The Use of Foreign Citations by the Constitutional Bench of the Supreme Court of India

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Introduction

The Indian constitution is one of the longest written constitutions of the world. Among its many other unique characteristics, is its inclusion of constitutional principles from many other nations of the world. This is what makes the Indian constitution, interesting and global. This also begs the question about the authority and the extent of the use of foreign citations in Indian judgements. The reason behind the use of the word 'citations' instead of 'precedent' is that, firstly, citations include case laws, academic commentaries, research and other sources of interpretations and secondly, because foreign cases do not have a binding value but only a persuasive value in the Indian courts. This research intends to look at the quantitative use of foreign citations by the constitutional bench of the Supreme Court of India (hereinafter, SCI) in the first two years of every decade of independent India and makes multiple distinctions. To understand this fully, it is, however, important to first understand the Supreme Court of India as an institution and the contemporary social, economic and political situations of these decades.

It must be stated at the onset, that this work is an original and primary data analysis and makes many comparisons. It draws and analyses the distinction between the number of judgements by the SCI on constitutional and non-constitutional matters; that between judgements that do and do not have citations; that between judicial and academic sources; that among various source nations of these citations; the number of foreign citations per judgement among other distinctions. It also looks at the average number of citations per time period and the average number of citations per judgement. This work is aimed at providing future researchers and scholars of the SCI an insight into the use of foreign citations in the court.

The SCI succeeded the Federal Court of India (hereinafter, FCI) that was set up under the Government of India Act of 1935[1] in 1937 and went on to exercise the function of the highest court of the land until 28th January 1950, when it became the SCI. The first constitutional bench judgement, however, was made on the 14th of March 1950.[2] The constitutional bench has since then given 2176 judgements (up until 2018). The frequency of these judgements although, has not remained constant. The size of the court has not remained the same since the adoption of the constitution, either. Initially, the SCI was envisaged with one Chief Justice of India (hereinafter, CJI) and 7 judges[3], These judges of the SCI usually sat together to hear the cases presented before them, however as work increased, so did the size of the court from 8 in 1950 to 11 in 1956, 14 in 1960, 18 in 1978, 26 in 1986, 31 in 2009 and 34 in 2019.[4] The term constitutional bench is used to specify when a bench of five or more judges[5] is constituted by the CJI to adjudicate over a matter that either raises an important question of law or interpretation of the constitution.[6]

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The following is a pictorial representation of the number of cases decided by the constitutional bench of the SCI since 1950 (Fig. 1):

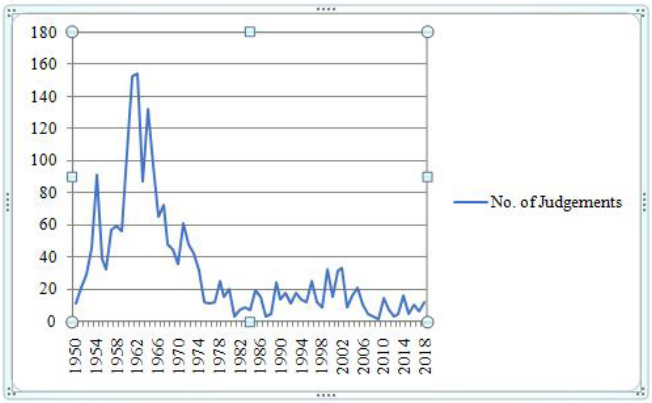

Figure 1: No. of Judgements of the SCI's Constitutional Bench (per year)[7]

It is however extremely academically provocative to note that there is no clear definition of what is or isn't a constitutional case, even when before the constitutional bench andthe discretion lies with the CJI to refer a case to a constitutional bench, as does the constitution of the said bench. Generally, as Scotti observes, "these cases concern the interpretation of the Constitution and all matters related to substantial questions of law"[8]. Hence, for the purposes of this paper, a distinction between a constitutional and a non-constitutional case, is based on whether the SCI in the judgement, interprets the constitution or not. It follows that only those cases where the SCI makes absolutely no mention of any constitutional article, have been categorized as a non-constitutional case.

The data that I have selected is of the firsts two years of each decade. To the reader, at first instance, it might seem arbitrary; and even though it is random, coincidentally, the fluctuation in the number of judgements per decade is similar to the same fluctuations when only first two years are selected as shown in Fig.2. This however is in no way a representative dataset, but merely indicative.

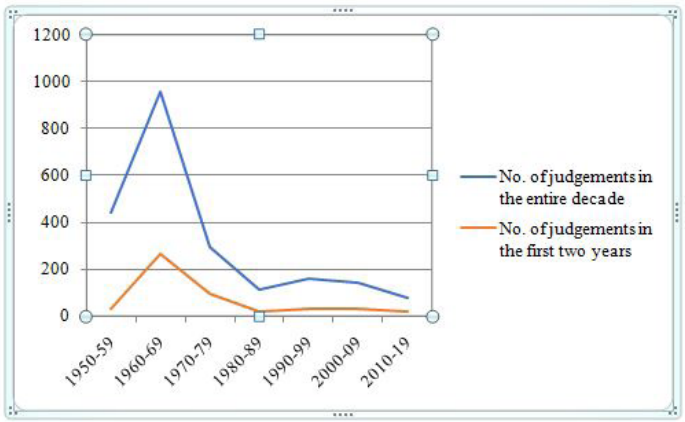

Figure 2: Comparison of No. of Judgements per decade v. First 2 Years[9]

Some Basic Concepts

It is not the focus of this paper to look into the theoretical reasons used by the proponents and opponents of the use of foreign citations by the Indian constitutional benches. It is however beneficial to be familiar with certain important concepts that might help in understanding the trends described in this paper. Valetia Rita Scotti in her chapter on India in Tania Groppi and Marie-Claire Ponthoreau's book titled, 'The Use of Foreign Precedents by Constitutional Judges' writes:

A tireless interpreter of a long and detailed Constitution, which combines ideas coming from other constitutional paths and elements that are an inner part of Indian legal culture, the Supreme Court of India has led the country into the so-called world constitutionalism, taking part in trans-judicial communication and constitutional borrowing among political and judicial bodies.[10]

There are three phrases in the above quote that need our attention to understand the purpose of this paper: trans-judicial communication; world-constitutionalism and constitutional borrowing. While the concept of world-constitutionalism was discussed by Justice Balakrishnan in a speech[11]; the concept can be traced back to Bruce Ackerman's essay on 'The Rise of World Constitutionalism[12].'This concept encompasses the trend of import and export of constitutional ideals across nations and social theoretical lines including both trans-judicial communication and constitutional borrowing.

The former was first introduced by Anne-Maries Slaughter in her paper titled, 'A Typology of Trans judicial Communication'[13] and while giving multiple examples of usage of foreign citations in different countries, she terms this phenomenon as a form of communication amongst various national and supranational courts in the following words:

Are all these examples part of a single phenomenon? They are all forms of trans judicial communication: communication among courts-whether national or supranational-across borders. They vary enormously, however, in form, function, and degree of reciprocal engagement.[14]

She further identifies three distinct forms of such communication: horizontal, vertical, and mixed vertical-horizontal. This concept has also further been expounded upon by former CJI, K.G. Balakrishnan in his speech to the North-western University School of Law, Illinois, USA in 2008[15] where he describes the first to be the use of supra-judicial institution's judgments by the national courts, which for instance in our study would be of the Privy Council (hereinafter, PC) being used by the SCI. The second is defined as the use by a domestic court, in our case the SCI of the precedents from other national jurisdictions to interpret its own laws, for example the use of the judgments by the Supreme Court of the United States of America (hereinafter, SCOTUS). The last category includes situations when a domestic court may cite the decision of a foreign court on the interpretation of obligation applicable to both jurisdictions under an international instrument[16] , for example, judges in European nations, cite each other due to the EU Law obligations that are identical to all. However, for the purposes of this paper, only the first two are important, since the research does not dwell into the form of use of the citations but only the quantitative acknowledgement of the authorities.

The latter is the concept of constitutional borrowing. This includes the direct influence of older constitution and constitutional principles on the formation of new constitutions. This becomes extremely important in the Indian context due to the heavy borrowing of ideals of multiple nations in the Indian constitution, which can be best put in the following table[17]:

From the United Kingdom	⇒ Nominal Head – President (like Queen) ⇒ Cabinet System of Ministers ⇒ Post of PM ⇒ Parliamentary Type of Govt. ⇒ Bicameral Parliament ⇒ Lower House more powerful ⇒ Council of Ministers responsible to Lowe House ⇒ Speaker in Lok Sabha
From the United States of America	⇒ Written Constitution ⇒ Executive head of state known as President and his being the Supreme Commander of the Armed Forces ⇒ Vice- President as the ex-officio Chairman of Rajya Sabha ⇒ Fundamental Rights ⇒ Supreme Court ⇒ Provision of States ⇒ Independence of Judiciary and judicial review ⇒ Preamble ⇒ Removal of the Supreme court and High court Judges
From USSR	⇒ Fundamental Duties ⇒ Five-year Plan
From Australia	⇒ Concurrent list ⇒ Language of the preamble ⇒ The provision regarding trade, commerce and intercourse
From Japan	⇒ Law on which the Supreme Court function
From Weimar Constitution of Germany	⇒ Suspension of Fundamental Rights during the emergency

From Canada	⇒ Scheme of federation with a strong center ⇒ Distribution of powers between the centre and the states and placing. Residuary Powers with the centre
From Ireland	⇒ Concept of Directive Principles of States Policy(Ireland borrowed it from SPAIN) ⇒ Method of election of President ⇒ The nomination of members in the Rajya Sabha by the President

Table 1: Foreign Borrowings in the Indian Constitution

Table 1 hence, clearly shows the heavy reliance of the Indian constitutional drafters on other, already existing constitutions. The constitutions are not however, the only source of inspiration for other constitution makers. International treaties like the United Nations Charter (hereinafter, UN Charter), Universal Declaration of Human Rights (hereinafter, UDHR), International Covenant on Civil Political Rights (hereinafter, ICCPR) have also been widely used. For instance, Part IV of the Indian constitution, that lays down the Directive Principles of State Policy (hereinafter, DPSP) includes principles from the UDHR.[18] This borrowing of constitutional principles of other nations and international instruments along with the trans-judicial communication amongst various courts, leads to the formation of an idea of world-constitutionalism.

Explanations and Definitions

This paper can easily be divided into many sub-parts. The first one among them is on the basis of subject matter of the judgement i.e. whether the case deals with a constitutional or non-constitutional and hence an 'important question of law'subject-matter (as per the definition above). As discussed earlier, since there is no explicit distinction between the two that is made by the court, it is decided (for the purpose of this paper) on the basis of the fact whether there is a constitutional provision used or interpreted by the court. As stated previously as well, only a case where there is absolutely no mention to any constitutional provisions has been categorized as non-constitutional cases. The second distinction that will be made shall be on the basis of presence or absence of citations. While prima facie it might seem simple, we often miss the importance of silence on the use of foreign citations in the judgements or any citations at all.

The next important explanation is owed to the categories of citations, which have been divided into two broad ones: case laws and academic works. Academic works originating from different nations are catalogued on the basis of country of origin. Case laws are also majorly catalogued the same way. However, there are two sub-categorizations that need to be brought forward. Firstly, for India, the cases are divided between those that were pronounced by the FCI on the one hand and all others including presidency courts before independence and all those after Independence on the other. The second, for UK, where a distinction has been created for judgements originating from the PC, which is more aptly an international court based in the UK and other judgements by various courts except the PC.

In the following parts of the paper we shall look at the data, decade-wise and attempt to understand the possible contextual reasons for the same and also the impact the same had on the interpretation of the constitution and the making of the future

The 1950s (1950-51)

The SCI was set up on the 28th of January 1950, but while the judiciary might have been Indianized, the law certainly wasn't. The Indian constitution had a heavy borrowing from the UK constitutional system. In this context, it becomes important to observe, what sources the court relied upon to interpret the Indian constitution, in the absence of Indian jurisprudence on the same.

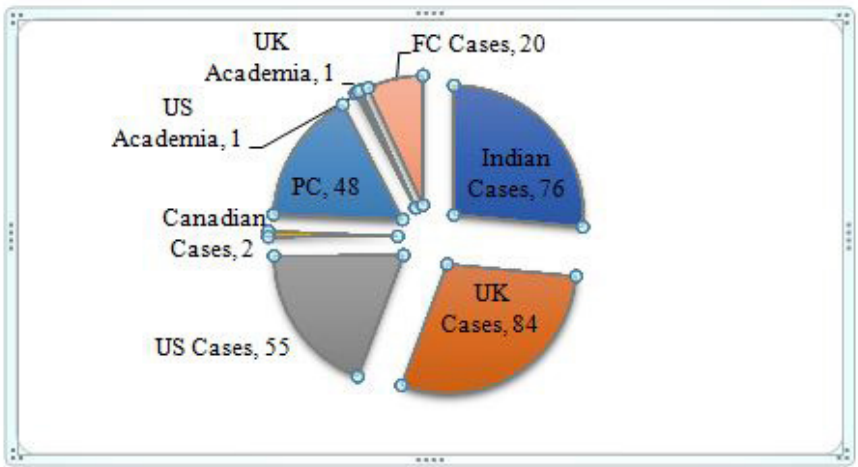

Figure 3: 1950-51- Citations in Constitutional Cases[19]

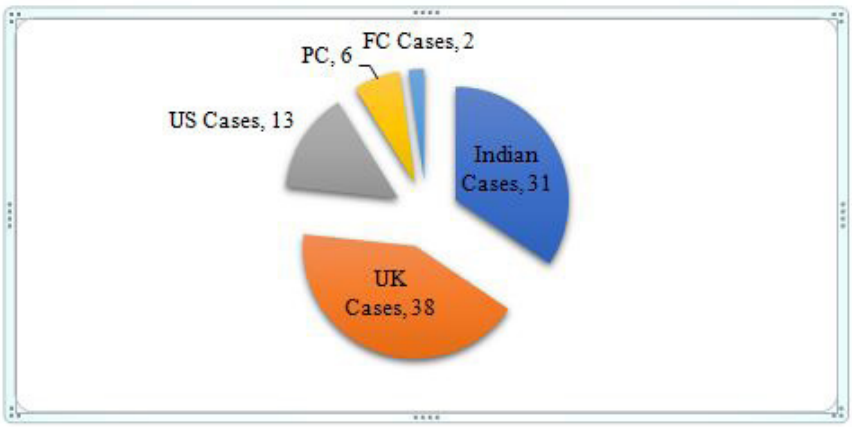

Figure 4: 1950-51- Citations in Non-Constitutional Cases (1950-51)[20]

This was a decade of beginning for India, majority of the judges on the SCI had previously served on the FCI and the dependence on the UK system from interpreting the Government of

India Act of 1935 also had an impact on how these judges saw the manifestation of rights, the powers of the state and most importantly the clash between them. The above graph shows how in the absence of Indian jurisprudence, there is a heavy dependence on foreign citations. The UK courts are cited more often than Indian courts. The FCI judgements are also very heavily cited (20 times) in 20 constitutional judgements that were made by the court in these two years. We also see, a somewhat expected reliance on the US, owing again to the borrowings from the US Constitution. The PC being cited 48 times is one thing that is exciting as well as intriguing. The PC was an international and largely colonial court, but the decisions of the PC were still being used and heavily so by the Indian judges in its highest court. The fact that the court has used a few cases from Canada shows one, the reliance on foreign jurisprudence apart from the dominant US and UK and two, the camaraderie of commonwealth nations owing to the similar colonial heritage and hence a similar colonial legal system inheritance. This trend largely stays the same even for the non-constitutional cases, where while the UK is the most cited nation, India itself is second and the US is third with the PC and FCI making quantitatively small but proportionally significant contributions.

This era is generally seen as one where the court pays a lot of deference to the government and its policies. While, a total of 32 judgements were pronounced by the SCI's constitutional bench in these two years, there is a heavy reliance on the judgements of pre-colonial judgements which indicate the kind of attitude that the court had decided to adopt towards the state- one where the nationality of the government officials had changed but the primacy had been retained. The low number of judgements can also be understood by the initial set-up of the court. As discussed earlier, the SCI was to be a court where all judges were to sit together and give all judgements together and hence this played a direct role on the number of judgements that could be pronounced in a given time frame. The effect of the bench constitution will become important and apparent when we observe the most radical shift in approach of the SCI as it entered into the 1960s.

The 1960s (1960-61)

The 1960s was a decade of exponential increase in the number of judgements of the SCI. From a mere 32 judgements in 1950-51, the SCI's constitutional benches delivered 257 judgements in the two-year period of 1960-61, eight times greater than in the previous time period. There are multiple factors that might have led to this increase. The most prominent is the increase of the number of judges on the SCI. As discussed earlier, the SCI was initially envisioned as a single bench with all judges deciding all cases together. However, the number of judges on the SCI increased and the tally reached 14 in 1960. Although, before that as well, in the late 1950s the SCI dissociated into multiple smaller benches only coming together in the constitutional bench in groups of five, usually. This provided the SCI the ability to allow more cases and define with greater authority how the constitution was to be interpreted.

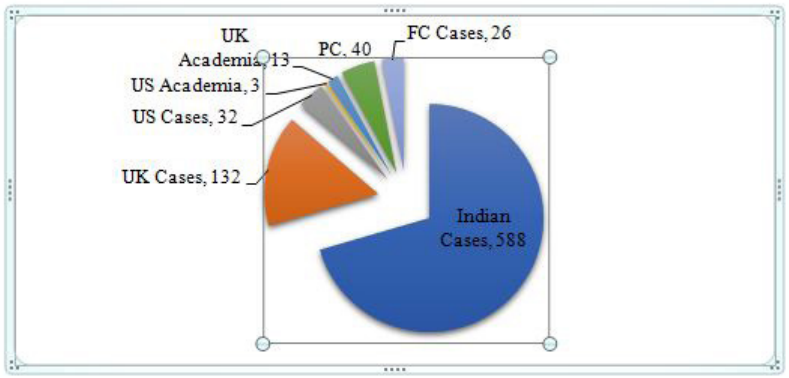

Figure 5: 1950-51- Citations in Constitutional Cases[21]

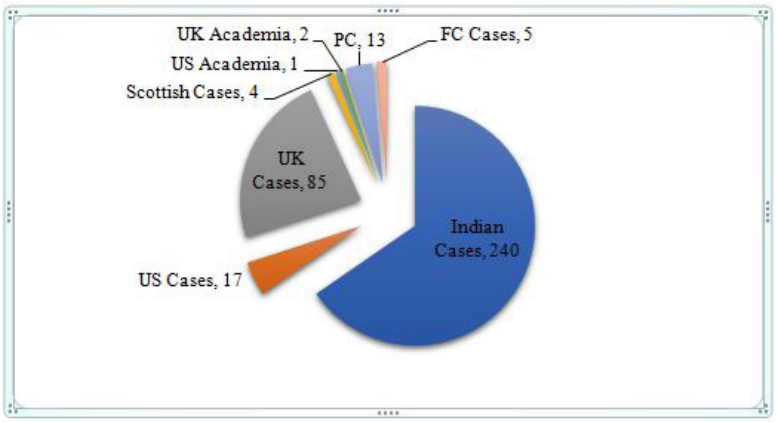

Figure 6: 1960-61- Citations in Non-Constitutional Cases[22]

There is an equal increase in the number of judgements on constitutional and non-constitutional matters, 163 and 94, respectively. However, almost 25% of these judgements didn't have any citations at all. This is a phenomenal shift keeping in mind the heavy reliance we placed on citations in the previous time period.

The change in the approach of the SCI is remarkable. From a reliance on the UK for about 30% of all citations, it has come down to around 15%. But, if we add the PC numbers and those of UK source academia, the numbers might be closer. However, it is important to note that the SCI is relying more heavily on its own jurisprudence. Jurisprudence that stems from India; the constitutional cases, witnessed a total of 26 citations of the FCI. The importance of the US can be seen to diminish. One of the contributing reasons is the attitude of the SCI towards the government. The 1950 attitude had persisted, one where the parliament had supremacy over other organs of the government, as originally envisioned in the Westminster Parliamentary system. Hence, it only makes sense to use UK cases. The US Constitution is stricter about the separation of power as was seen in the cases of Field v. Clark[23], Panama Refining Co. v. Ryan[24] and L.A. Schechter Poultry Corp. v. US[25] and hence it would not have been as helpful as the UK. While the US is a former UK colony, the influence over US law of the UK has been weak due to the former's strong reluctance and resistance. However, a unique trend here is the use of Scottish

jurisprudence in non-constitutional cases, primarily in the context of criminal law. It cannot be emphasized enough that it was a mark of great accomplishment of the Indian legal fraternity that they were able to define their constitution in terms of their own jurisprudence and not a foreign one, although the UK continued to be a dominating force all along, well into the 2010s as we will see later.

The 1970s (1970-71)

The case of Kesavananda Bharati, The Emergency and the case of ADM Jabalpur- the 1970s can be seen as the most volatile decade in Indian legal history when the court took a more dominant approach. The SCI introduced the basic structure doctrine, putting a limit on the constitution amending power of the parliament in 1973, one which never existed before; the central government under Indira Gandhi advised the then President to declare a national emergency in 1975 and the SCI upheld the constitutional validity of suspension of fundamental rights during emergency in 1976. While all of them might not be linked, they represent some big changes to the rule of law in India. However, our data period is restricted to the first two years of this decade. With the increase in the trans-judicial communication as discussed earlier in the article, what we see is a diversification of the sources of citations.

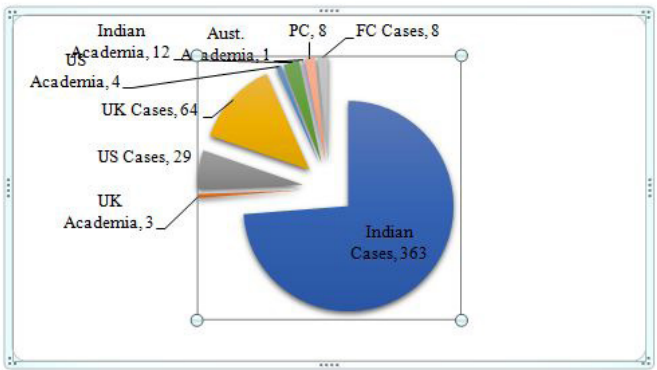

Figure 7: 1970-71- Citations in Constitutional Cases[26]

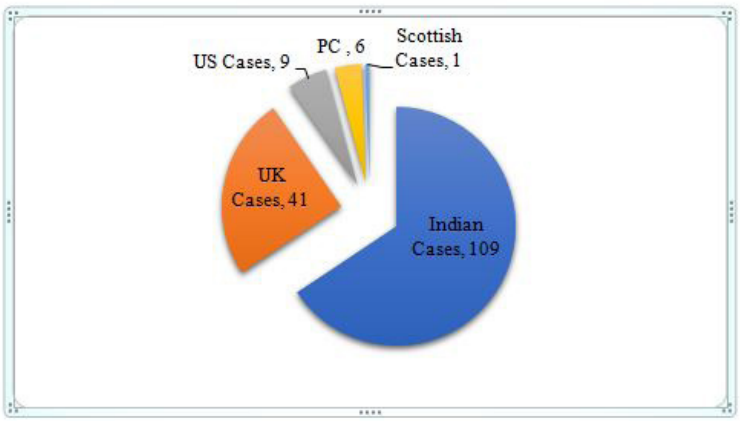

Figure 8: 1970-71- Citations in Non-Constitutional Cases[27]

This is the first time that India looked at a different source of citations apart from UK or the USA. Although a lone instance, we witness the use of an Australian Academic for the first time in the SCI. The number of cases has gone down from the previous record mark of 257 to 95, but it can be seen as a change caused by the piling backlog and hence the strict check by the SCI on what cases land in its constitutional bench, depending on the case's ability to raise important constitutional or legal question. One of the most important observations of this time period is the use of Indian academia for the first time since independence. While the SCI relied many a times on foreign jurists like Cooley, it was the first time that the SCI relied on the academic commentary by Indian jurists like H.M. Seervai. The use of PC and FCI cases also goes down in this decade and there is an overall increase in the number of academic citations. This becomes extremely important for academicians and jurists to reaffirm their faith that firstly, Indian law is not all that 'white' after all and second that there is a large scope to effect change in the law in this field of legal fraternity as well, apart from the general advocacy.

The 1980s (1980-81)

While the 1970s can be described as the most volatile, the 1980s can be defined as the most crucial decade for the Indian judiciary, because, this is when the SCI finally came out of the parliamentary supremacy era and established its own distinct presence, although to call it domination would be a little premature. Stemming out of the dissent of Justice H.R. Khanna in the ADM Jabalpur case and the fact that his seniority was ignored when it came to the appointment of the CJI by the Indira Gandhi led central government, the SCI shifted its attitude towards the government from one of deference to one of actual confrontation and active judicial review or as some like to call it- "judicial activism." While, we see a continuing decrease in the number of judgements that the court delivered from 95 to just 23, the judgements become longer and more diverse with respect to the citation source used by the court. Taking a break from our tradition of analyzing both constitutional and non-constitutional case, we shall look at the graph of only the constitutional cases first to appreciate the sheer magnanimity and beauty of world constitutionalism and trans-judicial communication meted out in actual numbers.

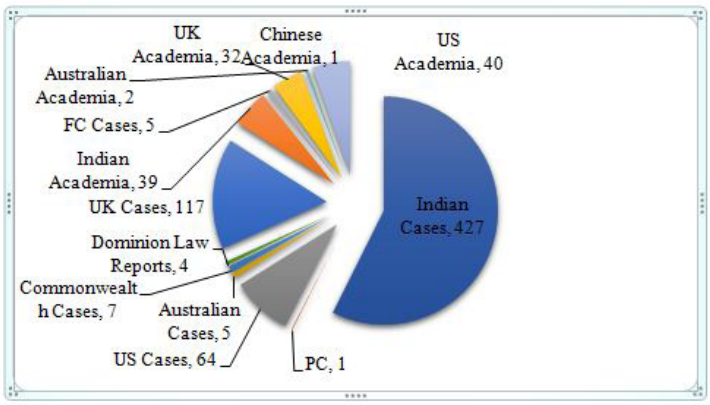

Figure 9: 1980-81- Citations in Constitutional Cases[28]

We see here that the proportion of the Indian cases has gone down from almost 75% in the last time period to nearer to 55% in this time period. We also see a large amount of diversity and that too with only 23 judgements in this time-period. We see for the first time, the SCI using extremely non-conventional sources like that from China, the Dominion Law Reports and Commonwealth

Cases and portraying the concept of shared legal inheritance in its truest form. The importance of the PC has been shrinking since independence, primarily due to the colonial psychology of those who wrote the judgements in the PC. One of the biggest marvels of this time period is the use of academic citations. The SCI used 2 Australian, 32 British, 40 American and 39 Indian academic works, a total of 113 out of 744, a little above 15%. This is the largest use of academic work in any given time period. While this is a great exercise and allows the court, flexibility to decide matters not only on the basis of binding case laws of India or authoritative foreign cases but also mete out decisions on the basis of newer and more progressive ideas, it also opens the court up to a justified critique for its misuse of judicial independence and of violating the coveted and sacred democratic ideal of separation of power. While it is for every individual to decide which side to support, it is important for the purpose of a holistic view of the data to put both the theories out there.

This is also the time period of the least number of non-constitutional judgements. It can be viewed it as a trial by the SCI to establish itself as a primarily constitutional court and entertaining only the most blatant instants of violation of rule of law in other statutes. There are only three judgements with a total of 27 citations, out of which 24 are Indian Cases. While it shows an almost complete riddance of UK citations, it would be naïve to assert so considering the fact that the data set of 3 cases in a two-year period in the almost 70 years.

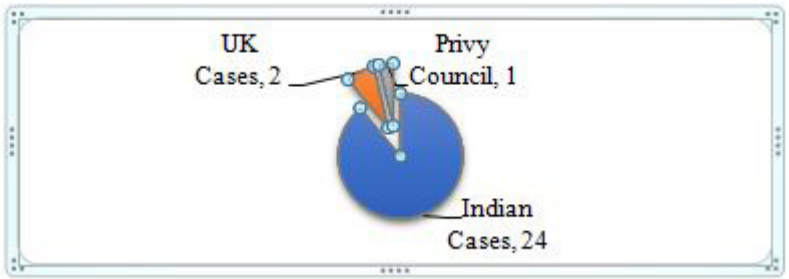

Figure 10: 1980-81- Citations in Non-Constitutional Cases[29]

The 1990s (1990-91)

Each decade has some distinct characteristics as we have seen. While one would expect there to be a trend with respect to the use of citations by the SCI and that with increasing Indian jurisprudence, the reliance on foreign citations would decrease, but there have been continuing fluctuations, with each time period breaking the barriers of the previous one. We saw the heavy reliance on academia in the previous time period and the increase in the share of the foreign citations. However, this decade changed that too. Indian case laws dominated the citations chart, as below.

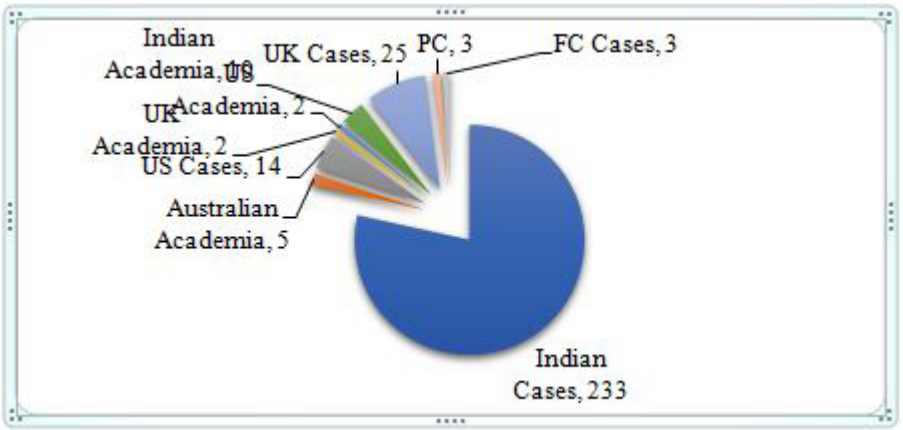

Figure 11: 1990-91- Citations in Constitutional Cases[30]

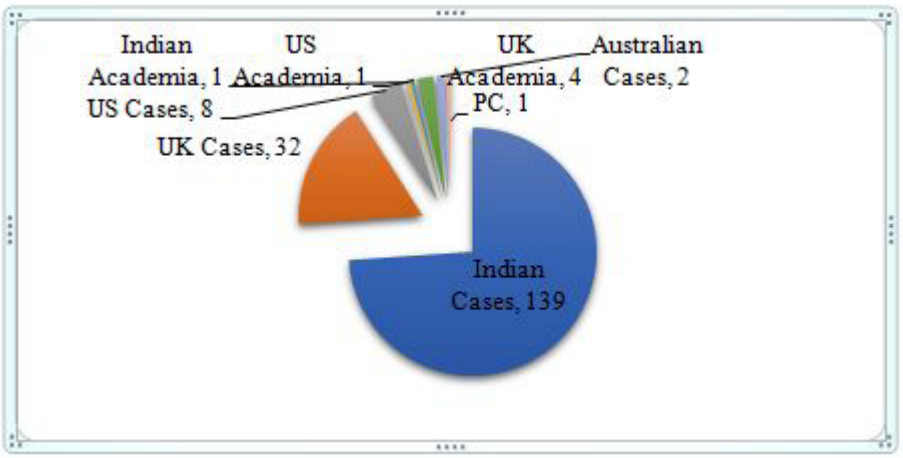

Figure 12: 1990-91- Citations in Non-Constitutional Cases[31]

While in the previous time period, the Indian cases citations had come down to almost 50% with a diverse range of sources for citations, this time period is characterized with an increase in the share of the Indian case citations to above 75% in constitutional and almost 75% in non-constitutional cases. This period also saw the rise of the autocracy of the judicial bureaucracy with the SCI holding that all appointments to the SCI and HC and all promotions shall be decided by the SC collegium and sent to the central government. However, what is most astonishing is the fact that while the court's overall reliance on academia went down as compared to the previous time period, the Indian academia is the most cited academia- five times oftener than UK or USA Academia. This change is also accompanied by the authoritative works of Indian jurists like H.M. Seervai and Upendra Baxi.

As has been stated before, that the Indian constitution has a heavy borrowing from the British model and the fact that most of the initial judges of the SCI had served on the British centric FCI, there is a strong co-relation between what India inherited and what other colonies of Great Britain inherited in terms of law and judicial mentality. This is one of the reasons that outside the UK

and USA, Australia is the most cited nation source in the SCI. This is clear from this era as well, with Australian academia being cited more than both US and UK combined. The diverse range of citations also helps us infer that the share of the UK is also going down. This trend to move away from the UK is clear from the gradual reduction in the use of judgements of the PC and the FCI.

The 2000s (2000-01)

The 2000-01 period witnessed another sudden change, the heavier than ever reliance on the Indian cases for citations and interpretation in all 32 judgements of the constitutional bench with only 3 cases without citations.

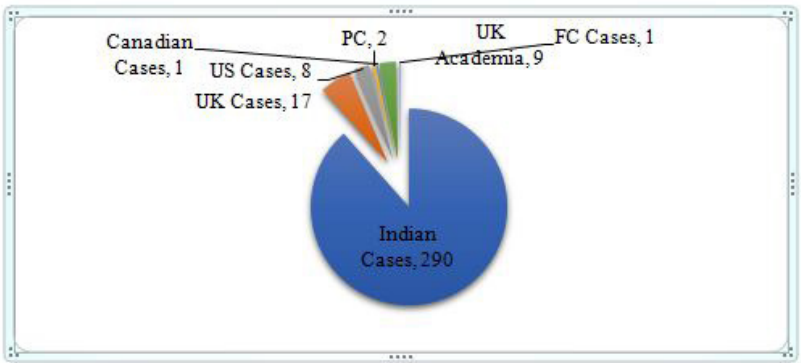

Figure 13: 2000-01- Citations in Constitutional Cases[32]

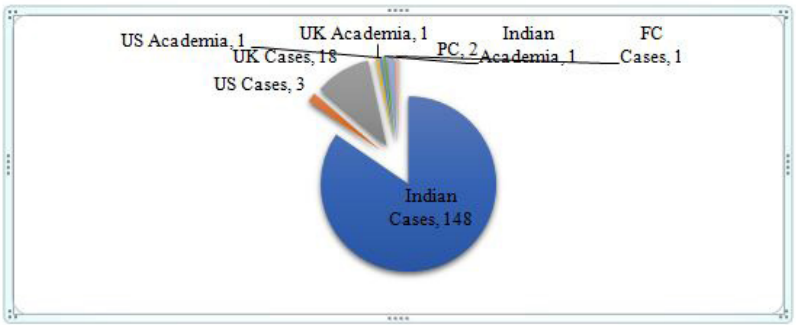

Figure 14: 2000-01- Citations in Non-Constitutional Cases[33]

As is evident from the above data that Indian cases are dominating the citations sphere with over 80-85% citations being Indian cases and as a result (as was stated earlier), the reliance on the UK cases has gone significantly down from almost 30% in the time period 1950-51 to just about 5% in 2000-01. This is also the first time that the court cited a Canadian case, again cashing in on the shared colonial history under the UK.

The 2010s (2010-11)

The last period in this research paper is that between 2010 and 2011 and is marked with some extremely interesting anomalies from what we have seen is the general trend in the SCI. For the first time, in this time period, the US cases were cited more often than UK cases. There was a sudden increase in the number of cases of the Canadian courts that were cited by the SCI a jump-

from just one in the last time period to six, in this time period.

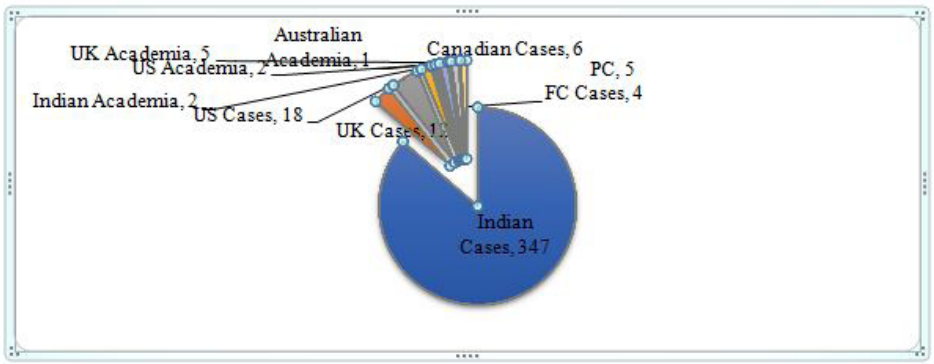

Figure 15: 2010-11- Citations in Constitutional Cases[34]

Figure 16: 2010-11- Citations in Non-Constitutional Cases[35]

The most interesting is however the absolute absence of any foreign citations in any of the four judgements on non-constitutional subject- matter by the SCI's constitutional bench in this time period. Previously, the court was said to be under the influence of British jurisprudence but while it might be going too far to state that the SCI has rid itself of it, it wouldn't be too far-fetched to state that India is gradually moving away from UK centric system to a more global one with a special place for commonwealth nations apart from UK.

Citations and Judgement Length

For any new entrant in the field of law, the length of judgements is one of the biggest challenges. While longer judgements often signify that it is a matter of great importance and there has been some shift in the approach towards a principle, it is however an extremely exhausting exercise. While this paper would not help with shortening the length of the judgements, it would be noteworthy to see how many citations are used by the judges in a single page. The numbers here too, like the trends above have been fluctuating continuously. For the purposes of brevity, the average number of citations has been calculated by dividing the number of citations with the total number of pages of judgements in that time period irrespective of whether the SCI's constitutional bench used a citation in that judgement or not.

Time Period	Total No. of Cases	Total Indian Cases (Indian Cases + FCI)	Total Academia + Foreign Citations	Total Citations	Total No of Pages	Citation/ Page	Average Pages/ Decision
1950-51	32	127	252	379	736	0.51	23
1960-61	257	859	342	1201	3054	0.39	11.88
1970-71	95	480	178	658	1262	0.51	13.69
1980-81	23	456	315	771	1567	0.49	68.13
1990-91	30	375	110	485	853	0.57	28.43
2000-01	32	440	63	503	665	0.76	20.78
2010-11	21	393	41	434	1167	0.37	55.57

Figure 17: Citations v. Judgement Length

It is to be noted that while the general trend is of about one citation per two pages of the judgement, it is however lowest in the current era, indicating a trend towards more reasoned rather than cited judgements. The second lowest is in 1960-61 time period, wherein there was the highest number of judgements but lesser citations. The average number of pages per decision is although not very surprising. As noted earlier that 1980-81 is the period of "judicial activism" and new constitution ideals were being introduced into the constitutional system of India and hence there arose a need for longer reasoning which led to this increase in the average number of pages in a decision.

Conclusion

No commonwealth country is completely free of the colonial hangover and India is not an exception to this rule. The country's legal system and judicial reasoning has been for the longest period been influenced and shaped by its colonial masters, even after independence. However, the evolution of the court is apparent on the face of this research. The constitutional bench of the SCI has shifted from a preference to UK to a reliance and trust on its jurisprudence. The SCI has also opened its doors to include not only case laws but also academic work. There was however an initial preference to British or American academic work which also shifted to those from India. What is most promising is the diversity of sources used by the constitutional bench and including jurisprudential inputs from authors from China, Australia and Canada. The court has also tapped into, and successfully so into the common inheritance pool of the commonwealth by citing cases from Australia, Canada and other reports like the Commonwealth and Dominion Law Reports. This all leads one to conclude that while there might not be any general trend that the court follows, the trend of increasing the diversity of sources seems to be constant. As discussed earlier this raises two questions and in absolute contrast to each other. One, about the creativity of the court and on the other of the misuse of discretion the court practices and the possible violation of the doctrine of separation of powers by reading things into laws that were neither there nor possibly intended. However, this paper is intended to assist the researchers and scholars looking at similar questions and not to answer it. The fluctuating trend makes the court hard to predict, but maybe it is a good thing.

Footnotes

[1] Government of India Act, 1935, Part IX.
[2] Abdulla Ahmed v. AnimendraKissenMitter, AIR 1990 SC 15.
[3] At the inauguration of the SCI on 28th January 1950, the following judges sat on the court: Chief Justice HarilalJ.Kania and Justices Saiyid Fazl Ali, M. Patanjali Sastri, Mehr Chand Mahajan, Bijan Kumar Mukherjea and S.R.Das.
[4] Supreme Court of India, 'History' https://web.archive.org/web/20120527162408/http://supremecourtofindia.nic.in/history.htm accessed on 26 April 2019.
[5] Constitution of India, 1950, Article 145(3).
[6] Rukmini S., 'Cases decided by the Constitution Benches dropping' (The Hindu, 14th November 2013) https://www.thehindu.com/news/national/cases-decided-by-constitution-benches-dropping/article5348431.ece accessed on 26 April 2019.
[7] Appendix 1.
[8] Valentia Rita Scotti, "India: A 'Critical' Use of Foreign Precedents in Constitutional Adjudication" in Tania Groppi and Marie- Claire Ponthoreau (eds), The Use of Foreign Precedents by Constitutional Judges (Hart Publishing Ltd., 2013) 78.
[9] Appendix 2.
[10] Valentia Rita Scotti, "India: A 'Critical' Use of Foreign Precedents in Constitutional Adjudication" in Tania Groppi and Marie- Claire Ponthoreau (eds), The Use of Foreign Precedents by Constitutional Judges (Hart Publishing Ltd., 2013) 69.
[11] K.G. Balakrishnan, 'The Role of Foreign Precedents in a Country's Legal System' [2010] National Law School of India Review, Vol. 22, No. 1 (2010) pp.1-16.
[12] Bruce Ackerman, 'The Rise of World Constitutionalism' [1997] 83 Virginia Law Review, 771.
[13] Anne-Marie Slaughter, 'A Typology of Trans judicial Communications' [1994] University of Richmond Law Review Volume 29, Issue 1.
[14] Anne-Marie Slaughter, 'A Typology of Trans judicial Communications' [1994] University of Richmond Law Review Volume 29, Issue 1, 101.
[15] K.G. Balakrishnan, 'The Role of Foreign Precedents in a Country's Legal System' [2010] National Law School of India Review, Vol. 22, No. 1 (2010) pp.1-16, 3.
[16] K.G. Balakrishnan, 'The Role of Foreign Precedents in a Country's Legal System' [2010] National Law School of India Review, Vol. 22, No. 1 (2010) pp.1-16, 4.
[17] Valentia Rita Scotti, "India: A 'Critical' Use of Foreign Precedents in Constitutional Adjudication" in Tania Groppi and Marie- Claire Ponthoreau (eds), The Use of Foreign Precedents by Constitutional Judges (Hart Publishing Ltd., 2013) 74.
[18] K.G. Balakrishnan, 'The Role of Foreign Precedents in a Country's Legal System' [2010] National Law School of India Review, Vol. 22, No. 1 (2010) pp.1-16, 2.
[19] Appendix 3.
[20] Appendix 4.
[21] Appendix 5.
[22] Appendix 6.
[23] 143 US 649 (1892).
[24] 293 US 388 (1935).
[25] 295 US 495 (1935).
[26] Appendix 7.
[27] Appendix 8.
[28] Appendix 9.
[29] Appendix 10.
[30] Appendix 11.
[31] Appendix 12.
[32] Appendix 13.
[33] Appendix 14.
[34] Appendix 15.
[35] Appendix 16.