BLOGS

Theories and Techniques of Constitutional Interpretation

Indrasish Majumder · 21 Jun 2026

Constitutional Interpretation: Evolution and Approaches

The interpretation of the Constitution of India has evolved significantly over the last seven decades, reflecting the dynamic relationship between governance and judiciary. Initially, constitutional provisions were interpreted literally, adhering strictly to their text.

In the second phase, the judiciary adopted a more scrutinising approach, introducing the landmark **Basic Structure Doctrine** to ensure no law undermines the Constitution's core principles.

The third phase marked a period of eclecticism, where fairness became the focal point of judicial decisions.

Currently, in the transformative phase, the judiciary interprets provisions with a forward-looking perspective, emphasising societal progress and inclusivity.

This evolution highlights the judiciary's responsibility to adapt constitutional interpretation to changing times while safeguarding fundamental values.

Constitution as an Organic Instrument

A constitution is not just a static legal document but an organic instrument that evolves with time. Legal philosopher **Roscoe Pound** described it as "not a glorified police manual," emphasising its dynamic nature.

Constitutional provisions establish foundational principles for legal and political reasoning, which contribute to societal advancement. While these provisions may outline specific responsibilities for public officials, interpreting them through a purely literal lens limits their effectiveness.

Instead, the judiciary applies reasoned, contextual interpretations to align constitutional principles with contemporary socio-political realities. This approach ensures the Constitution's enduring relevance, enabling it to address challenges unforeseen by its framers.

Purpose and Need for Interpretation

Constitutional interpretation is essential due to the formal amendment process and the need to adapt to unanticipated circumstances. The Indian Constitution is amended more frequently than its U.S. counterpart, necessitating careful interpretation to preserve its foundational values.

Article 145(1) of the Indian Constitution mandates that substantial constitutional questions be addressed by benches of at least five judges, emphasising the importance of collective judicial deliberation **Article 145(1).**

The Chief Justice plays a pivotal role in managing rosters and assigning bench compositions for such cases. The primary purpose of constitutional interpretation is to discern the framers' intent while advancing the Constitution's values and structuring executive powers.

Recognising the Constitution as an organic document ensures its adaptability to evolving societal needs, embodying the hopes, aspirations, and fundamental principles of the people it serves.

Theories of Constitutional Interpretation

- Originalism or Intentionalism
- Textualism
- Doctrinalism
- Structuralism
- Purposive or progressive approach.
- Prudentialism
- Harmonious Construction

Originalism or Intentionalism

Originalists believe that the constitutional text ought to be given the original public meaning that it would have had at the time that it became law. The original meaning of constitutional texts can

be discerned from dictionaries, grammar books, and other legal documents from which the text might be borrowed.

It can also be inferred from the background legal events and public debate that gave rise to a constitutional provision. The original meaning of a constitutional text is an objective legal construct like the reasonable man standard in tort law, which judges a person's actions based on whether an ordinary person would consider them reasonable, given the situation.

It exists independently of the subjective "intentions" of those who wrote the text or of the "original expected applications" that the framers of a constitutional text thought that it would have.

Originalism is usually contrasted as a theory of constitutional interpretation with living constitutionalism. Living constitutionalists believe that the meaning of the constitutional text changes over time as social attitudes change.

Originalism has its roots as far back as the 1857 Dred Scott case (**Dred Scott vs. Sandford)**, which held that U.S. citizenship was never intended to include enslaved or free Black Americans.

But the last 40 years have seen a transition from originalism as a legal theory espoused by conservatives to originalism as the preferred legal theory championed by conservatives. The rights of U.S. citizenship did not extend to African Americans. Originalism in the United States has come a long way since its inception.

However, while the relevance of this theory has eroded in most parts of the world, the United States is one of the few nations that still shows fascination towards its postulates.

Justice Antonin Scalia of the US Supreme Court asserts that "originalism, despite its imperfections, remains superior to all other alternative methods of constitutional interpretation."

He does not deny the fact that the constitution now finds application in new phenomena and contexts, but he opines that the historical inquiry of its original meaning is still essential.

From the Indian perspective, the situation is nearly the opposite of what it is in the United States. Currently, the living constitution approach holds a significant advantage. However, this was not always the case.

In Indian constitutional history, glimpses of originalism were first noticed in the case of**A.K. Gopalan v. State of Madras**. Here, the idea of interpretation of the provisions of the

Constitution “in the spirit of the Constitution” was rejected.

It was felt that an extensive constitutional charter such as ours lends itself to the application of strict and not liberal methods of interpretation. Here, an influence of the US tendency of favouring originalism was felt, especially in the judgement of Justice Mukherjee.

Textualism

Textualism advocates for adhering to the “black letters” of the law by focusing on the plain or ordinary meaning of the text. This approach prioritises the literal and grammatical meaning of the words in constitutional provisions.

The principle is rooted in the belief that laws, including the Constitution, should be interpreted as they are written without straying into speculative or subjective interpretations. Textualism is closely associated with the literal rule of interpretation.

The A.K. Gopalan v. State of Madras case is a prominent example of textualism in India. In this case, the Supreme Court gave a narrow and literal interpretation to Article 21 of the Constitution, refusing to integrate principles of natural justice into the concept of “procedure established by law.” This decision marked a significant instance where the textualist approach limited the scope of constitutional interpretation.

Another critical instance of textualism arose concerning the interpretation of the word “law” under Article 13(2). Initially, the Supreme Court ruled that the Parliament’s power to amend the Constitution under Article 368 was distinct from ordinary legislative power and was not constrained by Article 13(2).

However, an 11-judge bench later overturned this view, concluding that Article 368 could not abridge or take away fundamental rights in Part III of the Constitution.

Textualism provides clarity and consistency by sticking to the explicit language of the Constitution. However, it has limitations, particularly in cases where a literal interpretation may conflict with broader constitutional values or principles.

Doctrinalism

Doctrinalism treats constitutional text as only one piece of evidence required for interpretation, relying heavily on judicially developed doctrines to guide constitutional interpretation.

This approach allows courts to create frameworks or doctrines that serve as interpretive tools for resolving constitutional disputes.

One significant doctrinal tool is the **Doctrine of Colourable Legislation**, which examines whether the legislature has overstepped its constitutional boundaries. This doctrine is based on the maxim *"Quando aliquid prohibetur ex directo, prohibetur et per obliquum"* (what cannot be done directly cannot be done indirectly).

It addresses situations where the legislature enacts a provision under the guise of a legitimate purpose but, in reality, violates constitutional limits. For instance, in **K.C. Gajapati v. State of Odisha**, the Supreme Court ruled that legislation must adhere to constitutional limitations, even when the legislature's intentions appear benign.

Another significant doctrinal tool is the **doctrine of pith and substance**, which focuses on the true nature and character of legislation to determine its validity. This doctrine allows incidental encroachments on another legislative field, provided the primary subject matter falls within the legislature's jurisdiction.

In **State of Bombay v. F.N. Balsara**, the Supreme Court upheld the Bombay Prohibition Act, despite its incidental impact on central legislative powers.

The Doctrine of Eclipse posits that laws that contradict fundamental rights are not completely null and void, but rather, their inconsistency renders them inoperative. The case of **Keshava Menon v. State of Bombay** held the provisions of the Indian Press Act, 1931 invalid due to their inconsistency with **Article 19(1)(a)**.

Similarly, the **doctrine of severability** allows courts to strike down unconstitutional provisions while preserving the rest of the legislation. In **A.K. Gopalan v. State of Madras**, the court invalidated parts of the Preventive Detention Act, 1950, that conflicted with fundamental rights.

Doctrinalism provides flexibility and adaptability in constitutional interpretation by enabling courts to address complex constitutional issues through well-defined principles.

Structuralism

Structuralism focuses on interpreting the Constitution based on its overarching structure, emphasising the relationships among various constitutional elements such as federalism, separation of powers, and democracy.

This approach seeks to derive meaning from the arrangement and organisation of constitutional provisions, avoiding subjective moral judgements.

One of the most critical applications of structuralism is in understanding the **separation of powers**. The Constitution establishes a clear division of authority among the legislature, executive, and judiciary to ensure checks and balances.

Similarly, federalism—a defining feature of the Indian Constitution—is reflected in the distribution of legislative powers between the Union and the States under the Seventh Schedule. Structuralism analyses these relationships to resolve conflicts and maintain the Constitution's integrity.

In **Keshavananda Bharati v. State of Kerala**, the Supreme Court introduced the **basic structure doctrine**, holding that the Constitution's fundamental framework, including federalism, cannot be amended by Parliament. This decision is a hallmark of structuralism, as it relied on the Constitution's overall design to limit legislative authority.

Structuralism offers a thorough framework for constitutional interpretation, guiding the understanding of individual provisions within the overall design of the Constitution. By focusing on the Constitution's structure, this approach safeguards its foundational principles and maintains the balance of power.

Purposive or progressive approach.

The Purposive or Progressive Approach emphasizes interpreting constitutional provisions in light of their intended purposes and objectives.

This approach recognizes that the Constitution is an organic document that must evolve to address new challenges and societal changes. It seeks to uphold the Constitution's spirit by focusing on its underlying values and goals.

Justice Vivian Bose's dissenting opinion in **State of West Bengal v. Anwar Ali Sarkar** is a classic example of the progressive approach. He argued that constitutional provisions are not static, lifeless words but dynamic tools designed to shape the future and guide the present. This perspective highlights the Constitution's role as a living document that adapts to changing societal needs.

The purposive approach often involves examining historical records, such as Constituent Assembly debates, to understand the framers' intentions. The application of constitutional provisions also takes into account the broader socio-economic context.

For example, in **Maneka Gandhi v. Union of India**, the Supreme Court adopted a liberal interpretation of Article 21, incorporating the principles of procedural and substantive due process. This decision expanded the scope of the right to life and personal liberty, introducing new rights such as privacy and a clean environment.

The purposeful or progressive approach ensures that constitutional interpretation aligns with contemporary values and realities. By focusing on the Constitution's purpose, this approach promotes justice and safeguards the rights and aspirations of the people.

Prudentialism

Prudentialism is a practical approach to constitutional interpretation that considers the potential consequences of judicial decisions. This method focuses on balancing the costs and benefits of different policies and outcomes, ensuring that constitutional interpretation serves the public interest.

Prudentialism often involves a cost-benefit analysis to evaluate the implications of a particular decision. For example, courts may consider the societal impact of striking down a law, the feasibility of implementing a ruling, or the potential for creating unintended consequences.

This approach is particularly relevant in cases involving complex policy issues where judicial restraint is necessary to avoid overstepping the judiciary's role. This principle underscores the importance of judicial modesty and pragmatism in constitutional interpretation.

In India, prudentialism often informs decisions on economic and administrative matters.

For instance, the judiciary may exercise restraint in cases involving government policies, deferring to the expertise and discretion of the executive and legislature. By adopting a pragmatic perspective, prudentialism seeks to balance constitutional principles with practical considerations.

Harmonious Construction

The principle of harmonious construction aims to reconcile apparently conflicting constitutional provisions, ensuring that all parts of the Constitution work together coherently.

This method is based on the premise that the Constitution, as a whole, reflects a unified legislative intent, and no provision should render another redundant or contradictory.

In the Indian context, Harmonious Construction has been instrumental in resolving tensions between Fundamental Rights (Part III) and Directive Principles of State Policy (Part IV). The Supreme Court consistently maintains that the interpretation of these provisions should align with their complementary objectives.

For example, in **Maneka Gandhi v. Union of India**, the Court adopted a liberal interpretation of Article 21, emphasising the importance of harmonising individual rights with broader societal goals.

Similarly, in the **In Re Kerala Education Bill** case**,** the Court ruled that while interpreting Fundamental Rights, Directive Principles must also be considered to achieve a balanced interpretation.

The doctrine also applies to parliamentary privileges and the right to freedom of speech. In these cases, courts aim to balance the conflicting interests of legislative privilege and individual rights, preventing any undue compromise.

In the case of **Bhatia International v. Bulk Trading**, the Court underscored the importance of adopting the interpretation that aligns with the legislative intent when multiple interpretations of a statute are possible. In **S. Nagraj v. B.R. Vasudeva Murthy**, the Court decided to read conflicting statutory provisions together to prevent inconsistencies.

Harmonious construction ensures that constitutional interpretation respects the integrity and unity of the Constitution. By reconciling conflicting provisions, this approach safeguards the Constitution’s coherence and promotes its overall objectives.

Reading Down and Reading Up in Interpretation of Laws and Constitutional Amendments

Reading Down refers to the technique of interpreting general language in a statute in a more restrictive manner so as to ensure that it remains within the permissible scope of legislative

power. It is used to narrow the meaning of a statute, preventing it from extending beyond the power of the enacting legislature.

Where there are two possible interpretations of a statute—one wide and unconstitutional, and the other narrow and valid—the court will opt for the latter to ensure the statute's constitutional survival.

This rule is rooted in maintaining the balance between legislative autonomy and constitutionalism. Importantly, Reading Down is not equivalent to redrafting legislation; rather, it is a method of limiting the reach of a statute to preserve its validity.

In the **R.M.D.C. case**, while addressing the constitutionality of the Prize Competition Act, the Supreme Court applied the Reading Down rule by restricting the definition of competitions to those of a gambling nature. This interpretation ensured the legislation's alignment with constitutional principles, thereby saving it from being struck down.

Reading Up involves judicial intervention to add terms or procedural safeguards to legislation to ensure its conformity with the Constitution. This process includes expanding the scope of legislation to include groups or individuals who may have been omitted, thereby elevating the impugned legislation to meet constitutional standards.

For instance, in the **Sunil Batra case**, the court mandated the requirement of recording reasons for handcuffing detainees. This judicial addition transformed the statute, which was otherwise infirm, to meet the standards of fairness and justice.

Similarly, in the **PUCL (Telephone Tapping) case**, the Supreme Court addressed Section 5(2) of the Indian Telegraph Act, which allowed telephone tapping. The Court introduced procedural safeguards to protect the right to privacy, rooted in Articles 19(1)(a) and 21 of the Constitution. Drawing extensively from Indian and American jurisprudence, the Court laid down the following directions:

1. The exercise of power was restricted to high and reasonable officers.
2. A Review Committee of top-level officers was required to scrutinize the order within a week.
3. Alternative methods of obtaining information had to be considered.
4. The duration of tapping was limited to two months.
5. Records of tapping were to be maintained and destroyed after the stipulated period.

In the **Gita Hariharan case**, the Court read up Section 6(a) of the Hindu Minority and Guardianship Act to include mothers as “natural guardians” even during the lifetime of the father. This judicial addition brought the provision in alignment with Articles 14 and 15, ensuring equality and non-discrimination.

Reading Up often involves filling gaps in legislation by drawing on constitutional values, the spirit of the law, international conventions, and recommendations from bodies like the Law Commission and Press Commission. Unlike Reading Down, Reading Up focuses on enhancing legislation to align with constitutional ideals.

Application to Constitutional Amendments

The techniques of Reading Down and Reading Up have also been applied to constitutional amendments, particularly in the context of the basic structure doctrine.

The **Keshavananda Bharati case** serves as a landmark example. While upholding the Twenty-Fourth Constitutional Amendment, the Supreme Court ruled that Parliament’s power to amend the Constitution did not include the authority to alter its basic structure. The Court read down the amendment to preserve the essential features of the Constitution.

These judicial innovations have become critical tools in ensuring that constitutional amendments adhere to paramount constitutional values. By applying these techniques, courts have been able to balance legislative autonomy with the preservation of the Constitution’s core principles.