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# **THE ROLE OF THE SUPREME COURT TO SAFEGUARD AND INTERPRET THE CONSTITUTION OF INDIA**

AUTHORED BY - ADV. NUPUR SHRIRAM KULKARNI

## **Abstract**

This article's goal is to provide readers with an understanding of the Supreme Court of India's research and operations in upholding the fundamental ideas expressed in the Indian Constitution. This study was conducted on the subject of how the Supreme Court often plays a crucial role in ensuring the protection and interpretation of the Constitution. Furthermore, an effort was made to gather information by consulting a number of papers, journals, and blogs about the part the Supreme Court has played in undermining the fundamental principles of the Constitution through its rulings. In this article, the meaning and role of interpretation is studied in reference with the Constitution as well as concepts such as law of precedent in relevance with doctrine of judicial review and various verdicts of the Supreme Court of India are taken into consideration. The study's conclusions were drawn and interpreted to suggest that the Indian court is one of the four pillars of democracy that upholds democratic values. The framework for the Supreme Court's judicial reading of the Constitution over the decades since the nation's independence is provided by this research work.

## **Keywords**

Supreme Court of India

Interpretation of the Constitution

Judicial review

Basic structure

Fundamental principles

Fundamental framework

## Introduction

According to Hans Kelsen, a "Constitution" is an idea of the highest calibre that establishes the entire legal and political framework of a nation—a model for the equitable allocation of political power among its constituent parts under the law. This implies that the Constitution establishes the origins of statutes as well as the bodies and processes involved in legislation. It is always necessary to distinguish between constitutional norms and statute norms because the fundamental principle of the Constitution serves as the cornerstone of all State orders and must, therefore, be as firm and unchangeable as possible.<sup>1</sup>

The sounds of the Constitution can be readily understood when its text is evident. Interpreting the "sound of the silence" in the Constitution, however, becomes an obstacle when it comes to rights, immunity, privileges, or power distribution.<sup>2</sup>

There is a complex relationship between constitutional interpretation and further general amendments to the constitution. Constitutional interpretations are frequently supported by the ease or difficulty of amending a document. Inferences concerning the most practical means and the lawful agent of constitutional change are raised by the formal process of amending a constitution.<sup>3</sup> A two-thirds majority in Parliament is required to amend the majority of the Indian Constitution's provisions. At least half of the state legislatures must also ratify amendments that impact federal matters.<sup>4</sup> In actuality, the Indian Constitution has undergone numerous amendments, typically more than once annually.

A key component for ensuring the constitution's protection is the judiciary. It seeks to make an attempt to restore the harm caused by the executive and legislative branches, as well as to grant citizens the rights guaranteed by the Constitution and take into account the Directive Principles

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<sup>1</sup> Lars Vinx, *The Guardian of the Constitution: Hans Kelsen and Carl Schmitt on the Limits of Constitutional Law*, 28 (Cambridge university press, 2015).

<sup>2</sup> Laurence H. Tribe, *Soundings and Silences*, 115 Mich. L. Rev. Online 26 (2016), available at: [https://repository.law.umich.edu/mlr\\_online/vol115/iss1/3](https://repository.law.umich.edu/mlr_online/vol115/iss1/3) last seen on 29/03/17.

<sup>3</sup> Chandrachud, Chintan, *Constitutional Interpretation*, The Oxford Handbook of the Indian Constitution November 18, 2015, available at SSRN: <https://ssrn.com/abstract=2692834>, last seen on 24/11/15.

<sup>4</sup> Constitution of India, article 368(2).

of State Policy. The judiciary is responsible for carrying out the law, which is the fundamental component of the democratic system. This is the core of the constitution, indestructible even in the event that the parliament enacts new legislation.<sup>5</sup>

## Interpretation: Meaning and Role

Since legal experts draft enacted laws, particularly the current Acts and Rules, it is reasonable to assume that the language used will leave little opportunity for interpretation or construction. The lengthy process of implementing the passed legislation has resulted in the creation of certain guidelines for interpretation or building. "By interpretation or construction is meant the process by which the courts seek to ascertain the meaning of the Legislature through the medium of authoritative forms in which it is expressed"- says Salmond.

The Legislature's goal incorporates two elements: It conveys the idea of "meaning," or what the words mean, in one sense, and the idea of "purpose and object," or the "reason and spirit," which invades the statute in another. Thus, the goal of interpretation integrates literal and purposeful methods. Put another way, the true or legal meaning of an enactment, or the legislative intention, is determined by analysing the meaning of the words used in the enactment in the context of any apparent purpose or object that encompasses the wrong and its intended remedy.<sup>6</sup> This expression has now entered the blessing of the Supreme Court and has been called the "Cardinal principle of construction."<sup>7</sup>

## Modes of Interpretation of Constitution

The Supreme Court of United States, has relied on specific "methods" or "modes" of interpretation—that is, approaches to determining a specific meaning of a provision within the Constitution—when using its authority to assess the constitutionality of governmental action. This report provides an overview of the various arguments in favour of and against the use of the most popular constitutional interpretation techniques, as well as a broad description of those

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<sup>5</sup> Dr Justice A.S. Anand Justice N.D. Krishna Rao Memorial Lecture *Protection of Human Rights — Judicial Obligation or Judicial Activism*, (1997) 7 SCC (Jour) 1.

<sup>6</sup> State of Himachal Pradesh v. Kailash Chand Mahajan, 1992 AIR 1277, 1992 SCR (1) 917.

<sup>7</sup> Union of India v. Elphinstone Spinning and Weaving Co. Ltd., (2001) 4 SCC 139.

techniques and examples of Supreme Court decisions that illustrate their application.<sup>8</sup>

1. **Textualism** – Textualism is an approach to interpretation that concentrates on a legal document's text's obvious meaning. Textualism typically focuses on the context in which terms exist in the Constitution as well as how people would have interpreted them at the time they were ratified. Textualists typically take the position that the text has an objective meaning and do not consider the intentions of those who drafted, adopted, or ratified the Constitution or its amendments when interpreting the text. Opponents contend that judges ought to take into account values that aren't expressly stated in the text, like those that are founded in structural relationships, practical consequences, moral reasoning, or other factors. To put it another way, determining the text's meaning might not be simple, and those who oppose textualism might argue that in order to save the abecedarian rights and guarantees of the Constitution, a more flexible approach that doesn't bind the Court and policymakers to words written 300 times ago is needed.<sup>9</sup>
2. **Originalism** – Originalist methods to constitutional interpretation take into account the meaning of the document as understood by at least some portion of the public during the time of the Founding, in contrast to textualist approaches, which only focus on the text of the document. Originalists most people concur that the language of the Constitution had a "objectively identifiable" or public meaning at the period of the Founding, which has remained constant over time, and the responsibility of justices and judges and This original meaning is to be constructed by other responsible interpreters.<sup>10</sup>
3. **Judicial Precedent** – The Supreme Court's earlier rulings on constitutional law issues are the source of constitutional meaning that is most frequently cited. For the majority of Justices, if not all of them, legal precedent offers potential guidelines, norms, or standards that could direct court decisions in the future in cases with arguably comparable facts.<sup>11</sup>

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<sup>8</sup> Modes of Constitutional Interpretation, Congressional Research Service, <https://crsreports.congress.gov/product/pdf/R/R45129>, last seen on 15/03/18.

<sup>9</sup> Ibid, at 7.

<sup>10</sup> Ibid, at 7,8 and 9.

<sup>11</sup> Ibid, at 10,11.

4. **Pragmatism** – The Court will frequently weigh or balance the likely practical ramifications of one interpretation of the Constitution against alternative interpretations when using a pragmatic approach. A feature of pragmatism is weighing the potential benefits and costs of an interpretation to the political branches or society in order to determine which interpretation is most likely to produce the desired result. A court might take into account the extent to which the judiciary could contribute positively to the resolution of a constitutional law dispute under a different kind of pragmatist approach.<sup>12</sup>
5. **Moral Reasoning** – This method contends that certain terms (such as "equal protection" or "due process of law") in the text of the Constitution are motivated by moral ideas or concepts, and that judges should interpret the Constitution in light of these ideas.<sup>13</sup>
6. **National Ethos** – The idea of a "national ethos," which draws on the unique qualities and principles of the American national identity and the country's institutions to elucidate the meaning of the Constitution, is sometimes used in judicial reasoning.<sup>14</sup>
7. **Structuralism** – The relationships between the three branches of the federal government (also known as the separation of powers), the federal and state governments (also known as federalism), and the relationship between the government and the people are all inferred from the structure of the Constitution in another method of constitutional interpretation.<sup>15</sup>
8. **Historical Practices** – The meaning of the constitution is heavily influenced by past political branch decisions, especially by their long-standing, historical customs. In cases involving issues of federalism, the separation of powers, and individual rights, courts have looked to past practices for guidance on the meaning of the Constitution, especially when the text is ambiguous.<sup>16</sup>

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<sup>12</sup> Ibid, at 12,13 and 14.

<sup>13</sup> Ibid, at 15.

<sup>14</sup> Ibid, at 17.

<sup>15</sup> Ibid, at 18.

<sup>16</sup> Ibid, at 22.

## Constitutional Interpretation through an Indian Perspective

It is clear that every judge in the United States adheres to his or her own school of thought and becomes an unmatched defender of it. Such an exercise is not possible in India, where it is impossible to discuss ideologies in relation to constitutional interpretation, as has already been discussed. The Indian Constitution can no longer be read restrictedly. All judges have been interpreting the Constitution with the purposive tool since Maneka Gandhi.<sup>17</sup> The Supreme Court ultimately decided in S.R. Chaudhuri<sup>18</sup> that debates in the Constituent assembly may be relied upon as an aid to interpret a Constitutional provision because it is the function of the court to ascertain the intention of the Constitution's framers. This decision ended years of uncertainty regarding the role of Constituent assembly debates as a tool to interpret the Constitution.<sup>19</sup>

### The Provisions empowering the Supreme Court of India to Safeguard and Interpret the Constitution

- 1. Original Jurisdiction** – According to Article 131 of the Indian Constitution, the Supreme Court has original jurisdiction over contestations involving "the Centre and one or further states; the Centre and any state or states on one side and one or further states on the other; or between two or further states."<sup>20</sup> In the forenamed governmental disputations, the Supreme Court is the only body with original jurisdiction. It also manages the settlement of disagreements pertaining to the presidential and vice-presidential elections. The Supreme Court, as the highest court in the land, guards against violations of everyone's fundamental rights. The Indian Constitution's Article 32 grants anyone the right to petition the Supreme Court if they believe their fundamental rights have been violated. The court will grant mandamus, quo-warranto, habeas corpus, certiorari, and prohibition writs or orders in such a case.<sup>21</sup>

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<sup>17</sup> Maneka Gandhi v. union of India, (1978) 1 SCC 248: AIR 1978 SC 597.S

<sup>18</sup> S.R. Chaudhuri v. State of Punjab, (2001) 7 SCC 126.

<sup>19</sup> Arvind P. Datar, Rahul Unnikrishnan, *Interpretation of Constitutions: A Doctrinal Study*, Vol. 29, No. 2, National Law School of India Review, 136-148 (2017), available at <https://www.jstor.org/stable/26748049>, last seen on 08/12/2023.

<sup>20</sup> Constitution of India, article 131.

<sup>21</sup> Constitution of India, article 32.

- 2. Appellate Jurisdiction** – According to Articles 132, 133, 134, and 136 of the Indian Constitution,<sup>22</sup> the Supreme Court of India has the appellate jurisdiction and can handle a variety of cases pertaining to constitutional, civil, criminal, and appeals by special leave. It alludes to a higher court's capacity to examine and review rulings from a lower court. The Appellate Court's job is to examine any legal problems and mistakes that may have arisen during the lower court proceedings, not to retry the case or determine whether the parties involved are guilty or innocent. In summary, the Supreme Court considers appeals from individuals who are dissatisfied with the rulings of lower courts.
- 3. Advisory Jurisdiction** – The President is entitled to consult the Supreme Court on any issue. The Indian Constitution's Article 143 gives the Supreme Court the authority to counsel the President on any legal issue, fact of public interest, or disagreement resulting from a pre-constitutional agreement, engagement, treaty, or covenant. It is frequently used when there is a need for legal advice or clarification on a particular matter but there isn't a real disagreement or controversy between the parties.<sup>23</sup>
- 4. Review Jurisdiction** – Article 137 of the Indian Constitution grants the Supreme Court of India the power to examine legislation that the legislature has approved or passed.<sup>24</sup> It guarantees the fair and uniform conduct of legal proceedings and contributes to the preservation of the judicial system's stability and integrity. The Supreme Court may review its own ruling under Article 137, subject to any laws passed by Parliament or rules established pursuant to Article 145. "The Supreme Court shall have power to review any judgment pronounced or order made by it," according to this article.

## Judicial Review

'Judicial review' refers to a court's authority to determine whether a statute, executive order, or other official action is in conflict with the written constitution and, if so, to declare it so. Federalism requires judicial review as one of its fundamental requirements. It is quite reasonable to view the courts under a federal constitution as the defenders of individual liberties and the

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<sup>22</sup> Constitution of India, article 132,133,134 and 136.

<sup>23</sup> Constitution of India, article 143.

<sup>24</sup> Constitution of India, article 137.

custodians of the constitution. The foundation of constitutionalism, which suggests limited government, is judicial review.<sup>25</sup>

Since the Indian Constitution is federal in nature, it is the ultimate law of the land. It assigns the Union Parliament and the State Legislatures equal authority over legislation. Thus, the High Courts and the Supreme Court make sure that no government goes beyond its bounds of power. Any competent court has the authority to declare a legislative enactment unconstitutional if it violates any provision of the Constitution. Public opinion is passive in a democracy, and it is even worse in India, according to K. V. Rao. For this reason, the judiciary must step in to save the day. If not, the constitution loses its equilibrium and becomes overly dependent on the tyranny of the majority and executive supremacy - neither of which the framers intended.<sup>26</sup>

Additionally, our Constitution clearly provides for judicial review of legislation to ensure that it complies with its provisions. Article 13(2) states: "Any law made in violation of the clause shall, to the extent of violation, be void." The State is prohibited from making laws that restrict or take away the rights granted by Part III.<sup>27</sup> Article 32 (1) additionally stipulates the right to petition the Supreme Court through the proper channels in order to enforce the rights granted by Part III of the Constitution.<sup>28</sup>

## **Role played by the Supreme Court of India in Interpreting the Constitution through various Verdicts**

In the well-known case *Gopalan v. State of Madras, 1950*,<sup>29</sup> the accused's attorney argued that article 21, which guaranteed the protection of legally established procedures, did not support the administrative discretion to imprison a citizen upon official satisfaction of the necessity of his detention granted under the Act. He contended that "due process of law" and "according to procedure established by law" were synonymous. However, in his representation of the Union of

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<sup>25</sup> S.C. Dash, *The Constitution of India: A Comparative Study*, 334 (1968).

<sup>26</sup> K.V. Rao, *Parliamentary Democracy of India*, 213 (1965).

<sup>27</sup> Constitution of India, article 13(2).

<sup>28</sup> Constitution of India, article 32(1).

<sup>29</sup> A.K. Gopalan v. State of Madras, AIR 1950 SC 27.

India, the Attorney General argued that the legal guarantee of procedure protected "nothing more than procedure prescribed by any law made by a competent legislature." The "due process" clause and everything that the American constitution meant by it had already been rejected by the Constituent Assembly. Article 21 used the term "law" to refer to the enacted law rather than just, or natural law. Therefore, contrary to what the American Supreme Court claimed under the due process clause, the Indian Supreme Court lacks the authority to conduct judicial reviews. Therefore, regardless of how harsh or irrational the law may be, if it deprives someone of their life or personal freedom, it is rightful for the legislator to do so. The aforementioned ruling outlined the legal procedure and provided an overview of the nation's personal liberty laws.

In 1959, the Searchlight case<sup>30</sup> addressed the significant problem of restricting a citizen's basic right to freedom of speech and expression when it interfered with the use of a parliamentary privilege. In the 1959 Express Newspapers v. Union of India case,<sup>31</sup> the question of whether the freedom granted by article 19 (1) (a) encompassed press liberty in its broadest sense was thoroughly examined. According to the Court, the press had the right of free propagation and free circulation, without any previous restraint on publication, because liberty of the press was an essential part of the freedom of speech and expression guaranteed by that article. In the 1962 Sakal Papers v. Union of India case,<sup>32</sup> the Court went one step further and invalidated the Newspaper (Price and Page) Act, 1956 which set limits on the quantity of pages and costs of newspapers.

The Supreme Court, in Kesavananda Bharati v. State of Kerala,<sup>33</sup> ruled by a majority of 7:6 that Parliament can amend any provision of the Constitution to implement out the socioeconomic duties that the Preamble guarantees to the citizens, provided that the amendment does not alter the fundamental framework of the Indian Constitution. The court determined that the word "amend," as used in Article 368, does not allude to modifications that could alter the fundamental framework of the constitution. Any amendment to a specific Constitutional provision proposed

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<sup>30</sup> Pandit M. S. M. Sharma V. Shri Sri Krishna Sinha and Others, AIR 1959 SC 395.

<sup>31</sup> Express Newspapers Private. Ltd. and Ors. v. Union of India and Ors., 1986 AIR 872, 1985 SCR Supl. (3) 382.

<sup>32</sup> Sakal Papers (P) Ltd. v. The Union of India, 1962 3 SCR 842.

<sup>33</sup> Kesavananda Bharati v. State of Kerala, (1973) 4 SCC 225: AIR 1973 SC 1461.

by Parliament must pass the fundamental structure test. Furthermore, it was determined that the Parliament could alter the Fundamental Rights to the extent that they are not covered by the Constitution's basic structure, given its unrestricted authority to amend the document subject to its basic framework. Additionally, the parliament's actions could be reviewed by the court and declared invalid if they undermine the basic structure of the Constitution. It did not, however, preclude the judiciary from reviewing any proposed constitutional amendment in light of the fundamental provisions of the document.

The theory of Basic Structure states that the Parliament can change the Constitution indefinitely, with the only restriction being that the changes cannot alter the basic structure of the document. The fundamental elements of the Constitution are what give our Constitution its spirit and essence, and the Parliament should not in any way tamper with them. The bench made no reference to the fundamental framework of the Constitution; instead, the courts were left to interpret it. The courts must determine whether or not a given amendment infringes upon the fundamental provisions of our Indian Constitution. The landmark Kesavananda Bharti's case gave the Constitution stability.

In the 1950 Chiranjit Lal case,<sup>34</sup> the majority of Supreme Court judges provided the following definition of the term and significance of the "equal protection of law" guarantee: 'The protection of equal laws is what is meant by the guarantee of the equal protection of the laws.' It prohibits class legislation, but it does not prohibit classification based on justifiable differences. Legislation that is restricted in its goals or in the areas it is intended to be used does not violate this provision. It only stipulates that everyone covered by such laws must be treated equally under similar circumstances, with respect to the rights granted and the obligations placed upon them.

Furthermore, when interpreting statutes, the Indian judiciary has historically adhered to the directive principles. When there was no authority on a subject, the directive principles provided guidance. The fundamental rights shall take precedence over the directive principles of State

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<sup>34</sup> Chiranjit Lal Chowdhuri v. The Union of India and Ors., AIR 1951 SC 41.

policy in the event of a conflict, as stated in article 12(2),<sup>35</sup> which expressly states that the State shall not enact any legislation that denies or restricts any of the fundamental rights. Indeed so, the Supreme Court noted in a case that the President had appertained to it under article 143 that the court may not entirely overpass these directive principles, but should embrace the principle of "harmonious construction" and should endeavour to give effect to both as substantial as possible in determining the ambit and extent of the fundamental rights leaned on by or on behalf of any person or body.<sup>36</sup>

## Conclusion

The Supreme Court is authorized to interpret the constitutional provisions under articles 132 and 133 (2). For the Court, interpreting the Constitution is both an honourable responsibility and a difficult undertaking. As an incident of its task of upholding the Constitution, it can make a judicial review of legislation brought before it to determine if it is consistent with the provisions of the document. It interprets the Constitution in accordance with the intention of the framers as brought out by the clear words of its text, its essential features, and its basic framework.

The Supreme Court defends citizens' rights as well. Article 32 states that anyone may file a direct appeal with the Supreme Court without first going through any lower courts, provided they can prove a violation of their fundamental rights or an imminent threat of one.

In a welfare state, the judiciary has to perform this delicate role. Its duties include interpreting the Constitution, upholding fundamental rights, and assisting the government in accomplishing its welfare objectives.

The Supreme Court actively defends and upholds fundamental rights in addition to its constitutional interpretation duties. Any person or group can directly approach the Court through Public Interest Litigation (PIL) to request judicial intervention in matters of public importance.

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<sup>35</sup> Constitution of India, article 12(2).

<sup>36</sup> Devdatta Mukherjee, *Judicial Implementation of Directive Principles of State Policy: Critical Perspectives*, Volume 1.1, IJLPP, 1, 26-31 (2014-15), <https://docs.manupatra.in/>, last seen on 20/01/2017.

The Court has taken an active role to protect society's rights and hold the government responsible. Apart from safeguarding essential rights, the Supreme Court also acts as the defender of India's federal system. The Court's approaches have been essential in preserving the fundamental framework of our nation's Constitution and the equilibrium between the legislative, executive, and judicial branches of government.

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