

Constitution as a Living Document: An Analysis of Judicial Construction in Sri Lanka and India

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The constitution is the fundamental law of a state. Sometimes, the constitution necessitates evolution through judicial interpretation to respond to the contemporary needs of the society. Traditionally, originalists argue that the meaning of the constitutional provisions is fixed and that should be applied in its original form. Whereas, living constitutionalists oppose the originalist view and argue that constitutional law can and should evolve in response to changing circumstances and values. Constitutional interpretation during the last few decades has evidenced a gradual evolution of the meaning of the constitution as a living document in Sri Lanka. Nevertheless, there are some judgements where a significant decline in broadening the constitutional protection through interpretation. This inconsistency has resulted in violating people's rights, societal imbalance, social unrest, and losing faith in the justice system. This paper aims to investigate the possible reasons for such inconsistencies and attempts to evaluate the constitutional interpretative theory 'rationalism' to promote the concept of 'living constitutionalism' with reference to India. Rationalism has been termed as a general approach to the recurrent inquiry required by different provisions of a constitution. Rational conduct is something related to the behaviour deliberately directed to achieve a formulated purpose and governed exclusively by that purpose. This paper lays down that constitutional evolution as a living document is crucial in countries like Sri Lanka where several rights of the people including the right to life have not been expressly guaranteed. This research is mainly carried out using the black letter approach using primary and secondary sources. A comparative research methodology is followed to evaluate the position of constitution as a living document in Sri Lanka and India.

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