

"The judiciary is beginning to interpret the Constitution in line with its revolutionary and transformative potential."

The Constitution of India came into force 70 years ago, on January 26, 1950. The enactment of the Constitution was an ambitious political experiment — with universal adult franchise, federalism in a region consisting of over 550 princely States, and social revolution in a deeply unequal society. However, it was equally a unique achievement in terms of constitutional design. Republic Day, especially this year, therefore provides us an opportunity to take a step back from political contestations about the Constitution and consider how the text has been interpreted by the courts over the last seven decades.

Text as phase one

In its early years, the Supreme Court adopted a textualist approach, focusing on the plain meaning of the words used in the Constitution. *A.K. Gopalan v. State of Madras* (1950) was one of the early decisions in which the Court was called upon to interpret the fundamental rights under Part III. The leader of the Communist Party of India claimed that preventive detention legislation under which he was detained was inconsistent with Articles 19 (the right to freedom), 21 (the right to life) and 22 (the protection against arbitrary arrest and detention). The Supreme Court decided that each of those articles covered entirely different subject matter, and were to be read as separate codes rather than being read together.

Amongst the most controversial questions in Indian constitutional law has been whether there are any limitations on Parliament's power to amend the Constitution, especially fundamental rights. In its early years, the Court read the Constitution literally, concluding that there were no such limitations.

Phase two, the structure

In the second phase, the Supreme Court began exploring other methods of interpretation. Appeals to the text of the Constitution were gradually overtaken by appeals to the Constitution's overall structure and coherence. In the leading case of *Kesavananda Bharati v. State of Kerala* (1973), the Court concluded that Parliament's power to amend the Constitution did not extend to altering its "basic structure" — an open-ended catalogue of features that lies within the exclusive control of the Court. When Parliament attempted to overturn this decision by amending the Constitution yet again, the Court, relying on structuralist justifications, decisively rejected that attempt.

In this phase, the Court also categorically rejected the Gopalan approach in favour of a structuralist one in *Maneka Gandhi v. Union of India* (1978). Through this decision, the Court conceived of the fundamental rights as a cohesive bill of rights rather than a miscellaneous grouping of constitutional guarantees. The right to life was incrementally interpreted to include a wide range of rights such as clean air, speedy trial, and free legal aid. This paved the way for the Supreme Court to play an unprecedented role in the governance of the nation.

What was common between the first two phases of the interpretive story was that significant decisions involving the interpretation of the Constitution were entrusted to Constitution Benches (comprising five or more judges of court) and were carefully (even if incorrectly) reasoned. There was limited scope for precedential confusion, since matters which had been decided by Constitution Benches and which demanded reconsideration were referred to larger Constitution Benches.

Eclecticism as phase three

In the third phase, the Supreme Court's interpretive philosophy turned far more result-oriented than it had ever been. The Court often surrendered its responsibility of engaging in a thorough rights reasoning of the issues before it. Two factors underpinned this institutional failure. First, the changing structure of the Court, which at its inception began with eight judges, grew to a sanctioned strength of 31; it is currently 34. It began to sit in panels of two or three judges, effectively transforming it into a "polyvocal" group of about a dozen sub-Supreme Courts. Second, the Court began deciding cases based on a certain conception of its own role — whether as sentinel of democracy or protector of the market economy. This unique decision-making process sidelined reason-giving in preference to arriving at outcomes that match the Court's perception.

The failure to give reasons contributed not only to methodological incoherence but also to serious doctrinal incoherence and inconsistency across the law. This can be best described as panchayati eclecticism, with different Benches adopting inconsistent interpretive approaches based on their conception of the Court's role, and arriving at conclusions that were often in tension with one another. The imagery that panchayati eclecticism is meant to invoke is that of a group of wise men and women (applying the analogy, sub-Supreme Courts), taking decisions based on notions of fairness that are detached from precedent, doctrine and established interpretive methods.

Phase four, purpose

We are currently in the midst of transitioning from the third phase of constitutional interpretation to the fourth. In the fourth phase, the Court has acknowledged as critical to its interpretive exercise the purpose for which the Constitution has been enacted. Many Constitutions attempt the task of entrenching a political compromise between the incumbents and challengers of the day. India's Constitution, at its very inception, was different. In enacting the Constitution, the founders of our Republic expressed a sense of unease with the status quo and raised expectations of root-and-branch social revolution and transformation. The Court is now beginning to interpret the Constitution in accordance with its revolutionary and transformative potential.

With about a dozen significant Constitution Bench decisions from the Supreme Court since September 2018, there has been a renaissance in decision-making by Constitution Benches. This includes the Court's decisions striking down Section 377 and the criminal offence of adultery, and including the office of the Chief Justice of India within the scope of the Right to Information Act.

However, facets of phase 3 continue to linger on in the courts. Cases that involve substantial questions of interpretation of the Constitution — such as the cases concerning the National Register of Citizens and the electoral bonds scheme — are still being adjudicated upon by benches of two or three judges. There remains a latent risk, therefore, that the gains made in the early days of phase four could be lost, and we could slide back to panchayati adjudication once again.

Expected Questions (Prelims Exams)

1. Consider the following statements:

1. Article 22 deals with protection against arbitrary arrest and detention.
2. The Court has declared the A.K.Gopalan vs. State of Madras (1950) case is related to Part III.
3. The Kesavanand Bharati vs. State of Kerala (1974) case deals with the basic structure of the Constitution.

Which of the above statements are correct?

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| (a) Only 1 | (b) 1 and 2 |
| (c) 1 and 3 | (d) Only 3 |

Note: Answer of Prelims Expected Question given on 25 Jan., is 1 (d)

Expected Questions (Mains Exams)

'The Indian Constitution is a dynamic document, so its form and scope have been changing, in which the role of the Supreme Court has been paramount.' Explain this statement with the help of examples. (250 words)

Note: - The question of the main examination given for practice is designed keeping in mind the upcoming UPSC main examination. Therefore, to get an answer to this question, you can take the help of this source as well as other sources related to this topic.