

*PRINCIPLES OF  
CONSTITUTIONAL  
INTERPRETATION*

# INTRODUCTION

Constitutional adjudication affects several aspects of culture of institutions and life of the people of a nation governed by it. Therefore, there can be no fixed or rigid rules of interpretation of the Constitution.

# MEANING

Constitutional *interpretation*, or constitutional *construction*, the term more often used by the Founders, is the process by which meanings are assigned to words in a constitution, to enable legal decisions to be made that are justified by it. Some scholars distinguish between "interpretation" — assigning meanings based on the meanings in other usages of the terms by those the writers and their readers had probably read, and "construction" — inferring the meaning from a broader set of evidence, such as the structure of the complete document from which one can discern the function of various parts, discussion by the drafters or ratifiers during debate leading to adoption ("legislative history"), the background of controversies in which the terms were used that indicate the concerns and expectations of the drafters and ratifiers, alternative wordings and their meanings accepted or rejected at different points in development, and indications of meanings that can be inferred from what is *not* said, among other methods of analysis.

# TYPES

The letters of the constitution are fairly static and not very easy to change but the laws enacted by the legislature reflect the current state of people and are very dynamic. To ensure that the new laws are consistent with the basic structure of the constitution, the constitution must be interpreted in a broad and liberal manner giving effect to all its parts and the presumption must be that no conflict or repugnancy was intended by its framers. Applying the same logic, the provisions relating to fundamental rights have been interpreted broadly and liberally in favor of the subject. Similarly, various legislative entries mentioned in the Union, State, and Concurrent list have been construed liberally and widely. There are basically three types of interpretation of the constitution.

# Historical interpretation

Ambiguities and uncertainties while interpreting the constitutional provisions can be clarified by referring to earlier interpretative decisions.

# Contemporary interpretation

The Constitution must be interpreted in the light Of the present scenario. The situation and circumstances prevalent today must be considered

# Harmonious Construction

It is a cardinal rule of construction that when there are in a statute two provisions which are in such conflict with each other, that both of them cannot stand together, they should possibly be so interpreted that effect can be given to both. And that a construction which renders either of them inoperative and useless should not be adopted except in the last resort.

The Supreme Court held in *Re Kerala Education Bill* that in deciding the fundamental rights, the court must consider the directive principles and adopt the principle of harmonious construction so two possibilities are given effect as much as possible by striking a balance.

# CASES

*In Qureshi v. State of Bihar*, The Supreme Court held that while the state should implement the directive principles, it should be done in such a way so as not to violate the fundamental rights.

In *Bhatia International v Bulk trading SA*, it was held that if more than one interpretation is possible for a statute, then the court has to choose the interpretation which depicts the intention of the legislature.

# General rules of interpretation of the Constitution

- If the words are clear and unambiguous, they must be given the full effect.
- The constitution must be read as a whole.
- Principles of harmonious construction must be applied.
- The Constitution must be interpreted in a broad and literal sense.
- The court has to infer the spirit of the Constitution from the language.
- Internal and External aids may be used while interpreting.
- The Constitution prevails over other statutes.



# Principles of Constitutional Interpretation

- Principle of colourable legislation
- Principle of pith and substance
- Principle of eclipse
- Principle of Severability
- Principle of territorial nexus
- Principle of implied powers

# ‘Doctrine of Pith and Substance’.

- The basic purpose of this doctrine is to determine under which **head of power or field** i.e. under which list (given in the Seventh Schedule) a given piece of legislation falls.
- **Pith** means ‘true nature’ or ‘essence of something’ and **Substance** means ‘the most important or essential part of something’.
- **Doctrine of Pith and Substance** says that where the question arises of determining whether a particular law relates to a particular subject (mentioned in one List or another), the court looks to the substance of the matter. Thus, if the substance falls within Union List, then the incidental encroachment by the law on the State List does not make it invalid

# Cases

- ***The State of Bombay And Another vs F.N. Balsara*** - This is the first important judgment of the Supreme Court that took recourse to the Doctrine of Pith and Substance. The court upheld the Doctrine of Pith and Substance and said that it is important to ascertain the true nature and character of a legislation for the purpose of determining the List under which it falls.

# Case

- ***Mt. Atiqa Begam And Anr. v. Abdul Maghni Khan And Ors.***– The court held that in order to decide whether the impugned Act falls under which entry, one has to ascertain the true nature and character of the enactment i.e. its ‘pith and substance’. The court further said that ***“it is the result of this investigation, not the form alone which the statute may have assumed under the hand of the draughtsman, that will determine within which of the Legislative Lists the legislation falls and for this purpose the legislation must be scrutinized in its entirety”***.

# Colorable Legislation

- Doctrine of **Colorable Legislation** is built upon the founding stones of the Doctrine of **Separation of Power**. **Separation of Power** mandates that a balance of power is to be struck between the different components of the State i.e. between the Legislature, the Executive and the Judiciary. The Primary Function of the legislature is to make laws. **Whenever, Legislature tries to shift this balance of power towards itself then the Doctrine of Colorable Legislation is attracted to take care of Legislative Accountability.**

# Meaning

- **Black’s Law Dictionary** defines ‘**Colorable**’ as:
  - 1. Appearing to be true, valid or right.
  - 2. Intended to deceive; counterfeit.
  - 3. ‘**Color**’ has been defined to mean ‘**Appearance, guise or semblance**’.
- The literal meaning of Colorable Legislation is that under the ‘**color**’ or ‘**guise**’ of power conferred for one particular purpose, the legislature cannot seek to achieve some other purpose which it is otherwise not competent to legislate on.
- This Doctrine also traces its origin to a Latin Maxim:
- *“Quando aliquid prohibetur ex directo, prohibetur et per obliquum”*
- This maxim implies that “**when anything is prohibited directly, it is also prohibited indirectly**”. In common parlance, it is meant to be understood as “**Whatever legislature can’t do directly, it can’t do indirectly**”.

# ANCILLARY POWER

- EXPRESSIO UNIUS EST EXCLUSIO ALTERIUS - MAXIM
- STATE OF RAJASTHAN V.S G CHAWLA AIR 1959
- R M D CHARBHAUGWALA V.S STATE OF MYSORE, AIR 1962