

Unit V

I. Interpretation of the Constitution

II. Repeal

III. Repugnance

IV. Retrospective Doctrine

Interpretation of the Constitution

The Constitution is the very framework of the body policy: its life and soul; it is fountain-head of all its authority, the main spring of all its strength and power. The executive, the legislature and judiciary are all its creation and derive their sustenance from it.

The Constitutional law differs profoundly from ordinary law. It is unlike ordinary law which can be at anytime altered or repealed. The Constitution is not built for present nor it reflects past only it is built for the future. It is the mechanism under which laws are to be made and not merely an Act to declare what the law is to be. It is well settled that a Constitution must not be interpreted in a narrow sense and the construction which is most beneficial to the widest possible amplitude of its power must be adopted. In *Chicago R Co v. Swanger* 137 Fed 783 it was laid down:

A written Constitution is to be interpreted and effect given to it as a paramount law to which all other laws must yield. It is equally obligatory on individual citizens and on all departments of government, including the legislature and judiciary.

In *Fatechand Himatlal v. State of Maharashtra* 1977 Mah LJ 205, Krihna Iyer, J. laid down:

A Constitution is a documentation of the founding faiths of a nation and the fundamental directions for their fulfillment. So much so, an organic, not pedantic, approach to interpretation, must guide the judicial process. The healing art of harmonious construction, not the tempting game of hairsplitting promotes the rhythm of the law.

According to Rascoe Pound, the Constitution is not a glorified police manual; Constitutional provisions lay down great principles to be applied as starting points for legal and political reasoning in the progress of society. The principles established by the Constitution are not to be interpreted strictly according to the literal meaning of the words used by the framers of the Constitution as if they lay down rules. Interpretation of Constitutional principles is a matter of reasoned application of rational precepts of conditions of time and place.

Justice Holmes in *Gompers v. US* 233 US (1914) observed:

“..... the provisions of the Constitution are not mathematical formulas having their essence in their form; they are organic living institutions.... Their significance is vital

and not formal ; it is to be gathered not simply by taking the words and a dictionary, but by considering their origin and line of their growth”.

John Marshall, in *Dartmouth College v. Woodward* (1819) 4L ED 629, laid down that without doing violence to the language a Constitutional provision should be given a fair, liberal and progressive construction so that its true object might be promoted. In *re, C.P. and Berar Sales of Motor Spirit and Lubricants Taxation Act, 1938* AIR 1939 FC 1, Gwyer, C.J., observed that a Constitution must not be construed in a narrow or pedantic sense and construction most beneficial to the widest possible amplitude of its powers must be adopted. Chief Justice emphasized that a broad and liberal spirit should inspire those whose duty is to interpret the Constitution.

In *Special Reference No.1 of 2002* (2002) 8 SCC 237, it was observed that liberal and visional interpretation is necessary to interpret the provisions of the Constitution. The reason given was that the old articles of the supreme lex meet new challenges of life, the old pillars suffer new stresses so the court has to adopt the law and develop its latent capabilities if novel situations are encountered.

Please note refer to cases:

Airport Authority case;

E.P. Royappa;

Maneka Gandhi, etc.

Some Broad Principles of Constitutional Interpretation

I. Too much verbalism to be avoided

The judicial mind must rise above verbalism and explore the meaning of meanings and adopt that construction which goes to the root of the matter. Plainly stated that the judge should endeavour to interpret the words in such a manner that even though the words belong to the old order, the sense must radiate the new order. This is because the world of yesterday is not same as of today and the words grow with the world.

II. Special purpose to be the aim of Constitutional Interpretation

In Constitution, there is a bill of rights guaranteeing citizens the enjoyment of certain fundamental rights subject only to reasonable restrictions. It is the courts function to secure justice to citizens against any social or economic injustice committed by an individual or by the government itself. The court should in fulfillment of the Constitutional obligation, extend protection to the weaker sections against all sorts of exploitation.

III. Judges to play a creative role

A Constitution is a living organism and should be viewed upon by the judges as such. In *Sunil Batra v. Delhi Adm.* AIR 1978 SC 1675, Krishna Iyer, j., has said that the judges should change their stance in relation to changes that come upon the society with the change of times. They should feel the throb of the pulsating life of their society and to interpret the law to meet the challenge of the changing time.

Please note also refer to Doctrine of pith and substance, Harmonious construction, Colourable Legislation and Severability.