

Journal of Management & Public Policy

Vol. 16, No. 4, June 2025 Pp. 8-17

ISSN 0976-0148 (Online) 0976-013X (Print)

DOI: <https://doi.org/10.47914/jmpp.2025.v16i4.002>

Perspectives

Judicial Discretion in the Interpretation of Laws: A Critical Analysis

Sudarshana Jha*

ABSTRACT

Judicial discretion provides flexibility and freedom to choose the most viable course of action when multiple plausible courses of action conforming to the existing legal boundaries are present. Considering the inherent weaknesses of traditional methods of interpreting laws, judicial discretion serves a useful purpose of decrypting the statutory ambiguities and arriving at a constitutionally valid conclusion during adjudication with the sole purpose of fair administration of justice. This paper examines the conceptual and contextual foundations of the exercise of judicial discretion in interpretation of statutes. Based on a comprehensive scrutiny of the extant literature on the subject, the paper also examines the interpretative presumptions, and limitations of judicial discretion. The paper provides a holistic perspective on exercise of judicial discretion to the young scholars of law, as well as the practicing lawyers, legislative researchers, and faculty members deeply interested in the conceptual and applied aspects of the interpretation of statutes.

KEYWORDS: Discretion, Judicial Discretion, Interpretative Presumptions, Interpretation of Statutes

* Student, Integrated BA-LLB (2020-25), Vivekanand Institute of Professional Studies, Guru Gobind Singh Indraprastha University, New Delhi, India; Recipient of Prime Minister Young Upcoming Versatile Authors (PM-YUVA) Fellowship 2021-22
E-mail: sudarshanajha@gmail.com

INTRODUCTION

Exercise of discretion distinguishes human beings from animals and machines alike. Judges and lawyers are also human beings¹. This view has been further reinforced by Hart:

...because we are men not gods, and as part of the human predicament we may find ourselves faced with situations where we have to choose what to do under two handicaps. The first I will call Relative Ignorance of Fact, and the second I will call Relative Indeterminacy of Aim. These two factors may face us in a given sphere alone or jointly: in any sphere in which we may want to regulate in advance by general principles or rules to be invoked in successive particular occasions as they arise, we find our capacity limited by them. Sometimes the limitation imposed by the factors is so patent at the outset that we do not attempt to lay down specific rules but ab initio confer a discretionary jurisdiction on some official or authority.²

Hence, it is natural that the key stakeholders in the administration of justice use discretion while interpreting statutes lest anyone is adversely affected by the ensuing judgments. At the same time, it is important to note that discretion is a double-edged sword³. It can be instrumental in administration of justice, but one cannot rule out its misuse for vested interests. After all, judges and lawyers are also human beings imbued with integrity, intellect, reasoning and conscientiousness alongside greed, apathy, prejudice, and dishonesty. There are large number of judgments of the lower courts which have been overturned by the appellate courts on account of misuse of discretion in India and other parts of the world. Hence it is imperative to examine the role of judicial discretion in interpretation of statutes for the holistic administration of justice. Discretion becomes more relevant in the adjudication of cases where general rules may not apply for inexplicable reasons⁴.

Idea of justice should not be constrained merely by fairness. Rather, the administration of justice must also be rooted in human compassion. It has been observed that rigidity in interpretation of statutes often leads to impaired justice administration. It has been observed

¹Jerome Frank, Are Judges Human? Part 1: The Effect on Legal Thinking of the Assumption that Judges Behave Like Human Beings, 80 U. Pa. L. Rev. 17 (1931–32); Jerome Frank, Are Judges Human? Part 2: As Through a Glass Darkly, 80 U. Pa. L. Rev. 233 (1931–32).

²H.L.A. Hart, Discretion, 127 Harv. L. Rev. 652 (2013).

³Thomas O. Main, Traditional Equity and Contemporary Procedure, 78 Wash. L. Rev. 429, 495 (2003); Rex R. Perschbacher & Debra Lyn Bassett, The End of Law, 84 B.U. L. Rev. 1 (2004).

⁴Benjamin N. Cardozo, The Nature of the Judicial Process (1921); Brian Bix, Jurisprudence: Theory and Context 103 (4th ed. 2006).

that textual analysis, contextual explanations, and purposive interpretations have their own limitations⁵. Textual analysis binds the interpretation of statutes to plain literal meaning which may not convey the real object of the laws. Besides, literalism has conflicting semantic connotations due to regional cultural variations. To say the least, literal interpretation runs the risk of devaluing both the goals of the legislatures who passed a law and the aims of those who intend to protect it⁶. Indeed, language is principally a deficient tool for interpretation of laws⁷. Understanding of the statutes is also incumbered by cognizant and insentient circumstances⁸. Such impaired statutory interpretations may lead to misplaced court rulings and judgments. Hence, exercise of judicial discretion becomes crucial, especially when the laws are ambiguous.

DEFINING DISCRETION AND JUDICIAL DISCRETION

“Discretion means the power to choose between two or more courses of action each of which is thought of as permissible”⁹. Various metaphors have been used for discretion viz. frame of possibilities¹⁰, a fork in the road¹¹, a fenced pasture¹², and a doughnut hole¹³, among others. These metaphors indicate choices amidst complexities. For example, the frame of possibilities enables the judges to scrutinize merits of all the legal recourses and arrive at one that could optimize fairness and equity¹⁴.

Hart, in his seminal work on discretion¹⁵, has termed it as an ‘intellectual virtue synonymous with practical wisdom or prudence’. According to Hart, discretion is not necessarily a choice or flexibility. Discernment or acumen is akin to discretion. As such, one develops acumen with

⁵Valerie C. Brannon, *Statutory Interpretation: Theories, Tools, and Trends*, Cong. Rsch. Serv., R45153 (Apr. 5, 2018).

⁶Kenneth S. Abraham, *Statutory Interpretation and Literary Theory: Some Common Concerns of an Unlikely Pair*, 32 *Rutgers L. Rev.* 676 (1979)

⁷Frances Vaughan Hawkins, *On the Principles of Legal Interpretation, with Reference Especially to the Interpretation of Wills*, reprinted in James B. Thayer, *A Preliminary Treatise on Evidence at the Common Law* 577, 578 (1898).

⁸Benjamin N. Cardozo, *The Nature of the Judicial Process* 14 (1921).

⁹Henry M. Hart Jr. & Albert M. Sacks, *The Legal Process: Basic Problems in the Making and Application of Law* 162 (10th ed. 1958).

¹⁰Hans Kelsen, *Pure Theory of Law* 351 (1967).

¹¹Benjamin Cardozo, *The Growth of the Law* 59 (1924).

¹²Maurice Rosenberg, *Judicial Discretion of the Trial Court, Viewed from Above*, 22 *Syracuse L. Rev.* 635 (1970–71).

¹³Ronald Dworkin, *Taking Rights Seriously* 31 (1978).

¹⁴Benjamin Cardozo, *The Nature of the Judicial Process* 141 (1978) (1st ed. 1921).

¹⁵Hart H.L.A., *Discretion*, *Harvard Law Review*, 2013 v. 127 pp. 652-665.

experiences in life. Hart has elucidated it further: “A discreet person is not someone who just remains silent, but who chooses to be silent when silence is called for”.¹⁶ Thus every choice we make may not qualify as discretion. For example, one’s choice of wearing red shirt with black trousers is merely a routine decision without any discretion. Choices induced by individual whims and fancies cannot be classified as discretion. Exercise of discretion involves reasoned choices, informed choices, and consequential choices. Discretionary choices are generally justifiable in sync with reasonable framework of socio-legal norms of practices. In exceptional cases, discretion may be used to break away from the well-established socio-legal norms to usher progressive and forward-looking ethos in society.

According to Hart,¹⁷ discretion becomes imperative where there is no clarity regarding right or wrong, or there is no definable object, or there is no certainty about the circumstances under which a particular decision will operate, or there are no clear principles or rules determining the relative importance of distinguishable constituent values. Hart’s thoughts set clear ground for the exercise of discretion in judicial settings while interpreting the statutes. Discretion becomes crucial in adjudicating matters where laws are based on equivocal notions such as reasonable, convenient, appropriate, just, etc. On the other hand, scenarios in which some ground rules exist, discretion can enable the judges and other legal experts to expand the scope of relief to the victims through remedial modifications in the current legal framework.

Furthermore, Hart¹⁸ has suggested a comprehensive taxonomy of discretion comprising ‘Express or Avowed Use of Discretion’, ‘Tacit or Concealed Discretion’, and ‘Discretionary Interference or Dispensation from Acknowledged Rules’. Express or avowed use of discretion can be exemplified in terms of application of ‘reasonable and proper cause’ or ‘reasonable care’ in cases of malevolent trial. Furthermore, express or avowed use of discretion can also be used to provide discretionary remedies in the form of ‘injunction’ and ‘specific performance’ in cases where the vulnerable individuals or communities are at the receiving end. Tacit or concealed discretion is generally used in interpretation of statutes. Precedence becomes a reasonable ground for used of tacit or concealed discretion during trial and adjudication. Judges can provide a ‘reprieve’ or ‘injunction’ as part of discretionary interference. We have several

¹⁶ Ibid.

¹⁷ Ibid.

¹⁸ Ibid.

instances where the Supreme Court of India has applied discretionary interference in public interest litigations.

Discretion allows flexibility, which essentially ensures fair play in the administration of justice. However, defining discretion, especially in judicial parlance, is a cumbersome task. Indeed, the notion of discretion is fraught with judicial reviews by the appellate authorities¹⁹. Thus, exercise of discretion rests on shaky grounds. It is possible that exercise of discretion in good faith may be construed by the appellate authority as blatant misuse of judicial flexibility in interpreting the statutes and administering justice based on such interpretations. Variation in the interpretation of statutes arises due to possibility of multiple legitimate outcomes in a conflicting situation. Since interpretation is generally subjective, there might be differences of opinion on a particular matter. Such differences cannot be viewed with suspicion amounting to misuse or abuse of discretion. In exercise of discretion, therefore, the legal experts must look at the possibility of multiple legitimate and appropriate outcomes rather than one and must go beyond the set options or statutory limits.

Judicial discretion is construed as a privilege of the judge to determine a fair, equitable and wholesome outcome, specific to the factual situation, which is within the confines of natural justice but independent of the strict rules of positive law due to inherent ambiguities²⁰. Judicial discretion may be used to interpret laws in manner that twist the meaning of the statutes or break away from the literal meaning of the statutes and take an entirely new stance on a particular matter not mentioned in the laws or simply focus on the compliance with the same. For example, judges hearing a case on the plight of prisoners may instruct the government to initiate prison reforms, which are otherwise not provided in the law²¹. In 1997, the Supreme Court of India issued Vishakha Guidelines to prevent sexual harassment at workplace while examining a case of gang rape of a community social worker in Rajasthan. Although the accused are yet to be convicted, the Supreme Court laid the foundation for promulgation of The Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act, 2013. Such judicial ingenuity is entirely discretionary. The judges go out of their way to exercise judicial discretion for larger public good as expected by society. Indeed, exercise of

¹⁹Albemarle Paper Co. v. Moody, 422 U.S. 405 (1975).

²⁰FE Cooper, Living the Law 99 (Bobbs-Merrill 1958).

²¹Malcolm M. Feeley & Edward L. Rubin, Judicial Policy Making and the Modern State: How the Courts Reformed America's Prisons (Cambridge Univ. Press 1998).

judicial discretion depends on the personal wisdom and experience of the judges and other legal experts involved in interpretation of laws and administration of justice.

EXERCISE OF JUDICIAL DISCRETION IN INTERPRETATION OF STATUTES

The judges are expected to make discreet choices during adjudication based on their own interpretations of the laws²². They are supposed to exercise judicial discretion to explain the subtleties in complex legal provision to ensure a fair and equitable justice administration. Indeed, exercise of discretion is considered a core judicial function²³, although there are constitutional obligations to this effect. Plurality of interpretation also necessitates the exercise of judicial discretion as indicated in the following predicament which cannot be addressed through conventional methods:

A conscientious judge may perform all of the conventional tasks: she may consider the objective meaning of the relevant text, the legislative intent reflected in the text or elsewhere, the general policies and purposes behind the legislation, the traditional canons of interpretation, the “rules of clear statement,” and so forth. On the basis of such considerations, she may determine that the statute could be interpreted to mean either “A” or “B,” yet she may also find that there is no persuasive conventional reason to prefer “A” over “B” or “B” over “A.” How, then, should she interpret the statute? Which interpretation should she prefer?²⁴

While the traditional tools of interpretation of statutes such as legislative intent, objective meaning and influence of the existing laws on meaning and consequences of any legal or regulatory or administrative action build a foundation for justifiable decision, judicial discretion affords fairness in the adjudication process and end goal of the holistic administration of justice. Judicial discretion bridges the gaps between textual ambiguities in the laws and the ground realities.

INTERPRETATIVE PRESUMPTIONS

Statutory ambiguities provide a free hand to the judges and other legal experts to move forward with interpretation of laws based on standard presumptions. Textual openness allows the judges

²²Benjamin N. Cardozo, *The Nature of the Judicial Process* 141 (1921); H.L.A. Hart, *The Concept of Law* 29, 121 (1961).

²³D.J. Galligan, *Discretionary Powers: A Legal Study of Official Discretion* 1 (Clarendon Press 1986).

²⁴H.M. Foy III, *On Judicial Discretion in Statutory Interpretation*, 62 *Admin. L. Rev.* 291 (2010).

as well as other legal experts to leverage their own discretion in exploring and establishing meaning and intent of laws in the courtroom proceedings²⁵. Thus, interpretative presumptions play a crucial role in the exercise of judicial discretion. As such, interpretative presumptions are legal assumptions rooted in traditions that the court applies while scrutinizing the laws. Interpretative presumptions serve as institutional guardrails that shape the exercise of judicial discretion in sync with constitutional boundaries. Further, interpretative presumptions do not focus on a single outcome. Thus, judges are constrained from articulating what they feel could be a fair course of action, rather they need to go by the broad intent of the law within the valid constitutional boundary.

Interpretative presumptions are classified as semantic presumptions and substantive presumptions. Semantic presumptions are based on typical use of language, and how people communicate and make sense of their linguistic exchange. Thus, the judges cannot arbitrarily attribute meaning to a word in view of the ‘presumption of consistent usage’. Likewise, the ‘presumption against superfluosity’ prevents the judges from ignoring clauses which conflict with their preferred reading. On the other hand, substantive presumptions strengthen protection of long-standing systemic values such as rule of law, principle of justice, constitutional order, etc. Efficacy of the substantive presumptions depends on the ‘rule of lenity’, the ‘presumption of legality’, and the ‘constitutional avoidance canon’. The rule of lenity indicates that statutory ambiguities must be leveraged in favor of the defendant in criminal cases. The presumption of legality enables the court to discern things which may not be constitutionally valid. The constitutional avoidance canon suggests that the court must choose the constitutionally valid legal recourse in case of statutory ambiguities.

Interpretative presumptions set ground rules for the exercise of judicial discretion. Thus, the exercise of judicial discretion remains outside the ambit of personal power and preferences based on vested interest. Indeed, interpretative presumptions provide a comprehensive framework for the judicious exercise of discretion in the pursuit of justice administration and fair play. Interpretative presumptions are essential for perseverance of constitutional rights and institutional consistency.

²⁵F. Macagno, Presumptive Reasoning in Interpretation: Implications and Conflicts of Presumptions, 26 *Argumentation* 233 (2012)

LIMITATIONS OF JUDICIAL DISCRETION

A major limitation of judicial discretion is the authority of the appellate body, which might take an entirely opposite view in the matter. Because of multiple possibilities, judicial discretion invites reviews by the appellate authorities. Element of predictability enhances the quality of discretion. Limitation of discretion is contextual, and it may be procedural or substantive or both at the same time. Judicial discretion may appear prejudicial to parties based on perception that the judgement was not fair in a particular case. Judicial biases induced by judicial discretion is a natural corollary. Moreover, even the public perception regarding the exercise of judicial discretion may be misplaced: “Many lay citizens who have never studied the legal sources on which they ostensibly believe judges should rely do not hesitate to allege that judges have grounded particular constitutional rulings in their own preferences rather than in law”²⁶. Judges and legal experts apply discretion to determine meaning of abstract and value-laden legal provisions which may have controversial implications for the common people. In such scenario, the judicial interpretations induced by discretion may lead to public outcry and social unrest. The problem arises due to the failure of the judges to explain the interpretative choices shrouded in judicial discretion in matters concerning public good. It has been observed thus: “a judge —must examine and explain all the factors that go into a decision”²⁷.

Judicial discretion is often imbued with the constrain of relative ignorance of facts while interpreting laws. Judicial discretion based on inaccurate or inadequate facts may impair the concomitant interpretation of statutes. Judges tend to reconstruct disjointed, patchy, and unrelated facts retrospectively as contextual background in the exercise of judicial discretion²⁸. Information gaps are furthered by presentation of filtered facts in the court room by the opposing party, which in turn, may impair the quality of judicial discretion. Relative ignorance of facts induces substantial cognitive traps and institutional susceptibility. Judges, like other individuals, are prone to indulge in making sense even when the information gap is wide. True, relative ignorance of facts is inexorable reality that quietly creeps into the exercise of judicial discretion. Relative ignorance of facts is likely to bring in elements of biases in the exercise of judicial discretion. Customarily, in absence of missing information or factual gaps, rebuttal presumptions are invoked, requiring the judges and other legal experts to assume a definite and unverified detail in case the initial fact has been established in the first place. However, it must

²⁶Todd E. Pettys, *Judicial Discretion in Constitutional Cases*, 26 *J.L. & Pol.* 123 (2011).

²⁷Stephen Breyer, *On Handguns and the Law*, *N.Y. Rev. Books*, Aug. 19, 2010

²⁸J. Hall, *Ignorance and Mistake in Criminal Law*, 33 *Ind. L.J.* 1 (1957).

be emphasized that such presumptions are not at all the conclusive proof of empirical reality. Such pragmatic legal fiction may enable the judges and other legal experts to move on with the judicious exercise of discretion²⁹.

Yet another drawback in the exercise of judicial discretion is relative indeterminacy of aim. The problem arises mainly because the incidence of indefiniteness in the existing laws across the globe is high. Generally, imbued with cultural nuances, competing values, vague compromises, and political exigencies, aims of a particular law are not distinctly articulated, providing scope for subjective interpretations³⁰. The courts are invariably challenged to reconstruct the intent of law through the exercise of judicial discretion. However, in case of vague intent of law, interpretation of the object is deeply constrained by the personal preferences, hidden political affiliations, and cultural prejudices. However, the judges and other legal experts can address the handicap induced by relative indeterminacy of aim through prioritizing enacted textual markers like preamble, trusting substantive rules, regulation and broader legal framework, and above all, attempting reasoned clarifications regarding the bases of their interpretation of the intent of a particular law by amicably balancing the competing values. Structural infirmities induced by relative indeterminacy of aim can be removed by the well-established principles of reasonableness, good faith and best interest³¹.

Common people view judicial discretion with suspicion and term it as both needless and constitutionally unlawful. In the garb of discretion, eccentricities of the judges and other legal experts may prevail while interpreting statutes during adjudication³². Another flipside of judicial discretion is the possibility of inadvertently putting the rule of law at risk. It has further been upheld that judicial discretion, and the rule of law are inconsistent³³. Also, the experts are not sure whether exercise of judicial discretion stands between making new laws through judicial adjudication or just unfolding the concealed systemic lacunae in the existing laws and administer justice within the boundary stipulated by legislation³⁴.

²⁹K.W. Simons, *Mistake of Fact or Mistake of Criminal Law? Explaining and Defending the Distinction*, 3 *Crim. L. & Phil.* 213 (2009).

³⁰J.R.G. Williams, *Decision-Making Under Indeterminacy*, 14 *Philosophers' Imprint* 1 (2014).

³¹S.B. McNicol & F. Maher, *The Range and Limits of Judicial Discretion*, *ARSP: Archiv für Rechts- und Sozialphilosophie* 37 (1987).

³²Lawrence A. Weiss & Karen H. Wruck, *Information Problems, Conflicts of Interests, and Asset Stripping: Chapter 11's Failure in the Case of Eastern Airlines*, 48 *J. Fin. Econ.* 55 (1998).

³³See, e.g., A.V. Dicey, *Introduction to the Study of the Law of the Constitution* 202 (10th ed., Macmillan 1959).

³⁴R.M. Dworkin, *The Model of Rules*, 35 *U. Chi. L. Rev.* 14 (1967).

CONCLUSION

Judicial discretion is primarily upheld for fairness, equity and above all, protection of the vulnerable sections of the society and levelling the playing field irrespective of who sets the rules of the game. Discretion plays a crucial role in administration of justice in absence of decisive rules, regulations, and statutes, Judicial discretion allows the judges and other legal experts to outsmart the established statutory boundaries with their judicial imagination aimed at maximum good for maximum number of people. Considering the wide-ranging impact of judicial discretion, it must necessarily be rational, and devoid of vested interests and prejudice of any kind whatsoever. It must be based on recognizable guiding purpose and reconciliation of conflicting values. Any arbitrary choice cannot qualify as judicial discretion. Judicial discretion must conform to acceptable interpretative choices in the larger pursuit of justice administration. Moreover, it must also be in sync with the rule of law values such as precision, steadiness and predictability.

A major refrain from the legal experts is the possible misuse of discretion in the name of administration of justice. In several cases, the decisions of lower courts with explicit discretionary tinge, are reversed by the appellate authorities. Judicial discretion must be subject to constitutional scrutiny.