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EMERGING PERSPECTIVES ON CONSTITUTIONAL INTERPRETATION

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ABSTRACT:

India's written constitution is a type of law with many common rules of interpretation. While reading the clauses contained in the Constitution, the Supreme Court concentrated on the straightforward sense of the words. The Constitution must be read liberally and broadly to ensure that no legislation violates the basic tenets of the Constitution. In seventy years of constitutional interpretation, the Supreme Court has taken a step back from political repercussions.

The phase in which the Courts began to audit every potential technique of interpretation, resulting in the basic structure doctrine; the third phase can be characterized as an eclecticism phase in which the Apex Court's decisions were based on fairness; and the fourth phase is the present phase in which the Court has started to interpret the statute in a significant manner. This essay will cover the various approaches taken by the Court in interpreting the Indian Constitution.¹ There are three approaches: doctrinal, textualist, and purposeful. A constitution is a fundamental design that governs the framework and responsibilities of government. It also contains residents' rights and responsibilities. A 'constitution' is frequently known as a document that is written and approved at a specific moment, but this is not the meaning of the constitution, which can be written or unwritten. It is sometimes found as a set of norms, maxims, customs, and practices by which its government is structured and its powers are applied. Every constitutional ruling depends on the court's understanding of what the constitution entails, why it stands in the manner it undertakes, and, especially, what inequities it is meant to address. When interpreting the law, the judges employ several concepts.

The method of constitutional interpretation varies from that of other statute readings. It is described as the process of creating a set of laws and regulations that people must observe. The role of judicial scrutiny is inherent in constitutional reasoning. It modifies the Constitution to reflect current circumstances and requirements. The opinions of the apex court of India can be

¹ Muditmandhana, Principles of Constitutional Interpretation, legalserviceindia, (Feb. 01, 2024, 4:19 PM), <https://www.legalserviceindia.com/legal/article-4536-principles-of-constitutional-interpretation.html>

divided into three phases. The first stage involves "grammatical/literal interpretation," which is also known as textualism. This is what it means to read each sentence and compare it to the Constitution. In the second phase, the "eclectic or conceptual approach" concentrates not only on the wording of the Constitution but also on the ideas and topics that it includes in a wider sense. These two stages are the outcome of the third phase, known as "careful thinking." The third part offers reasons by seating up to three Judge seats. Ultimately, the Court reaches judgments based on its views, which leads to the use of an array of internal interpretive techniques and, as a result, frequently results in inconsistent constitutional law. In interpreting the law, the Supreme Court employs several theories such as Doctrine of Severability, Doctrine of Waiver, Doctrine of Eclipse, Doctrine of Territorial Nexus, Doctrine of Pith and Substance, Doctrine of Colourable Legislation, Doctrine of Implied Powers, Doctrine of Incidental and Ancillary Powers, Doctrine of Precedent, Doctrine of Occupied Field, Doctrine of Prospective Overruling, Doctrine of Harmonious Construction, Doctrine of Liberal Interpretation.

The following provisions of the Constitution show the function that the Constitution has given to the Supreme Court to read the Constitution:

Article 132 - An appeal shall lie to the Supreme Court from any Judgement decree or final order of a High Court in the territory of India, whether a Civil, Criminal or other proceedings if the High Court certifies under Article 134-A that the case involves a substantial question of law as to constitutional interpretation.² Article 141 states that the Supreme Court's decisions are mandatory in all courts within India's jurisdiction. Individuals have recourse to the Supreme Court for constitutional interpretation under the Constitution, and the Supreme Court's meaning is binding. In several cases, the Supreme Court's method of constitutional interpretation has impacted worldwide interpretive trends. There have been numerous Supreme Court rulings with various interpretation methods. Textualism gave way to a diversity of tactics and viewpoints in the interpretation of the developing world. The exponential increase in constitutional interpretation judgments has led to progressively precedent-heavy and doctrine-heavy decisions that occasionally lose track of the document under construction.

As the preamble suggests, the constitution of India is the constitution that individuals have provided for themselves, who benefit from its provisions, and as defined by Churchill A small guy with a small pencil and a small ticket to vote ought not to be overlooked. The judiciary

² INDIA CONST. art. 131 cl. a.

must employ its intellect in interpreting any clause in an issue that in any way impacts human dignity. The innovative reading by the judges must be maintained while bearing attention to the historical evolution of India's constitution. In general parlance, the concept of colorable legislation alludes to the issue of the legislature's competency when passing legislative provisions. It essentially refers to the practice of the legislator enacting a provision that, on the surface, cannot be allowed by the Constitution by favoring the provisions alongside a replacement purpose that implicitly permits the original intention. This theory is founded on the legal adage *Quando aliquid prohibetur ex directo, prohibetur et per obliquum*, which says that what is prohibited directly cannot be prohibited tangentially.³ In a nutshell, the goal of this principle is to ensure that the government does not violate the provisions written in the Indian Constitution when drafting laws.

In the case of *K.C. Gajapati v. State of Odisha*⁴, the Supreme Court of India explained the doctrine and held that: if a State's constitution distributes the legislative spheres marked out by specific legislative entries, or if there are limitations on legislative authority in the form of fundamental rights, questions do arise as to whether the legislature in a particular case, in regard to the subject matter of the statute or in the method of enacting it, violated. Such transgressions can be obvious, visible, and direct, but they can also be subtle, concealed, and indirect, and it is in the latter category that the term "colorable legislation" has been used in some court decisions.

This doctrine is usually applied to Article 246 of our Constitution, which distinguishes the legislative competencies of the Parliament and the State legislative assemblies by detailing the different subjects under the different lists under Schedule VII on which the respective legislature can draft laws.⁵ This theory comes into play when the legislature writes a law that it lacks the authority to create and the destiny of that law is determined by the judges using the doctrine of colourable legislation. The doctrine of Pith and Substance emphasizes or concentrates on the real essence and characteristics of law.⁶ The theory denotes that the true topic matter is to be challenged, rather than its incidental impacts on another area. Article 246,

³ juriscentre, <https://juriscentre.com/2021/05/29/doctrine-of-colorable-legislation/>, (last visited Feb. 01, 2024).

⁴ AIR 1953 SC 375

⁵ INDIA CONST. art. 246.

⁶ Sai Shriya Potla, *Doctrine of colourable legislation*, blog.ipleaders, (Feb. 01, 2024, 4:19 PM), <https://blog.ipleaders.in/doctrine-of-colourable-legislation/>

which encompasses the legislative competence stated in the titles under the Seventh Schedule, exemplifies the implementation of this theory. It is relevant that the legislature will enact laws on the subject matter incorporated in the lists, but there may be incidental trespass by the legislature that results in the proclamation of that particular law as ultra vires. The reasoning behind this doctrine is that the Central and State Legislatures may trespass on the territory reserved for each other at any moment.

In the *State of Bombay v. F.N. Balsara*⁷, the Supreme Court implemented and affirmed this doctrine for the first time. In brief, the facts of the case were that the State of Maharashtra prohibited the distribution and ownership of liquor through the enactment of the Bombay Prohibition Act, which was challenged on the grounds that it interfered with the act of importing and exporting liquor across borders. The Supreme Court ruled that the challenged legislation was, in essence, and content, a state topic, even though it encroached on a subject listed in List I. The reasoning and spirit behind this are that every legislation will be deemed invalid because it is in conflict with a subject matter listed in another list. The theory of eclipse holds that when a law passed by the legislature is in conflict with Part III of the Indian Constitution, that law is declared invalid and inoperative to the degree that the clauses are in conflict with the Fundamental Rights. Article 13(1) stresses that the State shall not create any law that is inconsistent with basic rights, and any such law shall be void.

The Supreme Court ruled in the case of *Keshava Menon v. State of Bombay*⁸, in which the petitioner was charged under the Indian Press (Emergency Powers) Act, 1931 for publishing a pamphlet without asking for previous approval. The Court ruled that the sections of the Indian Press Act violate Article 19(1)(a) and are invalid to the degree of inconsistency. In *I.C. Golaknath v. State of Punjab*⁹, the court held that the Parliament had no power to dissect or break fundamental rights, and the court also rejected the absoluteness of Article 368, concluding that the amending powers under Article 368 are restrictive in nature, and thus Article 368 was eclipsed. However, the *I.C. Golaknath* decision was overturned by the Supreme Court following the decision in the well-known case of *Kesavananda Bharti v. State of Kerala*¹⁰. The Doctrine of Severability means that if a specific provision is not in accordance

⁷ AIR 1951 SC 318

⁸ AIR 1951 SC 128

⁹ AIR 1967 SC 1643

¹⁰ 4 SCC 225

with the fundamental rights enshrined in Part III of the constitution, the Court can separate it and declare it void as a result of which the rest of the provision remains in compliance with the relevant provisions.¹¹ When implementing this theory, the court declares only the provision or any portion of the provision that violates portion III of the constitution and can be detached from the remainder of the provision as void. The doctrine was applied by the Supreme Court in the case of *A.K.Gopalan v. State of Madras*¹², in which it was held that Section 14 of the Preventive Detention Act, 1950 was inconsistent with Article 22 of the Constitution only insofar as it prohibited the person detained from making representations or even disclosing the grounds to the court was ultra vires.

As a result, only the offensive portion of the challenged action will be deemed void, rather than the entire Act. Purposive interpretation, as the name implies, means that the court considers the reason for which the clause or law in issue was passed when reading the statute or constitution. As a result, the court will look deeply into the objective of the legislation in order to deduce the correct meaning, which will result in the deliverance of justice.

In the case of *State (NCT of Delhi) v. Union of India*¹³, the Supreme Court ruled that constitutional clauses must be understood and read with an object-oriented approach, and a constitution must not be construed in a narrow and pedantic way. The judiciary must read the Constitution in accordance with its spirit, as well as using a technique of purposeful interpretation. The judges rely on committee reports, constituent assembly discussions, early versions, and other documents from the pre-enactment period. It is important to remember Justice Vivian Bose's opposing opinion in the case of *State of West Bengal v. Anwar Ali Sarkar*¹⁴, in which he stated that the provisions of the Constitution are not mathematical equations with their substance in a simple form. They form an architecture of government written for individuals of essentially different opinions, written for the future as well as the present...they are not just inert words in a mummified manuscript, but alive fires meant to give life to a great country and organize its being, lines of kinetic fire capable of shaping the future as well as guiding the present. Textualism is also known as literal interpretation. The usual rule

¹¹ INDIA CONST. art. 13, cl. a.

¹² AIR 1959 SC 27

¹³ 8 SCC 501

¹⁴ AIR 1952 SC 75

of statutory interpretation is that the Court will use the literal rule of interpretation when interpreting the law or any portion of it. Adherence to the terms stated in the act is defined as a literal rule. The court takes this strategy by focusing on the precise interpretation of constitutional clauses. According to this guideline, the words, phrases, and sentences of legislation are normally to be understood in their literal and grammatical sense.¹⁵ In A.K. Gopalan, the Supreme Court applied a narrow and literal reading of Article 21 of the Constitution, refusing to infuse the notion of process created by law with natural justice principles. Another instance of textualist reading by the Supreme Court was in the interpretation of the term law under Article 13(2) in relation to Parliament's authority to amend the Constitution under Article 368.¹⁶

The Constitution is silent on whether or not this term in Article 13(2) contains a constitutional change. The Supreme Court distinguished between regular legislative authority and Parliament's Constituent power in 1951. It was decided that Article 368 gave Parliament complete authority to change the Constitution. However, this decision was overturned by an 11-judge panel, which found that the authority granted by Article 368 could not be used to limit or eliminate the basic rights enshrined in Part III of the Constitution. The judges interpret statutes and constitutions to make things clear and see the purpose conveyed by the language used in all instances. The judges read in such a way that the authentic and grammatical sense of the words or sentences used in the law reveals the legislature's intent. As seen above, the courts have taken various approaches to interpreting constitutional provisions to fulfill the goal of the provision in question. There have been landmark decisions in which judges used theories other than literal reading to achieve the goals of justice.

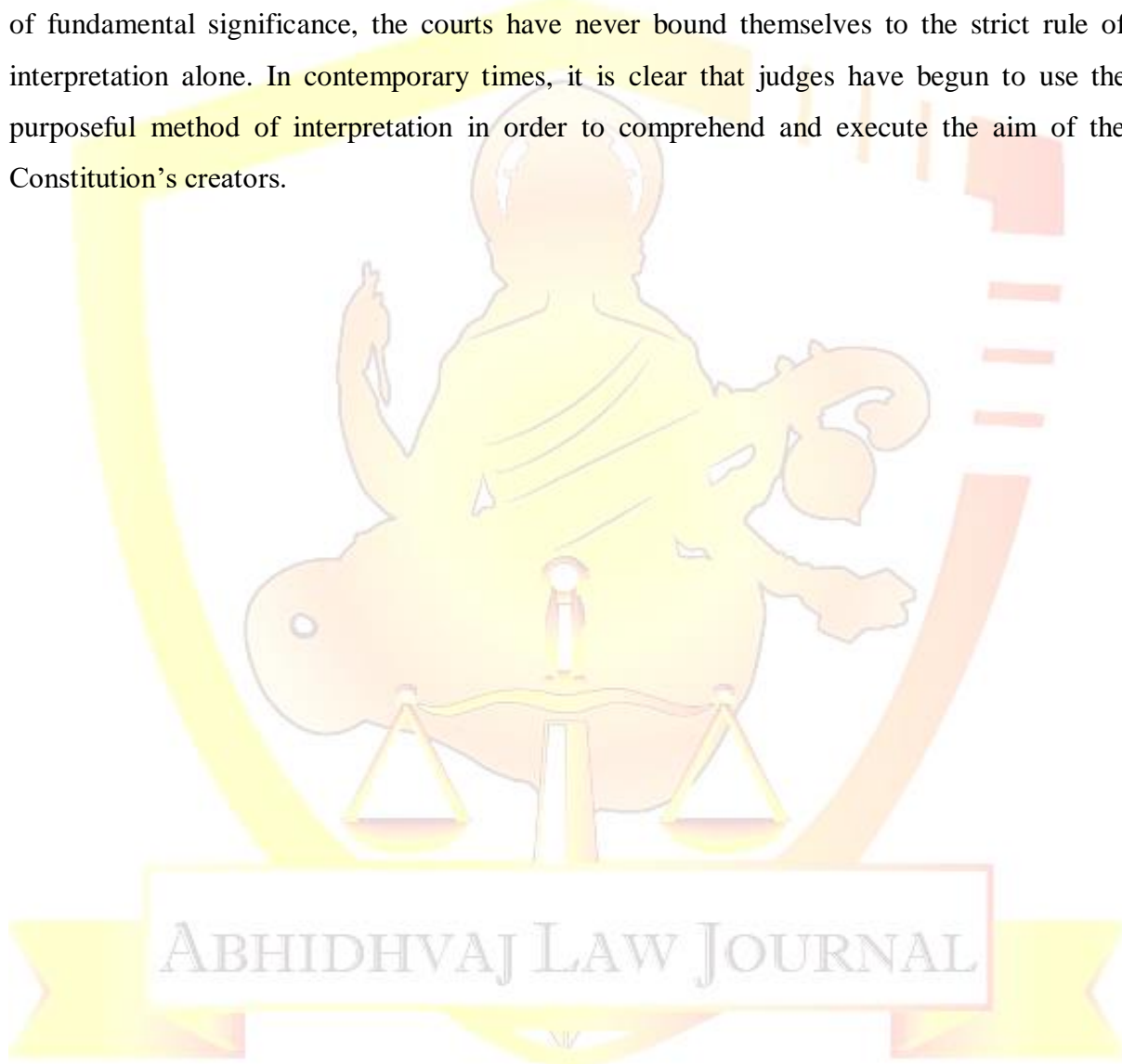
In order to be consistent with political implications and changing public policy, the Supreme Court's interpretation rules have evolved over the last seven decades. The Constitution is regarded as the mother of all laws, and it is said that every law is born from the Constitution itself, so it is the primary responsibility of the judges to uphold and safeguard the sacredness of the mother document so that the law of the land is not jeopardized at any time.¹⁷ According

¹⁵ theindianlaw, <https://theindianlaw.in/primary-rules-of-interpretation/>, (last visited Feb. 01, 2024).

¹⁶ INDIA CONST. art. 368 & 13, cl. 2.

¹⁷ Muditmandhana, Principles of Constitutional Interpretation, legalserviceindia, (Feb. 01, 2024, 4:19 PM), <https://www.legalserviceindia.com/legal/article-4536-principles-of-constitutional-interpretation.html>

to Salmond, interpretation or construction is the procedure by which the courts attempt to discern the meaning of the legislation through the lens of the authoritative forms in which it is articulated.¹⁸ When it is necessary to reconcile the Constitution with the democratic ideals of the State, the reading of the Constitution becomes more essential. The Indian Constitution is the oldest in the world, and it is clear that courts have applied various principles in reading the fundamental framework, equity, right to privacy, and so on. Thus, when determining any issue of fundamental significance, the courts have never bound themselves to the strict rule of interpretation alone. In contemporary times, it is clear that judges have begun to use the purposeful method of interpretation in order to comprehend and execute the aim of the Constitution's creators.



¹⁸ [erp.newlawcollege, https://erp.newlawcollege.edu.in/admin/notes/Statutory%20Interpretation.pdf](https://erp.newlawcollege.edu.in/admin/notes/Statutory%20Interpretation.pdf), (last visited Feb. 01, 2024).

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