

Analyzing The “Originalist School” And “Living School” Of Interpretation of Constituion with The Help of Landmark Judgements

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1. Introduction

The interpretation of statutes is a crucial aspect of the legal system in many countries. Statutes often use complex and technical language. Interpretation is needed to ensure that the text of a statute is understood with clarity and precision, reducing the potential for ambiguity or confusion in its application. Statutes are written in a general and abstract manner. Courts and legal authorities need to interpret them to apply the law to specific cases and situations. The interpretation helps bridge the gap between the text of the law and its real-world application.

Society and circumstances change over time, and new situations arise that were not anticipated when a statute was originally written. Interpretation allows for the adaptation of laws to changing conditions without the need for frequent legislative amendments. Sometimes, statutes can be ambiguous or unclear in their wording. The role of interpretation is to resolve these ambiguous situations and provide a clear and consistent understanding of what the law means. Consistent interpretation of statutes is essential for maintaining the rule of law. Courts need to ensure that the law is applied consistently to similar cases, which promotes fairness and predictability within the legal system. Interpreting statutes involved discerning the legislative intent behind a particular law. This means understanding what the lawmakers intend when they passed the law and how they intended it to be applied.

Interpretation is crucial for protecting individual rights. It ensures that laws are applied in a manner that respects constitutional rights and freedoms, preventing the abuse of power by government authorities. When two or more statutes or legal provisions appear to conflict with each other, interpretation helps resolve these conflicts and establish a hierarchy of laws to determine which one prevails. Lawyers, judges and other legal professionals rely on the interpretation of statutes to advise their clients, argue cases in court, and make legal decisions. Clear and consistent interpretations provide guidance to those working within the legal system. Interpretation of statutes contributes to legal certainty. When the meaning of the law is well-established and understood, it promotes confidence in the legal system and encourages compliance with the law.

The interpretation of the Constitution of India holds paramount significance as it upholds the rule of law, protects individual rights and freedoms, balances the powers of the three branches of government, and ensures the distribution of powers between the central and state governments. This interpretation also promotes social justice, allows for the evolution and adaptation of the Constitution to contemporary issues,

and safeguards principles such as federalism, secularism, and pluralism. It serves as a vital check against the abuse of government power, promotes consistency and fairness in legal matters, and instills public confidence in the legal and political system, playing a crucial role in upholding India's democratic values and principles of justice. The Supreme Court and High Courts in India play a central role in this process through their judgments and decisions.

The Supreme Court of India has been a central and dynamic institution in interpreting the Constitution of India since its inception in 1950. Over the years, it has assumed a range of roles and functions that have significantly shaped the legal and political landscape of the country. As the ultimate guardian of the Indian Constitution, the Court wields the authority to ensure that all laws, including constitutional amendments, conform to the Constitution's provisions. In this capacity, it has not hesitated to strike down laws and amendments it deemed unconstitutional, ensuring that the core values of the Constitution remain intact.

The protection of fundamental rights has been one of the Court's most vital functions. Landmark cases like **Kesavananda Bharati v. State of Kerala** (1973) established the basic structure doctrine, which limits the amending power of the legislature and safeguards fundamental rights. Furthermore, the Court has progressively interpreted fundamental rights in a broader and more inclusive manner, extending protection to a wide range of individual freedoms.

Another critical aspect of the Court's role is its power of judicial review. It has consistently reviewed the constitutionality of laws, executive orders, and government actions, often striking down those it found to be unconstitutional. Additionally, the Court has interpreted Directive Principles of State Policy, guiding and influencing policy decisions in areas such as social justice, environmental protection, and welfare measures.

The Supreme Court has also played a pivotal role in protecting the rights of minorities, ensuring that the cultural, educational, and religious freedoms of religious and linguistic minorities are upheld. It has resolved disputes related to federalism and center-state relations, promoting a harmonious relationship between the central and state governments.

Furthermore, the Court's involvement in environmental and public interest litigation has been notable. It has taken suo-motu cognizance of issues affecting the environment and the public, delivering judgments that have had a far-reaching impact on environmental protection and sustainable development.

Addressing gender discrimination and promoting gender equality have been additional facets of the Court's role. It has made significant strides in women's rights, domestic violence cases, and discrimination, contributing to social progress.

In the domain of economic and commercial matters, the Supreme Court has been actively involved, interpreting aspects of the Constitution related to taxation, property rights, and economic policies.

The Supreme Court's role in interpreting the Indian Constitution has evolved and expanded, adapting to the changing needs and aspirations of Indian society. Its judgments have not only shaped legal jurisprudence but have also had a profound impact on public policy, governance, and the protection of individual rights and freedoms. The Court's independence and authority make it a crucial institution in upholding the rule of law and democratic principles in India.

Having established the necessity of interpretation of statutes and discussed the role of the Judiciary in interpreting the Constitution of India, in the present paper I am looking forward to discuss two most important schools of interpretation in Constitutional Law Jurisprudence. These are –

1. Originalist School of Interpretation;
2. Living School of Interpretation.

The meaning and scope of these schools of interpretation will be discussed under the respective chapters further. Such differentiation is made on the point of consideration that is the extent of interpretation power that vests with the judiciary, such interpretation that gives rise to the debate of Judicial Activism and Judicial Over-reach.

2. Scope and Limitation

The present study extends its scope to study the above-mentioned Originalist School of Interpretation and Living School of Interpretation. The researcher limits the study of the schools with the interpretation of the landmark decisions given by the Hon'ble Court in the cases of **Kesavananda Bharati v. State of Kerala** and **Justice K.S. Puttaswamy (Retd.) and Anr. vs. UOI** with respect to the respective schools of interpretation.

Chapters

i. Originalist School of Interpretation

The Originalist School of Interpretation is a judicial philosophy that emphasizes interpreting a constitution based on its original meaning at the time it was adopted. Originalists argue that the text's original public meaning or the intent of the framers and ratifiers should guide the interpretation of the constitution.

The different forms of originalism in Constitutional Law are as follows –

1. Original Intent
Original intent originalism seeks to determine and follow the specific intentions of the framers of the constitution. The propounders argue that understanding the framers' subjective intent is essential for interpreting and applying the constitution. They may look to the historical records of debates and writings to discern this intent.
2. Original Meaning
Original meaning originalism focuses on the understanding of the words and phrases in the constitution as they were commonly used and understood by the general public at the time of adoption. This approach looks to the text's public meaning rather than the specific intent of the framers.
3. Textualism
Textualists in constitutional law emphasize a strict reading of the constitutional text, regardless of historical context. They argue that the plain language of the constitution should be followed, and they may not necessarily seek to uncover the historical intent or meaning.
4. Public Meaning Originalism

This approach in constitutional law places emphasis on the text's original public meaning, considering how a reasonable person of that era would have understood the language used in the constitution.

To understand the Originalist School of Interpretation in the Indian Constitutional Law context the landmark case law that will be discussed is *Kesavananda Bharati v. State of Kerala*.

Kesavananda Bharati v. State of Kerala

- Brief facts about the case:

This case was filed challenging the legality of the Kerala Land Reforms Act, 1963, amidst the ruckus revolving the then Government's decision to bring in the laws regarding the acquisition of land with the objective of social welfare and bringing about the socio-economic equality.

The primary issue in the case was the interpretation of Article 368 of the Indian Constitution, which deals with the power to amend the Constitution. *Kesavananda Bharati's* argument was that there were implied limitations on this power. The case raised the fundamental question of whether Parliament had unlimited authority to amend the Constitution, including altering its basic structure, or if there were inherent and unamendable features of the Constitution. The petitioner contended that certain "basic features" of the Constitution, such as the principles of democracy, secularism, federalism, and the separation of powers, were beyond the scope of amendment by Parliament. The case also involved complex arguments related to the doctrine of judicial review, federalism, and the relationship between fundamental rights and constitutional amendments.

The judgement in this particular case gave the Doctrine of Basic Structure to the interpretation of the Constitution of India.

- Originalist Interpretation:

Many argue that having given the Doctrine of Basic Structure the Judiciary has showed Judicial Over-reach and has crossed the boundaries of scope of interpretation going against the textual meaning of the Constitution.

Others opine that since the Constitution of India mentions no such words as "Basic Structure" in text, it is not Originalist Interpretation but Living Interpretation which is much broader than the former.

My observations while studying the jurisprudence of the *Kesavananda Bharati* Judgement brought me to the conclusion that the interpretation done in the present case in fact belongs to the Originalist School. It, prima facie, may appear that the Originalist School equates with the literal interpretation kind, however, it does not. Mere fact that we are talking about the interpretation of the Constitution, limiting it to Literal Interpretation or Textual Interpretation is very wrong. The Constitution is such a statute that impacts the lives of people more closely than any other statute and hence it becomes very important to be thorough while interpreting the Constitution. In context of India, the right of having the protection of something so primary as life flows from the Constitution.

Doctrine of Basic Structure is not an alien concept in the Constitutional Law Jurisprudence. The German Constitution has the "Eternity Clause" which is similar to the Doctrine of Basic Structure in essence.

Now, the judges in this case went ahead and understood the intent of the framers of the Constitution rather than sticking to the strict textual meaning. While deciding whether the Parliamentary right of amendment is absolute the Court discussed the Primary Constituent Power and Secondary Constituent Power. The power under Article 368 of the Constitution is a Secondary Constituent Power and the power of the Constituent Assembly to actually frame the Constitution was the Primary Constituent Power. Thus, it was decided that as the power of amendment (Article 368) flows from the document which is a result of the Primary Constituent Power that vests with the Constituent Assembly, this fact puts the restrictions on the power of amendment of the parliament.

Therefore, even though the language of Article 368 does not impose visible restrictions on the power of the Parliament, the distinction of powers as Primary and Secondary puts implied restriction on the power, which was the intent of the framers. It was also established that the words "...the Constitution stands amended" shows how the power of amendment gives the power to bring amendments to the existing provisions or changing the language of provisions as the requirement of the hour and not to change the Constitution in its soul, as in, the basic pillars on which the document stands, which was termed as Basic Structure in the present judgement. The Doctrine of Basic Structure just brings the form to the intent of the framers for better understanding of a layman and does not add anything to the already existing Constitution. Thus, it is not judicial-overreach in any sense, it is pure interpretation that serves the purpose of making it simpler to understand the document (Statute/Constitution) and the intent of the framers of the document (Statute/Constitution).

ii. Living School of Interpretation

The concept of a "living constitution" or "living constitutionalism" shares many similarities with the broader principles of the living school of interpretation in constitutional law, although it is not referred to by this exact term. In India, constitutional interpretation recognizes that the Constitution is a living document that can adapt to the evolving needs of society.

Key aspects of this concept in the Indian context include:

1. Dynamic Interpretation:

The Indian Constitution is considered dynamic and adaptable, with its provisions interpreted in light of contemporary social, economic, and political developments.

2. Expanding Fundamental Rights:

Indian courts, particularly the Supreme Court, have taken a proactive role in expanding the scope of fundamental rights to keep pace with changing societal values. This includes recognizing new rights and liberties that may not have been explicitly mentioned in the original text.

3. Judicial Activism:

The Indian judiciary has played a significant role in protecting individual rights and ensuring that the Constitution is a living and evolving document. This often involves judicial activism to address social and political issues.

4. Balancing Principles:

Indian courts, while expanding individual rights and interpreting the Constitution in a contemporary context, also recognize the need to balance the protection of rights with other constitutional values, such as public order and the interest of the state.

5. Environmental and Social Justice:

The Indian judiciary has been involved in interpreting the Constitution to address environmental concerns and issues related to social justice, such as reservations for historically disadvantaged groups.

6. Evolution of Federalism:

India's federal structure has evolved over the years, with the interpretation of constitutional provisions related to the distribution of powers between the central and state governments adapting to changing circumstances.

7. Judicial Discretion:

Critics of this approach argue that it may grant judges significant discretion in interpreting the Constitution, potentially leading to judicial overreach or activism.

The concept of a living constitution in India has been instrumental in ensuring that the Constitution remains relevant and responsive to the needs of a diverse and rapidly changing society. It allows the Constitution to continue serving as a framework for governance while accommodating new challenges and aspirations. However, as in any legal system, the balance between a living constitution and judicial restraint is a subject of ongoing debate and discussion within the Indian legal and political landscape.

To understand the Living School of Interpretation in the Indian Constitutional Law context the landmark case law that will be discussed is Justice K.S. Puttaswamy (Retd.) and Anr. vs. UOI.

Justice K.S. Puttaswamy (Retd.) and Anr. vs. UOI

- Brief about the case:

The case of **Justice K.S. Puttaswamy and Arn. V. Union of India** is a landmark judgement delivered by the Supreme Court of India in 2017. The case is also commonly referred to as the "Aadhaar case" as it primarily revolved around the constitutional validity of the Aadhaar program, a biometric identification system in India.

The case was initiated through a batch of petitions challenging the constitutionality of the Aadhaar program, which aimed to provide a unique identification number to all residents of India. The petitioners, led by Justice K.S. Puttaswamy, argued that Aadhaar violated the fundamental right to privacy as it involved the collection and storage of biometric and demographic data, potentially infringing on individuals' privacy.

Major issues involved in the case were Right to Privacy, Aadhaar's Constitutionality, Data Security and Misuse.

The Supreme Court in the judgement made several significant pronouncements. The Court recognized that the right to privacy is indeed a fundamental right under the Indian Constitution, reaffirming its importance in safeguarding personal freedoms. While upholding the constitutional validity of Aadhaar as a tool for government welfare and subsidy schemes, the Court imposed several restrictions and safeguards to protect individuals' rights and privacy. The judgement mandated that Aadhaar could not be made mandatory for various services, such as bank accounts and mobile phone connections, and limited its use to certain government welfare programs. The Court emphasized the need for a strong data protection framework in India and the importance of data security and privacy safeguards.

This judgement recognized the Right to Privacy as Fundamental Right under Article 21 of the Constitution of India.

- Living Interpretation:

In the continuing context of the Originalist interpretation, many would argue that going by the theory of originalist interpretation and its application to the Kesawananda Bharati judgement, the same would apply to the Puttaswamy Judgement because it is similar. However, it is important to understand that even with the contextual similarity, the themes of the judgements are totally different. While in the former the Court curated a specific term just to make it convenient for the interpreters to understand the original intent of the framers, the latter has made a broader interpretation of the already existing Fundamental Right under Article 21 and has created a new Right while doing so.

Time and again the judiciary has made the interpretation of Article 21 in a broader sense. The Court, in Special Reference No. 1 of 2000, observed that liberal and visional interpretation is necessary to interpret the provisions of the Constitution. The reason being that the old articles of the Constitution meet new challenges of life, if new situations are encountered, which eventually happens, the law needs to evolve.

As with time the society felt the need for special recognition of new rights, for example, Right to Education, Right to Information, and in this case, Right to Privacy, the ambit of Article 21 has been expanded to incorporate these rights. This is a living interpretation as it shows how the Constitution of India is a living document which while respecting the intent of the framers, is not afraid for adapting to the new ways of the society.

3. Findings and Conclusion

The major finding from the above paper is that the Originalist School of Interpretation and the Living School of Interpretation are not opposites. They are different. They both make broad interpretation. While the Originalist School makes broad interpretation so as to understand the intent of the Framers, the Living School of Interpretation makes such broad interpretation that it may create a new right.

It is said that interpretation of statutes has to be done very carefully so that the original intent of the framers is respected, the division of powers is respected and the best interpretation is also done. Having said this, the Supreme Court has not restricted itself while making the interpretation of the Constitution. While interpreting the Constitution of India the Court has to be liberal. Constitution is not like any other Statute. It has a very great impact on the lives of people, we can say that it directly impacts the life of the people, one of the reasons being the Fundamental Rights which are a reflection of the Human Rights.

References

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