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The Meaning of Law, 49 J. Marshall L. Rev. 1077 (2016)

Anuj Puri

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THE MEANING OF LAW¹

ANUJ PURI *

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“When *I* use a word,” Humpty Dumpty said, in rather a scornful tone, “it means just what I choose it to mean—neither more nor less.” “The question is,” said Alice, “whether you *can* make words mean so many different things.” “The question is,” said Humpty Dumpty, “which is to be master—that’s all.”

~Lewis Carroll, *Through the Looking-Glass*²

Abstract

Human beings intrinsically seek meaning. We readily accept and absorb a proposition or even a legal stipulation, if it is meaningful. This human trait coupled with law’s ability to create, select and infuse meaning ensures that in case of conflict between rights, those rights that are perceived to be ‘more meaningful’ triumph over those that are viewed to be less so. Hence, it is important to study the relationship between meaning and law and its impact on rights and identity of an individual. In order to do so, we need to address the following questions: What is the meaning

1. Some of the most distinguished philosophers have expounded different facets of law and added to the understanding of Herbert Lionel Adolphus Hart’s *THE CONCEPT OF LAW* (2d ed. 1994), Joseph Raz’s *THE AUTHORITY OF LAW* (2d ed. 2009), and Jacques Derrida’s “Force of Law: The ‘Mystical Foundation of Authority,’” in *ACTS OF RELIGION* 230 (Gil Anidjar ed., 2002). I use the term ‘The Meaning of Law’ not to expound about law’s meaning, but in a proprietary sense, in the sense of indicating law as a source or an origin of meaning; the reader for her convenience may refer to the title as “Meaning as Per Law” or “Meaning Because of Law.”

* Lawyer practicing in the Supreme Court of India and a visiting faculty at Indian Institute of Management, Rohtak and Indian Institute of Management, Shillong. I am grateful to Professor Menachem Mautner, Professor Petros Mavroidis, my friends: Dr. Menaka Guruswamy, Wouter Schmit Jongbloed-JSD candidate Columbia Law School, and my wife Nidhi for their incisive comments on previous drafts of this paper. I am also indebted to my students at IIM Shillong, who during the course of a discussion on the topic provided several valuable inputs.

2. LEWIS CARROLL, *THROUGH THE LOOKING GLASS* 113 (Project Gutenberg 2016) (1898).

of meaning? How is it constructed? How is one meaning adopted to the exclusion of all others? What is the role played by law in construction and adoption of meaning? What is the effect of a grant of legal sanction to a particular meaning? Why does this meaning remain unchallenged? Does the role of law in creation of meaning change depending upon the right in question? I address these questions on the basis of three strands of classical theory of meaning, constitutional jurisprudence, and a few landmark cases that I have had the privilege to be part of. This paper begins by exploring the meaning of meaning and then examines a few models to better understand the role played by law in construction of meaning. I then study the conflict between the plurality of meaning of the public interest and the singularity of meaning of individual rights and the resultant effect on the identity of an individual. The paper's final assertion lies in envisaging scenarios where the singularity of meaning of individual rights can triumph over the plurality of meaning of the public interest.

I. INTRODUCTION

When St. Augustine spoke about time, he could very well have been referring to meaning.³ Meaning, like time, is easier to know than to explain. My endeavor in this paper is to try and understand how law influences construction and adoption of meaning and why we accept that interpretation. The conventional approach in this regard has been to address the question from the point of view of law rather than of meaning itself.⁴ The answer to the query of how law shapes meaning and why we accept that meaning can be understood in terms of either authority of law, force of law, or legitimacy of law. In my opinion, this approach overlooks the importance of meaning in our lives, which from an existential and survival perspective is perhaps as important, if not more important, than law.⁵

3. "What then is time? If no one asks me, I know: if I wish to explain it to one that asketh, I know not . . ." SAINT AUGUSTINE, Book XI, in *THE CONFESSIONS OF SAINT AUGUSTINE* 118, 123 (E.B. Pusey trans.).

4. Richard H. Fallon Jr., *The Meaning of Legal "Meaning" and Its Implications for Theories of Legal Interpretation*, 82 U. CHI. L. REV. 1235 (2015).

5. Viktor Frankl while narrating how he survived the harrowing conditions of a concentration camp writes,

"What was really needed was a fundamental change in our attitude toward life. We had to learn ourselves and, furthermore, we had to teach the despairing men, that it did not really matter what we expected from life, but rather what life expected from us. We needed to stop asking about the meaning of life, and instead to think of ourselves as those who were being questioned by life—daily and hourly. Our answer must consist, not in talk and meditation, but in right action and in right conduct. Life ultimately means taking the responsibility to find

In order to avoid this error, I begin this paper by addressing the importance and meaning of “meaning” in the first part, wherein I examine some of the classical theories of meaning. In the second part, I develop certain models for understanding the role played by law in transformation of meaning to definition. In this part, I also study the ability of law to infuse meaning in otherwise seemingly random human conduct. Having established the background to study the impact of legally selected meaning on rights, I analyze the conflict between the singularity of meaning of individual rights and the plurality of meaning of public interest, and its implications on individual identity in the third part. I contend that given to our innate need to be guided by meaning, the rights that are perceived to be ‘more meaningful’ triumph over those viewed as less so. This analysis is undertaken with the aid of constitutional jurisprudence and some significant cases that I had the privilege to be part of. The paper finds its just conclusion in the fourth and the last part by proposing alternate modes of interpretation whereby the singularity of meaning of individual rights can triumph over the plurality of meaning of the public interest.

II. THE MEANING OF “MEANING”

Human beings are intrinsically meaning seeking beings.⁶ This thought is echoed by Viktor E. Frankl who, while writing about his harrowing experiences in a concentration camp, approvingly quotes Nietzsche in stating, “He who has a *why* to live for can bear with almost any *how*.”⁷ In the relationship between law and

the right answer to its problems and to fulfill the tasks which it constantly sets for each individual.

These tasks, and therefore the meaning of life, differ from man to man, and from moment to moment. Thus it is impossible to define the meaning of life in a general way. Questions about the meaning of life can never be answered by sweeping statements. “Life” does not mean something vague, but something very real and concrete, just as life’s tasks are also very real and concrete. They form man’s destiny, which is different and unique for each individual. No man and no destiny can be compared with any other man or any other destiny. No situation repeats itself, and each situation calls for a different response. Sometimes the situation in which a man finds himself may require him to shape his own fate by action. At other times it is more advantageous for him to make use of an opportunity for contemplation and to realize assets in this way. Sometimes man may be required simply to accept fate, to bear his cross.”

VIKTOR E. FRANKL, MAN’S SEARCH FOR MEANING 85 (2008).

6. Menachem Mautner, *Meaning, Religion, and the State: On the Future of Liberal Human Rights*, 10 L. & ETHICS HUM. RTS. 109, 110 (2016).

7. VIKTOR E. FRANKL, MAN’S SEARCH FOR MEANING 84 (2008). *See also* SUSAN WOLF, MEANING IN LIFE AND WHY IT MATTERS 7-8 (2010) (stating,

meaning, if we give primacy to understanding meaning we begin to better appreciate law's ability and limitations in the construction of meaning.

With our sails set to the aforesaid course, let us turn our focus towards the urge to understand, to find meaning, and to explain, which perhaps is one of the most fundamental human urges. What drives this urge? Is it the need to communicate? Is it the need to *mean the same thing in the same sense*?⁸ Why must we agree on a meaning? Can a meaning exist without agreement? These questions of fundamental importance can be addressed from various perspectives- linguistic, social, economic...so on and so forth. For the purposes of this paper, I am limiting my inquiry to the legal contours of meaning.

One way of understanding meaning is that it is a product of the intrinsic characteristic of an object or phenomenon.⁹ This functional approach to meaning however cannot succeed when we are dealing with rights. Rights are perpetually in conflict with each other.¹⁰ Which right shall prevail over another, more often than not, is not a subject matter of its functionality, but of interpretation. Before we dwell further on the relationship between law and meaning, it is important to examine some of the existing theories of meaning.

C.K Ogden and I.A. Richards in their seminal work on meaning propose that, “[w]ords, as everyone now knows, ‘mean’ nothing by themselves. . . . It is only when a thinker makes use of them that they stand for anything, or in one sense have ‘meaning’.”¹¹ Two attributes of meaning stand out from the above

“[p]eople sometimes complain that their lives lack meaning; they yearn for meaning; they seek meaning. People sometimes judge others to be leading exceptionally meaningful lives, looking upon them with envy or admiration. Meaning is commonly associated with a kind of depth. Often the need for meaning is connected to the sense that one’s life is empty or shallow. . . . When the word ‘meaningful’ is used in characterizing a life (or in characterizing what is missing from a life), it calls *something* to mind, but it is not clear what, nor is it clear that it calls or is meant to call the same thing to mind in all contexts.”)

8. This semantic need is statutorily recognized in the definition of consent under The Indian Contract Act, 1872, § 13 (Eng.). The definition of “consent” under the Act states, “[t]wo or more person[s] are said to consent when they agree upon the same thing in the same sense.” *Id.* Put differently, the process of construction of meaning is essentially an exercise in manufacturing consent. As elaborated in the ensuing paragraphs, meaning cannot exist without a referent. Consent in a mercantile sense means offer and acceptance; I propose that, in a semantical sense, law provides the hegemonic justification for acceptance of one particular form of meaning to the exclusion of all others.

9. LUDWIG WITTGENSTEIN, PHILOSOPHICAL INVESTIGATIONS 7, 9, 158 (G.E.M. Anscombe trans., 2d ed. 1958).

10. Jeremy Waldron, *Rights in Conflict*, 99 ETHICS 503 (1989).

11. C.K. OGDEN & I.A. RICHARDS, THE MEANING OF MEANING 9-10 (8th ed. 1946).

statement: 1) meaning is relative; and 2) that meaning is capable of construction.

Before the work of Drs. Ogden and Richards, the prevailing view was that for every word, there is a single, correct meaning associated with it. Drs. Ogden and Richards offered an alternative perspective in form of theory of “Proper Meaning Superstition,” “which states that there is not a single ‘correct’ meaning associated with each and every word because each word means something different to each person, or more simply, meanings don’t reside in words, they reside in people.”¹²

On the other hand, Professor Mautner argues, while analyzing the interrelationship between religion and secularism from the perspective of meaning, that the concept of meaning itself has many meanings.¹³ These systems of meaning are shaped by the interaction of our mind categories with the external world, and law plays an important role in creation of these mind categories and consequently the embedding of meaning. If one were to synthesize Prof. Mautner’s hypothesis of mind categories with Ogden’s proposition of assigned meaning, then law emerges as a primal force shaping the creation, internalization, and acceptance of meaning.

III. FROM MEANING TO DEFINITION

The transition from meaning to definition is one from ambiguity to clarity. As per Ogden and Richards, when a person speaks, the words he or she chooses mean different things to different people. One may agree that a term best suited to describe this condition is ambiguity.¹⁴ According to Ogden and Richards, the best way to solve the ambiguity problem is to provide a definition of various terms or concepts.¹⁵ As elaborated in the ensuing paragraphs, law plays a pivotal role in removal of this ambiguity, thus paving the way for the transition from meaning to definition.

In *Philosophical Investigations*, Ludwig Wittgenstein explores the distinction between meaning and definition.¹⁶ As per Wittgenstein, in each case, the meaning of a word presupposes our ability to use it.¹⁷ This was elaborated with Wittgenstein’s now famous thought experiment asking the reader to come up with the

12. A. Bosco, *What Do You Mean: A Brief Look at Ogden and Richards’ Theory of Meaning*, CAL. ST. U. FRESNO (2002), <http://zimmer.csufresno.edu/~johnca/spch100/4-1-ogden.htm>.

13. Mautner, *supra* note 6, at 110.

14. Bosco, *supra* note 12.

15. Ogden & Richards, *supra* note 11, at 91.

16. *See generally* Wittgenstein, *supra* note 9.

17. *Id.* at 18.

definition of the word “game.”¹⁸ Wittgenstein goes on to demonstrate that, while it is possible to come up with a definition of the word “game,” each attempt at defining game leaves out or adds one or more relevant features of the game that are contextual, such as amusement, competition, and rules.¹⁹ According to Wittgenstein, we do not need a definition of “game” because everybody understands what we mean when we talk about playing a game, and we can clearly identify and correct inaccurate uses of the word, all without reference to any definition that consists of necessary and sufficient conditions for the application of the concept of a game.²⁰ Wittgenstein posits that definitions emerge from “forms of life,” which are roughly the culture and society in which they are used.²¹ He further rejects the idea that ostensive definitions can provide us with the meaning of a word.²² According to Wittgenstein, the thing that the word stands for does not give the word meaning.²³ The understanding of an ostensive definition, in fact, presupposes an understanding of the way the word being defined is used.²⁴

In my opinion, meaning can be a product of the intrinsic characteristic of the right or object, but from a legal standpoint, definition can be best understood as the selected meaning, as understood or adopted by law. I now propose two frameworks which can help us better understand the relationship between meaning, definition, and law.

First, consider the following analogy of why objects appear to be of a particular color. It is well understood that objects appear to be the color that they reflect after absorbing colors of all other wavelengths (See Figure 1).²⁵ In my view, this process of absorption and reflection plays out in the case of meaning and law as well (See Figure 2). In the case of any dispute involving interpretation of rights, law absorbs all the meanings which are to be rejected, based on the then existing social and cultural context,

18. *Id.* at 3, 31, 32, 36.

19. FREDERICK SHAUER, THE FORCE OF LAW 38 (2015)

20. Wittgenstein, *supra* note 9, at 66

21. *Id.* at 94; Danièle Moyal-Sharrock, *Wittgenstein on Forms of Life, Patterns of Life and Ways of Living, Nordic Wittgenstein Review*, SPECIAL ISSUE 28 (2015); Abdolrahim Fatemi et al, *The Later Wittgenstein, Forms of Life and Religious Belief*, INT’L RES. J. APPLIED & BASIC SCI. Vol.3 2870 (2012), Vol.1, 37 (2012). www.irjabs.com/files_site/paperlist/r_601_121231163056.pdf.

22. Wittgenstein, *supra* note 9, at 7, 8, 17, 18

23. *Id.* at 31

24. *Id.* at 19.

25. See *What is color? Why are things the color that they are?*, U. CAL. SANTA BARBARA SCIENCeline, <http://scienceline.ucsb.edu/getkey.php?key=207> (last visited Sept. 24, 2016); see also *Why do objects emit only particular colors?*, DEPT. PHYSICS U. ILL. URBANA-CHAMPAIGN, <http://van.physics.illinois.edu/qa/listing.php?id=41968> (last visited on Apr. 21, 2016).

and allows only the definition to be reflected back on to the society. This is not to disregard the role played by political, economic, social, and religious forces in the construction of meaning. I presume that role at the stage of absorption. It is my contention that the final process of selecting a particular meaning, interpretation, or definition is a function of law. No other phenomenon can help legitimize the exclusion of all other possible meanings.

FIGURE 1

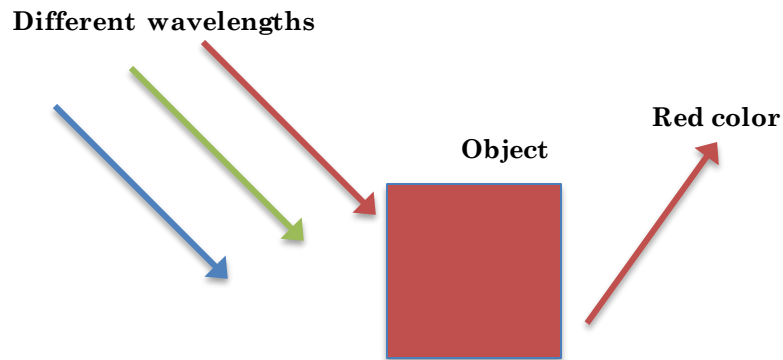
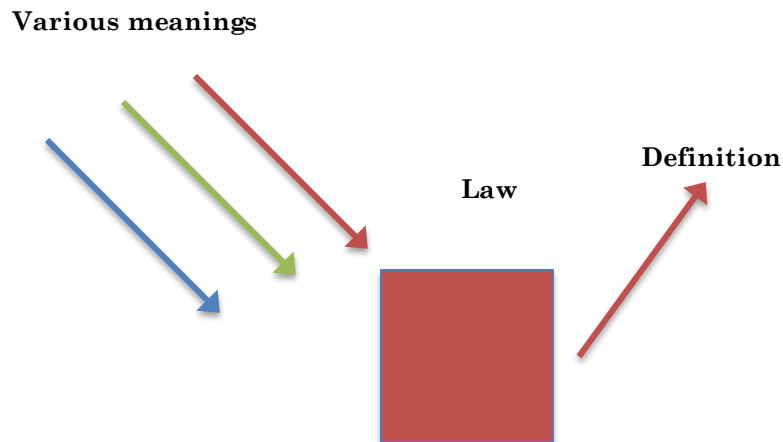


FIGURE 2

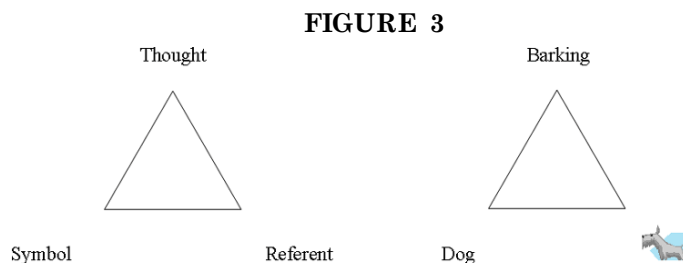


Consider the common social phenomenon of an exclusive club, which prominently displays on its door, "Right of admission is reserved." This helps the club restrict the entry of non-members and to cater its facilities exclusively for the benefits of its members. Now this restriction on entry exists because of social or

economic reasons, but is enforced because of legal ones. The legitimacy of law ensures that non-members respect the private right to property. This is not purely a function of force of law. The exclusivity is maintained because law absorbs or eliminates all other possible interpretations of the words, “Right of admission reserved” and leaves the one that we understand as deferential to private right to property.

Similarly, consider the case of a contract for sale of an apartment. The intentions of the parties as recognized and enforced by law excludes all other possible meanings and selects a particular definition of apartment, which will include its physical description, dimensions, and location. The act of defining is an act of eliminating alternatives. This act of elimination, which would otherwise never be accepted, by individuals and society at large, is made acceptable by law.

My second attempt at understanding the relationship between meaning, law, and definition is based upon the Ogden triangle.²⁶ Drs. Ogden and Richards in their book, *The Meaning Of Meaning*, first proposed a relationship between thought, symbol, and referent that has come to be known as the “Ogden Triangle” or the “Semiotic Triangle.”²⁷ (See Figure 3).²⁸



(Source: Bosco, *supra* note 12.)

A. Bosco explains the working of the Ogden Triangle as a function of the relationships between all three factors, represented by the sides of the triangle. While referring to other works on the Ogden triangle, he expounds that:

The relationship between the thought and symbol are causal, meaning the symbol evokes an attitude or a proposed effect on another person. Similarly, there is a relationship between the thought and the referent, though the relationship can be either direct, such as something we can see in front of us, or indirect, such

26. OGDEN & RICHARDS, *supra* note 11, at 11.

27. Givi Amaglobeli, *Semantic Triangle and Linguistic Sign*, 1 SCI. J. HUMAN. 37 (2012)

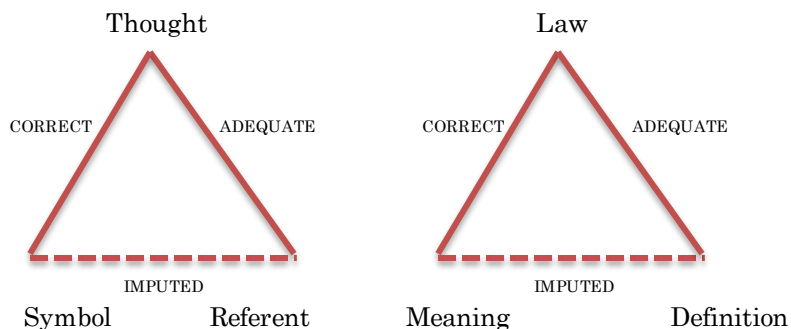
28. Bosco, *supra* note 12.

as an image or idea about something we have seen in another instance. Finally, the relationship between the symbol and the referent is purely indirect in that it is an arbitrary relationship created by someone who wishes the symbol to represent the referent. As demonstrated by the illustration above, the word “dog” is associated in the mind of the reader as a particular animal. The word is not the animal, but the association links the two, thus all three elements are required in an irreducible triad for the signs to operate correctly.

A unique and fascinating quality of Ogden and Richards’ theory is that it implies meaning can be arbitrarily exchanged without the need to understand how one another feels. What this means is that so long as definitions are created that all parties agree to, feelings regarding those definitions are inconsequential. In fact, according to Ogden and Richards, “Whenever we hear anything said, we spring spontaneously to an immediate conclusion, namely, that the speaker is referring to what we should be referring to were we speaking the words ourselves.”²⁹

If we prepare a similar triangular model between meaning, law, and definition on lines of the semiotic triangle comprising of thought, symbol, and referent, then we would discover, like thought and symbol, that law and meaning enjoy a direct and causal relationship (See FIGURE 4). Similar to thought and referent, law and definition also enjoy a direct and causal relationship. But like symbol and referent, meaning and definition share an imputed connection. In the absence of respective *copulas*³⁰ of thought and law, the connection between symbol-referent and meaning-definition cannot exist.

FIGURE 4



29. *Id.* (citations omitted).

30. See GRAMMAR.COM, *Copula* (copular verb)- In English grammar, a copula is a verb that joins the subject of a sentence or clause to a subject complement, <http://grammar.about.com/od/c/g/copulaterm.htm> (last visited on Jan. 1, 2017).

As mentioned earlier, the relationship between the symbol and the referent is purely indirect in that it is an arbitrary relationship created by someone who wishes the symbol to represent the referent. Law performs a similar function between meaning and definition. Law selects one definition to the exclusion of all other meanings. The journey from meaning to definition cannot be covered in the absence of law. Law serves the dual function of making sure that not only the appropriate meaning gets selected as definition but that it also gets accepted. What constitute 'appropriate meaning' depends on the facts and circumstances of each case, and the social and political context in which the case is adjudicated.

In the ensuing sections, I argue that in India, singular meaning (individual rights) invariably suffer a semantical defeat at the hands of plural meaning (public interest). But before that, it is worth visiting the law's ability to infuse meaning in otherwise seemingly meaningless acts.

A. Infusion of Meaning: The Myth of Sisyphus

So far we have been exploring the relationship between meaning and law with law acting as the selector, connector, and arbitrator of meaning. I now wish to focus attention on law's role as creator of meaning. And in order to do so, we begin with the myth of Sisyphus.

The gods had condemned Sisyphus to ceaselessly rolling a rock to the top of a mountain, whence the stone would fall back of its own weight. They had thought with some reason that there is no more dreadful punishment than futile and hopeless labor.³¹

Thus begins Camus' absurdist inquisition into plight of Sisyphus who was condemned by Gods to perform a meaningless task in the underworld perennially. Camus is not interested in the reasons for condemnation of Sisyphus- the accounts vary.³² But once his fate is sealed and Sisyphus has to perpetually push a rock to the top of the mountain only for it to roll back down and toil back again, Sisyphus becomes of interest to Camus. As per Camus, at the point of return from the top of the mountain, while moving down to once again collect the rock and push it back up, Sisyphus

31. ALBERT CAMUS, *THE MYTH OF SISYPHUS AND OTHER ESSAYS* 119 (Justin O'Brien trans., 1991).

32. Literary accounts vary as to who Sisyphus was and his reasons for condemnation. Some say he was the wisest of all, others say he was a highwayman. Reasons for his condemnation vary from chaining death to stealing secrets to eloping with the daughter of a God. *See id.* at 119.

is conscious of his fate and is in fact “superior” to it in that “[h]e is stronger than his rock.”³³

In other words, Sisyphus’ suffering is not caused by the meaningless and perennial nature of his ordeal but actually by his consciousness. As per some philosophers, if the myth were to be altered slightly, and it is assumed that all Sisyphus ever wanted to do ever in his life was to roll a rock up a mountain repeatedly, then the act would no longer constitute suffering.³⁴ The question that is pertinent for our inquiry is: if Sisyphus is conscious of his suffering, then why does he persist with the ordeal? One cannot rely on the coercive power of law or the gods’ decree to answer this question, as the coercive power has already been exercised, and Sisyphus has already been condemned to the worst possible fate as envisaged by Gods. One may then take recuse to the gods’ decree to argue that Sisyphus doesn’t have a choice but to comply. However, this reasoning takes away from the consciousness that Camus attributes to Sisyphus³⁵.

Perhaps then, we can use this example to understand the ability of law (or the gods’ decree in Sisyphus’ case) to infuse meaning in a scenario that is otherwise devoid of meaning. If we look at various mundane acts of our lives that constitute routine, we will recognize law’s ability to infuse meaning in otherwise seemingly meaningless events. For instance, the act of driving on a particular side of road is inherently meaningless up until we introduce it as a legal norm that has to be followed in order to ensure safety. Suddenly, a random act gets elevated to a meaningful one. The business hours of any commercial operation may be a factor of economic forces but are enforced on account of law. Law takes an otherwise arbitrary period of time and infuses meaning in it - thus, balancing the commercial interests of the entrepreneur with the rights of the laborers. If we examine closely, our lives are fraught with countless examples of otherwise seemingly random, arbitrary acts which create order because of the meaning law infuses in them. From enforcing restrictions on the entrance of vehicles in certain areas³⁶ to enforcing only selective commitments as contracts,³⁷ law has a unique ability to infuse meaning in otherwise seemingly random human conduct.

33. *Id.* at 121.

34. WOLF, *supra* note 7, at 17.

35. CAMUS, *supra* note 31, at 121.

36. For a fascinating interpretation of Hart’s “[n]o vehicles in the park” reference from various perspectives see Fallon Jr., *supra* note 4, at 1255 (2015).

37. One of the important prerequisites of any contract, oral or written, is the intention to give rise to legal relationship. See Bhawna Gulati, *Intention to Create Legal Relations: A Contractual Necessity or an Illusory Concept*, 2 BEIJING L. REV., 127 (2011).

IV. THE BATTLE BETWEEN SINGULARITY AND PLURALITY

So far we have examined the relationship between meaning and law from the creation and selection perspectives. In this section, I wish to analyze how construction of meaning affects rights. While analyzing the modes of interpretation we usually pay attention to context, legislative intent, and text but almost never to the meaning underlying law. This is a tremendous fallacy as the law's ability to shape meaning is of enormous significance to the language of rights. As stated earlier, human beings are inherently meaning seeking beings. This human trait ensures that those rights which are perceived as "more meaningful" triumph over others that are perceived as less so. This perception is as much a product of the country's legal system as it is of the country's socio-economic and political conditions. But law with its innate ability to regulate human conduct is the prime driver of the construction and absorption of meaning.

In India, for example, courts have consistently found public interest to be more meaningful than individual rights.³⁸ It is my hypothesis that the Indian Judiciary has consistently interpreted legal text in a manner where text capable of vague or pluralistic meaning triumphs over concrete, singular meaning. This triumph

38. In *Mardia Chemicals Limited v. Union of India* (2004) 4 S.C.C. 311, the Supreme Court while considering the validity of the SARFAESI Act and the recovery of non-performing assets by banks and financial institutions in India, held:

It may be observed that though the transaction may have a character of a private contract yet the question of great importance behind such transactions as a whole having far reaching effect on the economy of the country cannot be ignored, purely restricting it to individual transactions more particularly when financing is through banks and financial institutions utilizing the money of the people in general namely, the depositors in the banks and public money at the disposal of the financial institutions. Therefore, wherever public interest to such a large extent is involved and it may become necessary to achieve an object which serves the public purposes, individual rights may have to give way. Public interest has always been considered to be above the private interest. Interest of an individual may, to some extent, be affected but it cannot have the potential of taking over the public interest having an impact in the socio-economic drive of the country.

Id. Again, in *Thalappalam Ser. Coop. Bank Ltd. and Ors. v. State of Kerala and Ors* (2013) 16 S.C.C. 82, the Supreme Court observed:

Right to information and Right to privacy are, therefore, not absolute rights, both the rights, one of which falls under Article 19(1)(a) and the other under Article 21 of the Constitution of India, can obviously be regulated, restricted and curtailed in the larger public interest. Absolute or uncontrolled individual rights do not and cannot exist in any modern State.

Id.

is neither to be interpreted in a numerical manner nor in a sociological sense of the public interest prevailing over the private interest, but in a semantical manner where Indian courts have constantly favored vague general meaning over specific, crystallized rights. This unique school of thought has resulted in constant expansion of power of judicial review, often to the detriment of individual rights.

My hypothesis is that supremacy of individual rights can be maintained when it is an organic product of the society (like in the United States) rather than when it is transplanted in the society (like in India, where life traditionally has been understood more in nature of *Karma* or duty).³⁹ In the latter society, while transplanted individual rights may develop roots, their branches (the expansion of rights) will always be clipped. As stated earlier, the defeat of individual rights at the hand of public interest is not a demographical defeat, but a semantical defeat. An individual right with a singular defined meaning, which excludes all other interpretation, would always lose to a multi-headed Hydra⁴⁰-like entity called public interest. Given the fluid nature of public interest, it will always keep on changing its meaning to defeat individual rights. In the ensuing paragraphs, I cite two specific examples of cases that I had fought and lost on behalf of a ‘polluting’ industry and a private school, both of whose right to freedom of business, trade, and commerce was defeated on account of a varied and context-dependent interpretation of ‘public interest’ to the detriment of private individual rights.

By citing these cases, I do not wish to state that public interest is a meaningless concept. In my opinion, ‘public interest’ is a concept that derives meaning from context. In every new case, meaning is assigned to public interest depending upon the facts and circumstances. Unlike individual rights, its pluralistic, chameleon-like nature allows construction and deconstruction of

39. The Bhagwad Gita, one of the foremost sacred Hindu texts, enunciates the concept of Karma when Lord Krishna addresses a disheartened Prince Arjuna amidst a battlefield to perform his Karma by picking up his weapons and fighting the righteous war against his family members.

But thou hast only the right to work, but none to the fruit thereof. Let not then the fruit of thy action be thy motive; nor yet be thou enamored of inaction. . . . All honour to him whose mind controls his senses, for he is thereby beginning to practice Karma-Yoga, the Path of Right Action, keeping himself always unattached.

THE BHAGWAD GITA 6-13 (Shri Purohit Swami trans.), <http://d23a3s5l1qjyz.cloudfront.net/wp-content/uploads/2012/10/Bhagavad-Gita.pdf> (last visited on Oct. 25, 2016).

40. The Lernaean Hydra was a monster in Greek mythology. It had many heads and every time someone would cut off one of them, two more heads would grow out of the stump. *Lernaean Hydra*, GREEK MYTHOLOGY http://greekmythology.com/Myths/Monsters/Lernaean_Hydra/lernaean_hydra.html (last visited on Jan. 4, 2017).

meaning more readily. Also, unlike individual rights, a fluid concept like public interest cannot be reasonably restricted.

The effect of adoption of one particular meaning to the exclusion of all others is that the rejected meaning is lost forever, unless revisited in another case. How does this adoption succeed? Whether it is a contract or constitution, the meaning evolves from consensus, or that there is meaning for the same thing in the same sense. Law manufactures consensus through legitimacy⁴¹ and coercion.⁴² This consensus, whether real, perceived, artificial, or manufactured, then becomes the bedrock of meaning. Rights, like objects, are without meaning. It is law, which ascribes meaning to them. And, in case of conflict between rights, the right with pluralistic meaning is perceived to be more meaningful and triumphs over the right with singular meaning.

In this section, I analyze some judicial precedents to support my hypothesis that courts in India have consistently given preference to pluralistic meaning over singular.

A. Exhibit A: The Doctrine of Basic Structure

Since its initiation, the feature of the Constitution of India, which has been at the heart of the most contentious constitutional litigation, is the legislature's power to amend the constitution.⁴³

41. JOSEPH RAZ, *AUTHORITY OF LAW* 7 (2008)

42. FREDERICK SCAHUER, *FORCE OF LAW* 59 (2015)

43. Article 368 of the Constitution of India reads as:

368. Power of Parliament to amend the Constitution and procedure therefor-

(1) Notwithstanding anything in this Constitution, Parliament may in exercise of its constituent power amend by way of addition, variation or repeal any provision of this Constitution in accordance with the procedure laid down in this article.

(2) An amendment of this Constitution may be initiated only by the introduction of a Bill for the purpose in either House of Parliament, and when the Bill is passed in each House by a majority of the total membership of that House present and voting, it shall be presented to the President who shall give his assent to the Bill and thereupon the Constitution shall stand amended in accordance with the terms of the Bill:

Provided that if such amendment seeks to make any change in-

(a) Article 54, Article 55, Article 73, Article 162 or Article 241, or

(b) Chapter IV of Part V, Chapter V of Part VI, or Chapter I of Part XI, or

(c) any of the Lists in the Seventh Schedule, or

(d) the representation of States in Parliament, or

(e) the provisions of this article,

From right to property cases involving *Zamindari*⁴⁴ rights⁴⁵ to bank nationalization,⁴⁶ to abolition of privy purses⁴⁷ to appointment of judges,⁴⁸ the extent and contours of legislative powers of the parliament has been the subject of immense judicial scrutiny. At the heart of this debate lies the doctrine of separation of powers, as interpreted in the Indian context. The Indian constitutional journey has periodically witnessed ascendance of

the amendment shall also require to be ratified by the Legislature of not less than one half of the States by resolution to that effect passed by those Legislatures before the Bill making provision for such amendment is presented to the President for assent.

(3) Nothing in Article 13 shall apply to any amendment made under this article

(4) No amendment of this Constitution (including the provisions of Part III) made or purporting to have been made under this article whether before or after the commencement of Section 55 of the Constitution (Forty second Amendment) Act, 1976 shall be called in question in any court on any ground

(5) For the removal of doubts, it is hereby declared that there shall be no limitation whatever on the constituent power of Parliament to amend by way of addition, variation or repeal the provisions of this Constitution under this article

INDIA CONST. art. 368 (footnotes omitted).

44. Barbara Pozzo, *A Suitable Boy: The Abolition of Feudalism in India*, 1 ERASMUS L. REV. 41 (2008) <https://ssrn.com/abstract=1142845>. The zamindari system originated in India during Mughal domination. A zamindar in Mughal times was a 'vassal in chief' and zamindari was defined as 'the right which belonged to a rural class other than, and standing above, the peasantry'. The purpose of zamindari was of course to provide possessors with an income. This could derive from the land's products, as well as from holding back a share of the annual harvest, but also from other sources, such as the sale of milk. In this situation, agricultural production was not at all left intact in the hands of the peasants: it was creamed off by the land tax, with the government, central or provincial, taking the major share. The rest went to local landholders, with a small residue allotted to the villages collectively and from which corporate village life and its services were maintained. The actual cultivator was left with just enough to subsist on and with no reserve against famine.

The system continued under the British rule of India and was finally abolished after independence of India by the various State Zamindari Abolition Acts which were sought to be protected by amending the Constitution vide the First Constitutional Amendment. This Amendment was held to be constitutionally valid by the Supreme Court in *Shankari Prasad v. Union of India*, A.I.R. 1951 S.C. 458 (India).

45. *Shankari Prasad v. Union of India*, A.I.R. 1951 S.C. 458 (India). See also *Namita Wahi, State, Private Property and the Supreme Court*, FRONTLINE (Sept. 22-Oct. 5, 2012), www.frontline.in/static/html/fl2919/stories/20121005291903600.htm.

46. *Rustom Cavasjee Cooper v. Union of India*, A.I.R. 1970 S.C. 564 (India).

47. *H. H. Maharajadhiraja Madhav Rao v. Union of India*, A.I.R. 1971 S.C. 530 (India).

48. *Supreme Court Advocates on Record Association and Ors. v. Union of India*, (2015) 11 S.C.A.L.E. 1 (India).

the legislature over the judiciary, followed by systemic reversal. India's Constitution has been privy to a restrained judiciary,⁴⁹ a compliant judiciary,⁵⁰ and finally, to an activist judiciary asserting its constitutional existence in ways that have been seen as impinging upon the legislative powers of the parliament.⁵¹

49. In *Shankari Prasad*, A.I.R. 1951 S.C. 458, the constitutional validity of first constitutional amendment, which curtailed the right to property, was challenged. The Supreme Court upheld the legislature's authority to amend fundamental rights, which allowed for the eventual abolition of *Zamindari*. See *id*; see also *Case Analysis : Shankari Prasad v. Union of India*, LAWLEX (May 17, 2014), <http://lawlex.org/lex-bulletin/case-analysis-shankari-prasad-vs-union-of-india-air-1951-sc-455/9758>. The Supreme Court ruled that the power to amend the Constitution under Article 368 also included the power to amend fundamental rights, and that the word "law" in Article 13(2) includes only an ordinary law made in exercise of the legislative powers, and does not include a constitutional amendment which is made in exercise of constituent power. *Shankari Prasad*, A.I.R. 1951 S.C. 458. Therefore, a Constitutional amendment will be valid even if it abridges or takes away any of the fundamental rights. *Id*.

50. The worst hour for democracy in India coincided with Indian judiciary's worst hour. India's noted jurist and former Solicitor General T. R. Andhyarujina vividly recounts Supersession of Judges and the Supreme Court's verdict in *ADM Jabalpur v. Shivkant Shukla*, A.I.R. 1976 S.C. 1207 (India), which upheld the detention of opposition leaders and suspension of fundamental rights during emergency, in his article, *When the Bench Buckled*. T.R. Andhyarujina, *When the Bench Buckled*, INDIAN EXPRESS (July 8, 2015), <http://indianexpress.com/article/opinion/columns/when-the-bench-buckled/>; See also Jos. Peter D 'Souza, *A.D.M. Jabalpur vs Shukla, When the Supreme Court Struck Down the Habeas Corpus*, PEOPLE'S UNION CIV. LIBERTIES (June 2001), www.pucl.org/reports/National/2001/habeascorpus.htm.

51. "[T]he Supreme Court of India has attracted wide attention, particularly for its enforcement of affirmative action, social welfare, and environmental provisions in the Indian Constitution." Peter E. Quint, *"The Most Extraordinarily Powerful Court of Law the World has ever Known?"-Judicial Review in the United States and Germany*, 65 MD. L. REV. 152 (2006). See also Charles R. Epp, *THE RIGHTS REVOLUTION* 72 (1998) (citing Rajeev Dhavan, *JUSTICE ON TRIAL* (1980) and Carl Baar, *Social Action Litigation in India: The Operation and Limits of the World's Most Active Judiciary*, in *COMPARATIVE JUDICIAL REVIEW AND PUBLIC POLICY* (Donald W. Jackson & C. Neal Tate eds., 1992)); Ramachandran Raju, *Judicial Supremacy and the Collegium*, SEMINAR (2013) http://india-seminar.com/2013/642/642_raju_ramachandran.htm ("The Indian judiciary is one of the most powerful in the world. Judicial supremacy has become a fact of our constitutional life, at least from 1973, when the Supreme Court held by a slender and doubtful majority in the *Kesavananda Bharati* case that amendments to the Constitution would be struck down if they violated the basic structure of the Constitution. Any talk of such supremacy is quickly dismissed with the cliché that it is the Constitution which is supreme. This is countered with another oft-repeated saying, namely that the Constitution is what the judges say it is. . . . A weakened political class has over the last four decades meekly surrendered to judicial supremacy. It is this larger surrender that explains the acquiescence to lesser forms of judicial activism in Public Interest Litigation. It has often found it convenient to do so because it is easy then to avoid decision making, leaving it to the courts to decide.").

At the heart of this battle between the legislature and judiciary is the most important constitutional doctrine of Indian legal jurisprudence, that of the *basic structure of the constitution*.⁵² The doctrine of basic structure essentially states that the Parliament can amend the constitution to any extent as long as it does not destroy the basic structure of the constitution.⁵³ The beauty of the doctrine is that what constitutes basic structure has never been fully defined, but has been left to the wisdom of courts to be expounded on a case-by-case basis.⁵⁴ The basic structure

52. The reading of basic structure doctrine is a lesson in Indian Constitutional legal history. A worthy attempt to recapitulate this history has been made by Aqa Raza, *The "Basic Structure" Doctrine in the Indian Constitution: A Juridical Critique* (Sept. 23, 2015), <http://ssrn.com/abstract=2661127>. Without straying from my chief topic, I only wish to highlight that the basic structure doctrine is the inevitable democratic evolution of restraint on the constituent amending power of the legislature. In some countries, this restraint may arise out of political wisdom; in India it is a result of judicial review. The doctrine of basic structure was devised by the Supreme Court of India in the case of *Kesavananda Bharati v. State of Kerala* (1973) 4 S.C.C. 255. But, the discord between the judiciary and the legislature was long brewing over the latter's power to amend the Constitution and its impact on fundamental rights. The early rounds of the duel in *Shankari Prasad*, A.I.R. 1951 S.C. 458, and *Sajjan Singh v. State of Rajasthan* A.I.R. 1965 S.C. 845 went in favor of the legislature as the first and seventeenth constitutional amendments, respectively were upheld by the Supreme Court. However, the seventeenth constitutional amendment once again came up for challenge before the Supreme Court in *I.C. Golaknath & Ors. V. State of Punjab & Anrs.*, A.I.R. 1967 S.C. 1643, and this time the court overruled the previous judgment and held that the parliament does not have the power to take away fundamental rights under an amendment to Part III of India's Constitution. The Court held that Art. 368 merely describes the procedure of amendment and the actual power of amendment comes from Arts. 245, 246, 248 and Entry 97 of List I. *Id.* "Amendment" is a "Law" within Art. 13(2). *Id.* In order to overcome the Supreme Court's decision in *Golaknath*, parliament added Art. 13(4) by the twenty-fourth constitutional amendment, which said that Art. 13 will not apply to any amendments made under Art. 368. INDIA CONST. art. 1, § 4. This was challenged before the Supreme Court in *Kesavananda Bharati*, (1973) 4 S.C.C. 255. The court overruled *Golaknath* but went on to hold that the parliament has wide, but not unlimited, power of amending the constitution. *Id.* The usage of the word "amendment" in the constitution means that the basic framework of the constitution must survive after the amendment. *See id.* An amendment does not allow for destruction of the basic structure of the constitution. *Id.*; *see also* L.M. SINGHVI, CONSTITUTION OF INDIA 3899-3900 (2013).

53. *Minerva Mills Ltd. v. Union of India* (1980) 3 S.C.C. 625, Supreme Court Advocates on Record Association and Ors. v. Union of India, (2015) 11 S.C.A.L.E. 1 (India).

54. Raju, *supra* note 51. The *Kesavananda Bharati* case did not lay down the specific and particular features mentioned in that judgment alone would constitute the basic structure of the Constitution. *Kesavananda Bharati*, (1973) 4 S.C.C. 255. In a later opinion, the Court noted that "in the judgments of Shelat & Grover, JJ., Hegde & Mukherjee, JJ. and Jaganmohan Reddy, J., there are specific observations to the effect that their list of essential features comprising the basic structure of the Constitution are illustrative and are not intended to be exhaustive." *L. Chandra Kumar v. Union of India* (1997) 2

doctrine is deliberately left vague, so as to expand it, as and when necessary, and thus gives primacy to the judiciary in any constitutional conflict.⁵⁵ Subsequently, on a case-by-case basis, the doctrine of basic structure has been expounded with later insertions, including democracy,⁵⁶ power of judicial review,⁵⁷ rule of law,⁵⁸ effective access to justice,⁵⁹ free, fair and periodic elections,⁶⁰ federalism,⁶¹ secularism,⁶² separation of powers between the legislature, executive, and judiciary, and the independence of judiciary.⁶³

The doctrine of basic structure is the ultimate homage to the triumph of plurality over singularity of meaning. By retaining the doctrine in a fluid form, the Indian courts have ensured that interpretation of all individual rights and legislative powers will perpetually be deferential to public interest and judicial review, respectively. It is a testament to the doctrine's semantical supremacy that all cases decided under its purview have either resulted in expansion of sphere of public interest or judicial supremacy, or both.

*B. Exhibit B: M/s. DRG Grate Udyog v. State of Madhya Pradesh*⁶⁴

The *DRG* case involved an interesting conflict between an individual and public right. I represented the petitioner, a stone crusher unit, before the National Green Tribunal ("Tribunal"). The case involved operational rights of a stone crusher unit. The law in the State of Madhya Pradesh provided that any stone crusher has to be set up at a minimum distance of 500 meters from a residential area. The stone crusher unit in question was set up at a distance of 600 meters from the closest residential area but was at a distance of 450 meters from a school. The Madhya Pradesh

S.C.R. 1186.

55. Some of the illustrations given by Sikri, C.J. while explaining the concept of basic structure in *Kesavananda Bharati* case were (i) supremacy of the Constitution, (ii) republican and democratic form of government, (iii) secular character of the Constitution, (iv) separation of powers between the legislature, the executive and the judiciary, and (v) federal character of the Constitution. See V.N. Shukla, CONSTITUTION OF INDIA 1003 (2002).

56. *Indira Nehru Gandhi v. Shri Raj Narain & Anr.*, (1976) 2 S.C.R. 347.

57. *S.P. Sampath Kumar v. Union of India*, (1987) 1 S.C.C. 124.

58. *Waman Rao v. Union of India*, (1981) 2 S.C.C. 362.

59. *Central Coal Fields Ltd. v. Jaiswal Coal Co.*, A.I.R. 1980 S.C. 2125.

60. *Kihoto Hollohan v. Zachilhu*, A.I.R. 1993 S.C. 412.

61. *S. R. Bommai v. Union of India*, A.I.R. 1994 S.C. 1918.

62. *Id.*

63. *State of Bihar & Anr. v. Bal Mukund Sah and Ors.*, 4 S.C.C. 640; *Supreme Court Advocates on Record Association and Ors. v. Union of India*, (2015) 11 S.C.A.L.E. 1.

64. Application No. 96 of 2012 (May 9, 2013) (National Green Tribunal, India).

Pollution Control guidelines did not define residential area. Our contention, which was rejected by the court, was that the term residential area, as literally understood and as defined by pollution control norms of other states, does not include a school and, as such, any ambiguity in the definition of residential area should be interpreted in favor of the Petitioner, who should not be penalized for lack of definition, especially when it has obtained all other relevant approvals. The Tribunal, while rejecting the Petitioner's claim, propounded an expansive definition of the term 'residential area' to include a habitat. There are various ways of understanding the court's decision:

- i. In the absence of a statutory definition, the court adopted a purposive interpretation.⁶⁵
- ii. The court interpreted the term 'residential area' in a manner to further the legislative intent.⁶⁶
- iii. The court interpreted the term 'residential area' in a socioeconomic context so as to protect the health rights of school children.⁶⁷

I, however, wish to propound a different proposition. Here was a case of conflict between individual right and public interest; here was a case involving semantical challenge between public interest, which is inherently capable of plural meaning, and

65. When the material words are capable of bearing two or more constructions the most firmly established rule of construction is the rule laid down in *Heydon's Case*, (1584) 3 Co. Rep 7, also known as purposive construction. The rule requires consideration of four matters in construing an Act: i.) the law prior to the act; ii.) "the mischief or defect" which was not accounted for under the law prior to the act; iii.) the remedy provided under the act; and iv.) the reason for the remedy. *Id.* Purposive construction also means that judges cannot interpret statutes in light of their views as to policy; but they can adopt a purposive interpretation if found in the statute when read as a whole or in the material to which they are permitted by law to refer to as aids to interpretation as an expression of Parliament's purpose or policy. See G.P. Singh, *PRINCIPLES OF STATUTORY INTERPRETATION*, 20, 124 (2012); *Shah v. Barnet London Borough Council*, (1983) 1 All ER 226 (Eng). On *purposivism*, see Fallon, *supra* note 4, at 1286.

66. On legislative intent, see Singh, *supra* note 65, at 3. See also *Vishnu Pratap Sagar Works (Private) Ltd. v. Chief Inspector of Stamp, U.P.*, A.I.R. 1968 S.C. 102 ("a statute is "an edict of the Legislature" and the conventional way of interpreting or construing a statute is to seek the intention of the maker"); *RMD Chamarbaugwala v. Union of India*, A.I.R. 1957 S.C. 628 (a statute is to be constructed according "to the intent of them that make it."). On legislative intentionalism, see Fallon, *supra* note 4, at 1286.

67. On contextual interpretation, see Singh, *supra* note 65, at 15-16. See also *Lehigh Valley Coal Co. v. Yensavage*, 218 F. 547, 553 (2d Cir. 1914) ("[statutes] should not be construed as theorems of Euclid, but with some imagination of the purposes which lie behind them."); *Poppatlal Shah v. State of Madras*, A.I.R. 1953 SC 274 ("[e]ach word, phrase or sentence is to be construed in light of the general purpose of the Act itself."); *Kanta Goel v. B.D. Pathak*, A.I.R. 1977 S.C. 1599 (the interpretive effort "must be illumined by the goal, though guided by the word.").

singular interpretation of individual commercial rights. Regardless of the mode of interpretation adopted by the court, the verdict resulted in triumph of plurality of meaning over singularity. In the absence of a prescribed meaning of the term residential area, the court using law as a *copula* defined the term residential area in a broad, vague and pluralistic manner so as to triumph over the singular and concrete right of business of the stone crusher unit.

C. Exhibit C: The “Right to Education” Case⁶⁸

Society for Un-aided Private Schools of Rajasthan v. Union of India (“Right to Education”) involved a challenge to the provisions of the Right of Children to Free and Compulsory Education Act (“Act”⁶⁹), which directed all government and private schools to reserve twenty five percent of their seats for children from economically weaker sections of the society. The provisions of the Act were challenged as violative of the constitutionally guaranteed autonomy of the schools. I represented one of the private schools. Our argument was against the flawed conception and execution of the right to education as envisaged by the Act.⁷⁰ Apart from the economic constraints imposed by the Act on the private schools, the Act also impinged upon the right of private schools to manage their own affairs and impart education as per their vision. This necessarily included freedom to select one’s own students and the ability to promote students to next grade on merit rather than as a matter of right. The Supreme Court while upholding the children’s right to education dismissed the challenge mounted by the private schools. The Court in its wisdom, however, deemed it fit to create an exception for minority unaided schools and said that the provisions of the Act would not apply to such schools.⁷¹

The Court upheld the prevailing judicial wisdom that education in India is a charitable activity, which is subject to reasonable restrictions. The children’s right to education triumphed over the administrative and commercial rights of private schools except for minority unaided schools which were

68. *Society for Un-aided Private Schools of Rajasthan v. Union of India & Ors*, (2012) 6 S.C.C. 1.

69. The Right of Children to Free and Compulsory Education Act, 2009, No. 35 of 2009, India Code (2016). The Act provides for free and compulsory education for children between the ages of six and fourteen in accordance with Art.21A of the Constitution of India.

70. *Society for Un-aided Private Schools of Rajasthan*, (2012) 6 S.C.C. 1. (See the petition of Joy Education Society, W.P. No.148 of 2011).

71. *Society for Un-aided Private Schools of Rajasthan*, (2012) 6 S.C.C. 1. I find it extremely interesting that while ruling against us the then Chief Justice Kapadia opened his judgment with the following quote, “To say that “a thing is constitutional is not to say that it is desirable” *Id.*, (quoting *Dennis v. United States* (1950) 341 US 494).

exempted on account of specific constitutional provisions guaranteeing an absolute autonomy which was not subject to reasonable restriction.⁷² The court's ruling perhaps envisages a vague but possibly a bright future for the children ensured through right to education. No matter how ill-conceptualized the right was in terms of putting the burden on private schools to provide free education to children, it triumphed over concrete constitutional and commercial concerns of private schools. In other words, a vague, pluralistic interpretation of public interest once again triumphed over concrete, singularity of meaning assigned to individual rights.

It is worth interrogating, albeit briefly as any such interrogation would only be in the realm of speculation, the reasons for the triumph of the pluralistic interpretation of public interest over singularity of individual rights. Why does the Indian judiciary consider public interest to be more meaningful than individual rights? One reason could be found, as mentioned earlier, in the traditional *Karmic* view ascribed to life in India giving ascendance to duty over right. Yet another reason could be the socialistic tendencies that are writ large in the constitution of India.⁷³ Lastly, it can be argued that a certain degree of vagueness in interpretation is not only desirable but also necessary for democratic evolution of rights. This will ensure that the interpretation of rights does not result in intangible losses as opposed to tangible gains.

The key finding that emerges from the aforesaid legal discourse is that depending upon the nature of right involved, law's ability to produce meaning changes from singular to plural. This finding is of vast import for expanding the horizon of individual rights. In order to expand the purview of individual rights, we need to devise tools of interpretation that can overcome the law's default restriction on infusing plural meaning in individual rights. However, before I suggest scenarios wherein individual rights can triumph over public interest in a semantical

72. INDIA CONST. art. 30 provides:

30. Right of minorities to establish and administer educational institutions:

(1) All minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice.

Id.

73. The 42nd constitutional amendment added the word *socialist* to the preamble of the Constitution of India. The addition of the word *socialist* enabled the courts to lean more in favor of nationalization. See *Excel Wear v. Union of India*, A.I.R. 1979 S.C. 25. Even before that various directive principles of state policy prescribed socialistic goals for the nation. The Supreme Court of India has consistently upheld the importance of preamble in interpreting the Constitution. See *Ashoka Kumar Thakur v. Union of India*, (2008) 6 SCC 1.

conflict, it is important to understand the impact of the existing interpretations on the identity of an individual.

D. Meaning and Identity

So far, we have been examining instances where individual rights have been sacrificed at the altar of public interest or put differently pluralistic interpretation has triumphed over singular. I now wish to briefly examine the impact of these interpretations and the relationship between meaning and identity. What is the impact of the triumph of the pluralistic interpretation of public interest over singular meaning assigned to individual rights on the identity of an individual? The understanding of the co-relation between meaning and identity is important because in a rights based society existence and identification is a factor of interpretation of rights which derive their meaning from law. In my opinion, narrowing down the sphere of individual rights results in creation of monolithic subservient identity. For instance, the restriction on the number of hours that a woman can work in a factory may result in her identifying herself more as a homemaker than an industrial worker. The battle between individual rights and public interest can be best understood as a semantical battle between singularity and plurality. Once a fixed meaning is assigned to an individual right it becomes subservient to an amoebic concept like public interest on account of exclusion of all other meanings. Indian law has traditionally placed reasonable restrictions on all individual rights.⁷⁴ Indian Courts have

74. *See, e.g.*, INDIA CONST. art. 19:

19. Protection of certain rights regarding freedom of speech etc

(1) All citizens shall have the right

(a) to freedom of speech and expression;

(b) to assemble peaceably and without arms;

(c) to form associations or unions;

(d) to move freely throughout the territory of India;

(e) to reside and settle in any part of the territory of India; and

(f) omitted

(g) to practice any profession, or to carry on any occupation, trade or business

(2) Nothing in sub clause (a) of clause (1) shall affect the operation of any existing law, or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub clause in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence

(3) Nothing in sub clause (b) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of the sovereignty and

complimented this by expanding only those individual rights, which have a public nature for instance right to environment,⁷⁵ right to education⁷⁶ and right to health⁷⁷ have received far more expansive interpretation as opposed to strictly individual rights such as freedom of speech and expression⁷⁸ and right to carry on

integrity of India or public order, reasonable restrictions on the exercise of the right conferred by the said sub clause

(4) Nothing in sub clause (c) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of the sovereignty and integrity of India or public order or morality, reasonable restrictions on the exercise of the right conferred by the said sub clause

(5) Nothing in sub clauses (d) and (e) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, reasonable restrictions on the exercise of any of the rights conferred by the said sub clauses either in the interests of the general public or for the protection of the interests of any Scheduled Tribe

(6) Nothing in sub clause (g) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of the general public, reasonable restrictions on the exercise of the right conferred by the said sub clause, and, in particular, nothing in the said sub clause shall affect the operation of any existing law in so far as it relates to, or prevent the State from making any law relating to,

(i) the professional or technical qualifications necessary for practicing any profession or carrying on any occupation, trade or business, or

(ii) the carrying on by the State, or by a corporation owned or controlled by the State, of any trade, business, industry or service, whether to the exclusion, complete or partial, of citizens or otherwise”

Id.

75. Right to Life under INDIA CONST. art. 21 includes the right to an unpolluted environment and envisages protection of wild life, forests, lakes and protection from noise, air, and water pollution. *Indian Council for Enviro Legal Action v. Union of India*, (1996) 3 S.C.C. 212, 281; *M.C. Mehta v. Union of India*, (1996) 8 S.C.C. 462.

76. Right to education is enforceable even against private schools. *Society for Un-aided Private Schools of Rajasthan*, (2012) 6 S.C.C. 1.

77. Right to Life under INDIA CONST. art. 21 includes right to health and medical aid to protect the health and vigour of a worker while in service or after retirement. *Consumer Education and Research Centre v. Union of India*, (1995) 3 S.C.C. 42.

78. In *Devidas Ramachandra Tuljapurkar v. State of Maharashtra*, (2015) 6 S.C.C. 1, the Supreme Court while dealing with charges of obscenity against a poet for an allegedly offensive poem on Gandhi observed:

Freedom of speech and expression has to be given a broad canvas, but it has to have inherent limitations which are permissible within the constitutional parameters. We have already opined that freedom of speech and expression as enshrined under Article 19(1)(a) of the Constitution is not absolute in view of Article 19(2) of the Constitution. We reiterate the said right is a right of great value and transcends and with the passage of time and growth of culture, it has to pave the path

business trade and commerce.⁷⁹ Every time a vague pluralistic interpretation of public interest triumphs over concrete singularity of meaning assigned to individual rights, we treat human beings as means to an end and not an end in themselves. Every time pluralistic public interest triumphs over singular individual interest, it is a victory of citizen over human. In order to establish that singularity of interpretation is not an inevitable consequence of individual rights, we need to establish the origin of rights beyond the realm of individual and trace the moral authority of law beyond individual rights- in human dignity.⁸⁰

V. CONCLUSION

In a both legal and existential sense, the trap of meaning is perhaps unavoidable. There is a vast distinction between existing without meaning and having a meaningless existence; the former signifies an escape from the trappings of meaning and the latter a loss of it. But if meaning is inevitable, our efforts are best served by modulating its contours, particularly in the legal arena, to

of ascendancy, but it cannot be put in the compartment of absoluteness. There is constitutional limitation attached to it.

Id.

79. The issue of reasonable restriction on trade can be best understood with India's repeated enactments of alcohol prohibition laws. The Supreme Court has consistently curtailed the commercial right to sell liquor on account of 'public interest.' In *Krishan Kumar Narula v. State of Jammu and Kashmir*, A.I.R. 1967 S.C. 1368 the Supreme Court observed that dealing in liquor is business and a citizen has a right to do business in that commodity, but the State can make a law imposing reasonable restrictions on the said right, in public interest. More recently in *The Kerala Bar Hotels Association and Ors. v. State of Kerala and Ors.*, 2016 (1) S.C.A.L.E. 70, the Supreme Court upheld the ban on sale of alcohol in State of Kerala in all hotels except five star hotels.

80. Perhaps the most poignant example of this form of interpretation came from the German Constitutional Court, which in its judgment of 15th February 2006 struck down Aviation Security Act 2005 that expressly authorized the federal government to shoot down hijacked passenger airplanes, in case they were likely to be crashed against a target on the ground. The court while striking down the law as violative of human dignity observed:

The state may not protect a majority of its citizens by intentionally killing a minority – in this case, the crew and the passengers of a plane. A weighing up of lives against lives according to the standard of how many people are possibly affected on the one side and how many on the other side is impermissible. The state may not kill people because they are fewer in number than the ones whom the state hopes to save by their being killed.

Id. Bundesverfassungsgericht [BVerfG] [Federal Constitutional Court] Feb. 15, 2006, Judgment of the First Senate of 15 February 2006, 1 BvR 357/05, ¶ 1-156.

further the cause of individual rights. For far too long, meaning has existed as an albatross around the neck of individual rights stifling their growth. In my conclusion, I envisage the following scenarios where singularity of meaning of individual rights can triumph over plurality of meaning of the public interest and individual rights can emerge more meaningful:

1. One, extreme but idealistic way for the triumph of individual rights would be placing them higher in the judicial hierarchy of interpretation over the public interest.
2. Second, way could be through time when individual rights acquire a collective attribute, for example legalization of same sex marriage in USA or decriminalization of homosexuality in India, on account of being an idea whose time has come.⁸¹
3. Third, by adopting a new theory of interpretation where clear crystallized rights shall be given precedence over concepts, which cannot be defined.
4. Fourth, supremacy acquired through legitimacy. What makes one meaning more legitimate than others is if the said meaning is result of the inherent characteristics of the subject matter. In-formation of meaning would always be superior to ex-formation. This would require increase in social depth and expansion of individual rights, a course that would, as much be a product of socio-political and economic forces as it would be of legal interpretation.

Until any of the aforesaid approaches are conclusively adopted, the battle between singularity and plurality of meaning will continue unabated.

81. The Delhi High Court had in a landmark decision decriminalized homosexuality. See *Naz Foundation v. Government of Nct Of Delhi and Others*, 2010 Crim.L.J. (H.C.) 94 (July 2, 2009). This decision was unfortunately reversed by the Supreme Court of India in *Suresh Kumar Koushal v. NAZ Foundation*, A.I.R. 2014 S.C. 563. A review petition filed against the said decision was dismissed and now a judicial remedy of last resort- a curative petition is presently pending. See Vishnupriya Bhandaram, *Rainbow at the End of the Tunnel? Curative Petition on Section 377, a Last Legal Remedy to Toss Draconian Law Out*, FIRSTPOST INDIA, Feb. 1, 2016, www.firstpost.com/india/rainbow-at-the-end-of-the-tunnel-curative-petition-on-section-377-a-last-legal-remedy-to-toss-draconian-law-out-2605384.html.

