

Course Name	LL.B 6th sem
Subject	Interpretation of Statute
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Concept	Principles of Constitutional Interpretation

Principles of Constitutional Interpretation

Introduction

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.

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.

Interpretation of the preamble of the Constitution

The preamble cannot override the provisions of the constitution. In *Re Berubari*, the Supreme Court held that the Preamble was not a part of the constitution and therefore it could not be regarded as a source of any substantive power.

In *Keshavananda Bharati's case*, the Supreme Court rejected the above view and held the preamble to be a part of the constitution. The constitution must be read in the light of the preamble. The preamble could be used for the amendment power of the parliament under Art.368 but basic elements cannot be amended.

The 42nd Amendment has inserted the words "Secularism, Socialism, and Integrity" in the preamble.

General rules of interpretation of the Constitution

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

Principles of Constitutional Interpretation

The following principles have frequently been discussed by the courts while interpreting the Constitution:

1. Principle of colourable legislation
2. Principle of pith and substance
3. Principle of eclipse
4. Principle of Severability
5. Principle of territorial nexus
6. Principle of implied powers

Principle of Colourable Legislation

The doctrine of colourability is the idea that when the legislature wants to do something that it cannot do within the constraints of the constitution, it colours the law with a substitute purpose which will still allow it to accomplish its original goal.

Maxim: "*Quando aliquid prohibetur ex directo, prohibetur et per obliquum*" which means what cannot be done directly cannot also be done indirectly.

The rule relates to the question of legislative competence to enact a law. Colourable Legislation does not involve the question of bonafides or malfides. A legislative transgression may be patent, manifest or direct or may be disguised, covert or indirect. It is also applied to the fraud of Constitution.

In India ‘the doctrine of colourable legislation’ signifies only a limitation of the law-making power of the legislature. It comes into picture while the legislature purporting to act within its power but in reality, it has transgressed those powers. So the doctrine becomes applicable whenever legislation seeks to do in an indirect manner what it cannot do directly. If the impugned legislation falls within the competence of legislature, the question of doing something indirectly which cannot be done directly does not arise.

In our Constitution, this doctrine is usually applied to Article 246 which has demarcated the Legislative competence of the Parliament and the State Legislative Assemblies by outlining the different subjects under List I for the Union, List II for the States and List III for the both as mentioned in the seventh schedule.

This doctrine comes into play when a legislature does not possess the power to make law upon a particular subject but nonetheless indirectly makes one. By applying this principle the fate of the Impugned Legislation is decided.

Principle of pith and substance

Pith means ‘true nature’ or essence of something’ and substance means ‘the most important or essential part of something’. 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.

Union & State Legislatures are supreme within their respective fields. They should not encroach/ trespass into the field reserved to the other. If a law passed by one trespass upon the field assigned to the other—the Court by applying Pith & Substance doctrine, resolve the difficulty & declare whether the legislature concerned was competent to make the law.

If the pith & substance of the law (i.e. the true object of the legislation) relates to a matter within the competence of the legislature which enacted it, it should be held *intra vires*—though the legislature might incidentally trespass into matters, not within its competence. The true character of the legislation can be ascertained by having regard—to the enactment as a whole — to its object – to the scope and effect of its provisions.

Case: State of Bombay v. FN Balsara

Bombay Prohibition Act, 1949 which prohibited sale & possession of liquors in the State, was challenged on the ground that it incidentally encroached upon Imports & Exports of liquors across custom frontier – a Central subject. It was contended that the prohibition, purchase, use, possession, and sale of liquor will affect its import. The court held that act valid because the pith & substance fell under Entry 8 of State List and not under Entry 41 of Union List.

Principle of eclipse

The Doctrine of Eclipse says that any law inconsistent with Fundamental Rights is not invalid. It is not dead totally but overshadowed by the fundamental right. The inconsistency (conflict) can

be removed by a constitutional amendment to the relevant fundamental right so that eclipse vanishes and the entire law becomes valid.

All laws in force in India before the commencement of the Constitution shall be void in so far they are inconsistent with the provisions of the Constitution. Any law existing before the commencement of the Constitution and inconsistent with the provision of Constitution becomes inoperative on commencement of Constitution. But the law does not become dead. The law remains a valid law in order to determine any question of law incurred before the commencement of the Constitution. An existing law only becomes eclipsed to the extent it comes under the shadow of the FR.

Case: Keshavan Madhava Menon v. The State of Bombay

In this case, the law in question was an **existing law** at the time when the Constitution came into force. That existing law imposed on the exercise of the right guaranteed to the citizens of India by article 19(1)(g) restrictions which could not be justified as reasonable under clause (6) **as it then stood** and consequently under article 13(1)[8] that **existing law** became void **“to the extent of such inconsistency”**.

The court said that the law became void not *in toto* or for all purposes or for all times or for all persons but only **“to the extent of such inconsistency”**, that is to say, **to the extent it became inconsistent with the provisions of Part III which conferred the fundamental rights of the citizens**.

Thus the Doctrine of Eclipse provides for the validation of Pre-Constitution Laws that violate fundamental rights upon the premise that such laws are not null and void ab initio but become unenforceable only to the extent of such inconsistency with the fundamental rights. If any subsequent amendment to the Constitution removes the inconsistency or the conflict of the existing law with the fundamental rights, then the Eclipse vanishes and that particular law again becomes active again.

Principle of Severability

The doctrine of severability provides that if an enactment cannot be saved by construing it consistent with its constitutionality, it may be seen whether it can be partly saved. Article 13 of the Constitution of India provides for Doctrine of severability which states that-

All laws in force in India before the commencement of Constitution shall be void in so far they are inconsistent with the provisions of the Constitution.

The State shall not make any law which takes away/ shortens the rights conferred by Part III of the Constitution i.e. Fundamental Rights. Any law made in contravention of the provisions of the Constitution shall be void and invalid. The invalid part shall be severed and declared invalid if it is really severable. (That is, if the part which is not severed can meaningfully exist without the severed part.) Sometimes the valid and invalid parts of the Act are so mixed up that they cannot be separated from each other. In such cases, the entire Act will be invalid.

Case: AK Gopalan v. State of Madras

In this case, the Supreme Court said that in case of repugnancy to the Constitution, only the repugnant provision of the impugned Act will be void and not the whole of it, and every attempt

should be made to save as much as possible of the Act. If the omission of the invalid part will not change the nature or the structure of the object of the legislature, it is severable. It was held that except Section 14 all other sections of the Preventive Detention Act, 1950 were valid, and since Section 14 could be severed from the rest of the Act, the detention of the petitioner was not illegal.

Principle of Territorial Nexus

Article 245 (2) of the Constitution of India makes it amply clear that 'No law made by Parliament shall be deemed to be invalid on the ground that it would have extra-territorial operation'. Thus a legislation cannot be questioned on the ground that it has extra-territorial operation. It is well-established that the Courts of our country must enforce the law with the machinery available to them, and they are not entitled to question the authority of the Legislature in making a law which is extra-territorial. The extra-territorial operation does not invalidate a law. But some nexus with India may still be necessary in some of the cases such as those involving taxation statutes.

The Doctrine of Territorial Nexus can be invoked under the following circumstances-

- Whether a particular state has extra-territorial operation.
- If there is a territorial nexus between the subject- matter of the Act and the state making the law

It signifies that the object to which the law applies need not be physically located within the territorial boundaries of the state, but must have a sufficient territorial connection with the state. A state may levy a tax on a person, property, object or transaction not only when it is situated within its territorial limits, but also when it has a sufficient and real territorial connection with it. Nexus test was applied to the state legislation also

Case: Tata Iron & Steel Company v. Bihar State

The State of Bihar passed a Sales Tax Act for levy of sales tax whether the sale was concluded within the state or outside if the goods were produced, found and manufactured in the state. The court held there was sufficient territorial nexus and upheld the Act as valid. Whether there is sufficient nexus between the law and the object sought to be taxed will depend upon the facts and circumstances of a particular case.

It was pointed out that sufficiency of the territorial connection involved a consideration of two elements- a) the connection must be real and not illusory b) the liability sought to be imposed must be pertinent to that connection.

Principle of Implied powers

Laws which are necessary and proper for the execution of the power or incidental to such power are called implied powers and these laws are presumed to be constitutional. In other words, constitutional powers are granted in general terms out of which implied powers must necessarily arise. Likewise, constitutional restraints are put in general terms out of which implied restraints must also necessarily establish.

This is a Legal principle which states that, in general, the rights and duties of a legislative body or organization are determined from its functions and purposes as specified in its constitution or charter and developed in practice.