMES:

1. The students will be able to identify and theorise Constitutional silences and the tools to mitigate them
2. The students will be able to critically analyse the Supreme Court judgments where creative interpretations have shaped the jurisprudence.
3. The students will be able to evaluate the legitimacy of judicial creativity by engaging with debates on the separation of powers and the power of judicial review.
4. The students shall understand the comparative constitutional perspectives that shall, in turn, strengthen their critical understanding of the Indian constitutional law jurisprudence.
5. The students will be provided the opportunity to delve into written assessments on constitutional questions involving judicial interpretations that may be converted into a suitable publication.

READING LIST (upto 10 select readings):

1. Kesavananda Bharati v. State of Kerala (1973) 4 SCC 225
2. Indira Nehru Gandhi v. Raj Narain 1975 Supp SCC 1
3. Maneka Gandhi v. Union of India AIR 1978 SC 597
4. Hussainara Khatoon & Ors. v. Home Secretary, State of Bihar, State of Bihar 1979 SCR (3) 532
5. National Textile Workers' Union v. P.R. Ramakrishnan (1983) 1 SCC 228
6. Kunhayammed v. State of Kerala (2000) 245 ITR 360
7. S.P. Sathe, 'Judicial Activism in India' (Oxford University Press, 2002)
8. Justice R.C. Lahoti, 'Preamble: The Spirit and Backbone of the Constitution of India', 1st edition, Eastern Book Company, 2004
9. Supreme Court at 75: The Journey So Far, Bar Association of India, Mohan Law House, 2025
10. Constitutional Interpretation, Research Handbook in Comparative Constitutional Law Series, Edward Elgar Publications, 2025

WEEKLY READING PLAN (WEEKLY OUTLINE):

A weekly plan is provided below:

| MODULES | WEEK(S) |
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| <p>MODULE 1: ORIGINAL, APPELLATE AND ADVISORY JURISDICTION</p> <ul style="list-style-type: none"> As the highest judicial forum and the final court of appeal, the Supreme Court exercises extensive powers through the Original (Article 131), Appellate (Article 132-136), and Advisory (Article 143) jurisdictions. The module will serve as a precursor to subsequent modules by establishing the Supreme Court's inherent powers and the possible scope of deviation in their exercise. | Week 1-2 |
| <p>MODULE 2: WRIT JURISDICTION</p> <ul style="list-style-type: none"> The Supreme Court holds extensive writ jurisdiction under Article 32 of the Constitution. This module will discuss the landmark cases pertaining to writ jurisdiction that made the Supreme Court the ultimate protector of civil liberties. | Week 3-4 |
| <p>MODULE 3: THE BASIC STRUCTURE DOCTRINE</p> <ul style="list-style-type: none"> Through a series of defining judgments, the Supreme Court has delved in detail to answer the question 'What is the basic structure of the Constitution'? This module will utilise these cases to discuss the debates and challenges surrounding this principle. | Week 5-6 |
| <p>MODULE 4: JUDICIAL REVIEW</p> <ul style="list-style-type: none"> Stemming from the 'basic structure' feature, the power of judicial review enables the Supreme Court to have judicial supremacy in interpreting the law and the Constitution. This module will discuss landmark cases in which the Supreme Court relied on its interpretive power to strike down unconstitutional laws. | Week 7-8 |
| <p>MODULE 6: CURATIVE PETITION</p> <ul style="list-style-type: none"> This module will go through the evolution of the concept of Curative Petition, through which the Supreme Court, in line with its inherent powers, may reconsider a judgment to cure 'gross miscarriage of justice' | Week 9 |
| <p>MODULE 5: ROLE OF CONSTITUTIONAL MORALITY IN INTERPRETING THE CONSTITUTION</p> <ul style="list-style-type: none"> This module evaluates the role of 'constitutional morality' that is used by the Supreme Court as a dynamic and transformative tool that ensures that state actions align with the spirit of the constitution rather than plain text. | Week 10 |
| <p>MODULE 7: ARTICLE 142- POWER TO DO 'COMPLETE JUSTICE'</p> <ul style="list-style-type: none"> This module will discuss the powers and limitations of Article 142, a uniquely placed constitutional provision | Week 11 |

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| that empowers the Supreme Court to bypass statutory limitations to prevent injustice. | |
| <p style="text-align: center;">MODULE 8: LEGAL AID</p> <ul style="list-style-type: none"> This module will trace the evolution of the right of procuring Legal Aid, from the introduction of Article 39A in 1976 to the utilisation of Article 21 using judgments such as SCLSC (1996) and NALSA (1995). | Week 12 |
| <p style="text-align: center;">MODULE 9: PUBLIC INTEREST LITIGATION</p> <ul style="list-style-type: none"> Public Interest Litigation developed as an innovative tool to increase the accessibility of the Supreme Court to the masses. This module will delve into the Supreme Court's role in creating this instrument and the challenges it seeks to mitigate. | Week 13 |
| <p style="text-align: center;">MODULE 10: TRENDS BEYOND THE BORDER</p> <ul style="list-style-type: none"> This module will discuss the functioning of the Supreme Court in different democracies, its power of interpretation of the Constitution and the mutual lessons for judicial activism. | Week 14 |
| REVISION WEEK | Week 15 |