

International Journal of Legal Enforcement



Volume 1 Issue 1

|February 2021|

Email: editorialboard.ijle@gmail.com

Website: www.internationaljournaloflegaleenforcement-ijle.com

About Us:

International Journal of Legal Enforcement is an online peer review journal provide dedicated to express views on legal and socio legal aspects. This platform also shall ignite the initiative and desire of the young students. We also provide exclusive review by our Advisory Board for the papers submitted to us. We believe humanity is basic thing to be involved in any law. We do not charge any publication charge for online publications. We process to bring out the analysis and thoughts of every socio legal and legal matters from the young powerful minds. Law can be fulfilled as Law only when there is humanity in it.

With this thought we hereby present you,
International Journal of Legal Enforcement

SUPREME COURT AS AN ULTIMATE INTERPRETER OF THE CONSTITUTION.

-M. Arifa Thasneem

INTRODUCTION:

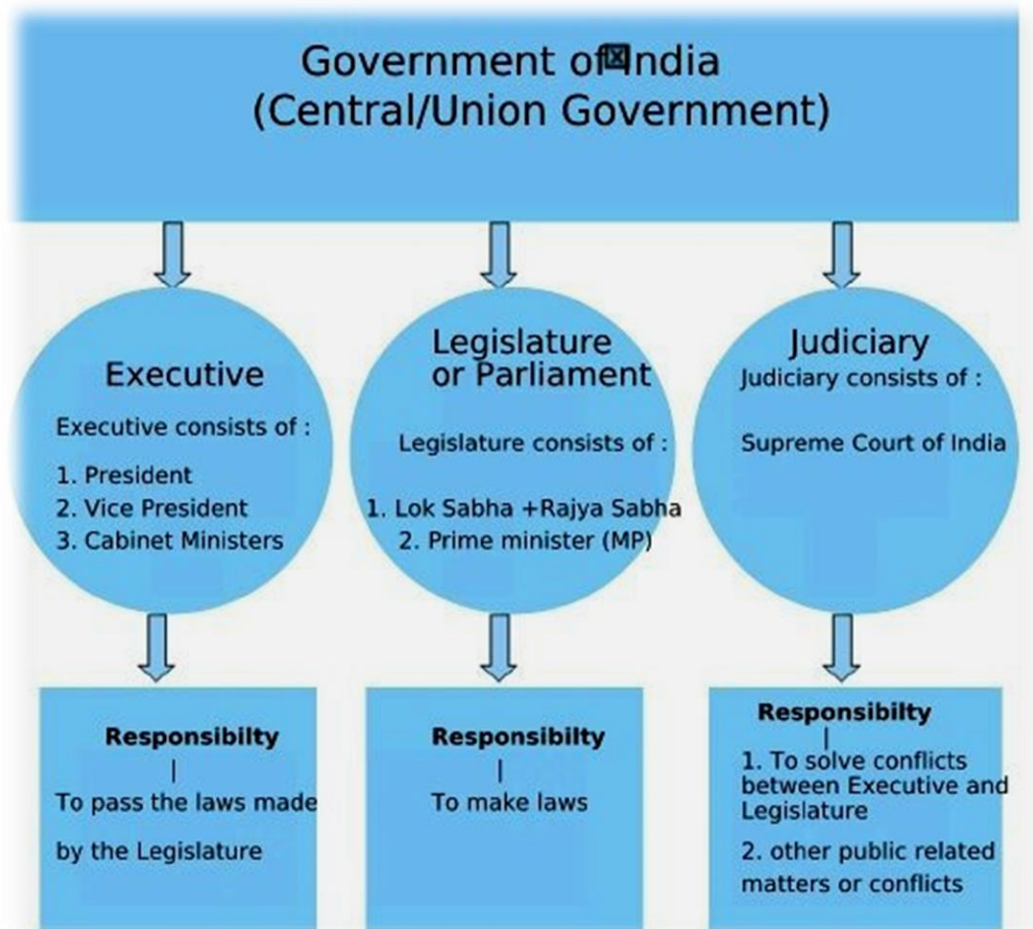
In the words of Riker, 'Federalism is a political organization in which the activities of government are divided between regional governments and a central government in such a way that each kind of government has some activities on which it makes final decisions'¹. By going through this definition, we can understand that the structure of Indian state is neither a unitary nor a federal system. The three main organs of India [LEGISLATURE, EXECUTIVE AND JUDICIARY] will explain the structure of India. Under these main organs the Legislature and Executive will divide their powers between union and state, but in the judiciary branch there will be neither union judiciary nor state judiciary and only the hierarchical structure will define the judiciary. That's why India is not considered as a purely federal state but only a QUASI-FEDERAL state. So, in India we do only have higher judiciary [Supreme Court and High Courts] and Subordinate judiciary [Lower courts] which are collectively known as INDIAN JUDICIARY. In Indian judiciary the Supreme Court occupies the top most position which is supreme. Likewise, the CONSTITUTION is considered as the supreme law of India and no one is above the law. So, whenever the conflict arises in the provisions of constitution the Supreme Court will interfere to interpret the constitution and to resolve the issue. In this research study we will get to know 'The role of Supreme Court in interpreting the constitution'. Judiciary is one of the most important organs in functions of a state. As we already know India is not a purely federal but Quasi-Federal state, so in India we do only have subordinate and higher judiciary which is called Indian Judiciary. In the hierarchy of the Indian Judiciary the Supreme Court occupies the top most position in the hierarchical structure. Similarly, Indian Constitution occupies the basic structure to form every other law which is also known as THE SUPREME LAW OF INDIA. The Supreme Court will hear both original jurisdiction [A.32] and appellate jurisdiction. The Supreme Court has the wide discretionary power to hear any

¹ Perspectives on Federalism, Vol. 5, issue 3, 2013

special appeals from any courts except armed services. It also functions as a Court of record. Indian constitution provides the fundamental rights for the citizen which is a basic structure of the constitution. Constitution is not come from the top but from the base that's why it is often describes as the "Mother of Every Law". The purpose of this study is to analyze the relationship between the Supreme Court and the constitution of India, and also to find out the power of Supreme Court in interpretation with constitution. Though the Independence of judiciary was stated under Art.121 of Indian constitution, but Art.368 says the parliament has the power to "Add, Amend or Repeal" any provisions to the constitution. Now there are so many questions arises such as "whether the Supreme Court exercise the main power in Judiciary or the parliament? How the Supreme Court will interpret the constitution? What are the roles and responsibilities of the Supreme Court Judges in interpretation of Indian constitution while deciding a case? How the Supreme Court defending and protecting the constitution? And, in what circumstances and in which grounds the law will become unconstitutional?". So, in this study we are going to discuss about the hurdles faced by the Supreme Court while interpreting the Constitution and the limitations on interpretation. And also, this study will conclude by finding the importance of constitutional law in Supreme Court with reference to many landmark judgments.

1. LEGISLATURE V. JUDICIARY:

The Doctrine of separation of powers clearly explains the powers of three branch namely legislature, executive and judiciary; the law-making power is vested with the Legislature branch, the power of execution is vested with the Executive branch and the power to interpret the law is vested in the hands of Judiciary branch. The following chart will clearly explain the branches of government in India;



As per this Doctrine the three organs are under obligation not to encroach upon each other's. So, the Doctrine of separation of powers is the BASIC STRUCTURE of constitution². Likewise, they are independent also, Art.121 says about the independence of judiciary which is the parliament should not discuss about the proceedings of Supreme Court and in Art.122 states that the supreme court not to inquire into proceedings of parliament. So finally, the supreme power to "ADD, AMEND OR REPEAL" any provisions in the constitution is in the hands of parliament however the amendment shall not be made on the basic structure of Indian Constitution which includes Art.13 and part III of the Constitution and also the amendment shall be made only in accordance with the procedures laid down in the constitution³. That's why there are contradictions occur between parliament and the Supreme Court while Amending the Constitution. The tussle between two wings began from the very first amendment under the Indian Constitution⁴ then so many amendments came in to force but

² Kesava Nandha Bharathi Sripadagalvaru and ors. V. State of kerala and Anr. (1973) 4 SCC 225; AIR 1973 SC 1461.

³ Art. 368 of the Indian Constitution.

⁴ Champakkam Dorairajan v. state of Madras AIR 1951 SC 226.

in the landmark case of *Kesavananda Bharathi v. State of Kerala*⁵, the concept of BASIC STRUCTURE DOCTRINE was recognized by the Supreme Court for the first time. So whenever the conflict arises the Supreme Court has the sole power on interpreting the Constitution which means the parliament has no authority to interpret the Constitution.

2. “THE SUPREME”:

The word supreme means superior to all other things. Here the word supreme will address the following two,

- I. The Supreme Court.
- II. The Supreme Law [Constitution].

I. THE SUPREME COURT:

The Supreme Court of India is the highest judicial court under the Constitution of India, consisting of the Chief Justice of India and a maximum of 34 judges. The Supreme Court will hear both original and appellate jurisdiction⁶. It has the wide discretionary power to hear any special appeals from any court or tribunal except armed forces which is formerly known as Special Leave Petition [SLP]⁷. The Supreme Court also enjoys some special powers and independence which is provided under the constitution of India⁸.

- **JUDICIAL SUPREMACY:**

Though the legislature has the power to make law, the Supreme Court can overrule the same. In *Supreme Court Advocates on Record Association V. Union of India*⁹ case popularly known as JUDGES TRANSFER CASE. A nine-judge bench of a supreme court by 7:2 majority overruled its earlier judgment¹⁰. The justices of the case observed: “Thus, the executive element in the appointment process has been reduced to minimum and political influence is eliminated. It is for this reason that the word ‘consultation’ instead of ‘concurrence’ was used in the constitution but that was done merely to indicate that absolute discretion was not given to any one, not even to the

⁵ (1973) 4 SCC 225; AIR 1973 SC 1461.

⁶ Art. 131 to 134A of the Indian Constitution.

⁷ Art. 136 of the Indian Constitution.

⁸ Art. 124 to 147 of the Indian Constitution.

⁹ (1993) 4 SCC 441

¹⁰ S.P. Gupta V. Union of India, AIR 1982 SC 149.

chief justice of India as an individual, much less to the executive”¹¹.

II. THE SUPREME LAW [CONSTITUTION]:

The constitution of India is the Supreme Law of India; this document lays down the framework of fundamental political code, structure, duties, procedures and powers of the government and also sets out fundamental rights and duties of citizens. No one can violate the constitution includes parliament because no one is above the law.

✓ RULE OF LAW:

The Constitution of India follows the principles of RULE OF LAW. In Rule of Law the three major principles are followed, they are;

- Supremacy of Law;
- Equality before the law;
- Predominance of Legal Spirit.

Thus the responsibility to protect the constitution is vested in the hands of the Supreme Court and also to prevent the constitution from violation.

3. INTERPRETATION OF CONSTITUTION:

Interpretation or construction of a statute is an age-old process and as old as language. Under two main aspects the interpretation can be done; one aspect carries the concept of meaning i.e., what the word means and another aspect conveys the concept of “purpose” and “object” or the “reason” or “spirit” pervading through the statute. As provided in Art. 367 of the Constitution, the General Clauses Act of 1897 applies for the interpretation of the Constitution. It has been held in many decisions that when a constitutional provision is interpreted, the cardinal rule is to look to the Preamble¹².

➤ SUPREME COURT INTREPRETS THE CONSTITUTION:

¹¹ Dr. J.N. Pandey, Constitutional Law of India (56th ed. 2019), P 554.

¹² Ashoka Kumar Thakur v. Union of India, (2008) 6 SCC 1

The ultimate power to interpret the Constitution can be done only by the Supreme Court. The Supreme Court has interpreted various provisions of the Constitution and has explained scope of those provisions in many landmark judgments. The interpretation can be made in many ways and by applying various doctrines.

a) Constitution – Repugnancy [Art. 254]:

If the laws made by union and state are conflict with each other, then the laws made by parliament only prevail and the state laws will be void to the extent of inconsistent with parliament made laws.

b) Preamble of the Constitution:

The preamble serves several important purposes such as
Indicating the source of the constitution contains the enacting clause which brings into force the constitution, it declares the rights and freedoms which the people of India intended to secure and finally the enforcement date of the constitution. So, it is not amenable because it falls under the basic structure.

c) Constitution not Retrospective:

It was held by majority decision in the case of keshavan madhava menon v. state of bombay¹³, that the constitution had no retrospective effect but was wholly prospective in its operation and as the existing laws, in so far as they were inconsistent with the fundamental rights, were rendered void only to the extent of their inconsistency, they were not void for all purposes but were void only to the extent they came in conflict with the fundamental rights.

d) Fundamental Rights¹⁴:

The Indian constitution describes certain rights as fundamental Rights and places them in a separate part which is PART III of the constitution. Any law made would be void if it infringes any one of the fundamental rights¹⁵.

e) Directive Principles of State Policy¹⁶:

Since the advent of the constitution, the state action must be

¹³ (1951) AIR 1951 SC 128; SCR 228.

¹⁴ Art. 12 to 35 of the Indian Constitution.

¹⁵ Kavalappara Kottarithil V. State of Madras (1960) 3 SCR 887.

¹⁶ Art. 36 to 51 of the Indian constitution.

Directed towards attaining the goals set out in PART IV of the constitution which, when achieved would permit us to claim that we have to set up a welfare state. So, it is to be noted while deciding a constitutional validity cases.

f) Colorable Legislation¹⁷:

CONCEPT – The idea conveyed by the expression “Colorable Legislation” is that although, apparently, the legislature in passing the statute in question has purported to act within the limits of its powers, yet, in substance and in reality, the legislature has transgressed these powers. At the same time, it is not proper to impute a dishonest motive to the legislature of the state and to hold that it acted mala fide and maliciously, in passing the impugned act. The question is of constitutional competence and not of motive¹⁸.

PITH AND SUBSTANCE TEST¹⁹ – The usual test for deciding whether certain legislation is within the competence of the legislature is the test of “pith and substance”. The question whether the legislature has kept itself within the jurisdiction assigned to it or has encroached upon a forbidden field, is determined by finding out the “pith and substance” or the “true nature and character” of the legislation.

INCIDENTAL ENCROACHMENT²⁰ – If the pith and substance of legislation is covered by an entry within the permitted jurisdiction of the legislature, then any incidental encroachment by the legislature in the rival field is to be disregarded.

4. LIMITATIONS ON “THE SUPREME”:

John Emerich Edward Dalberg-Acton, best known for the remark, "Power tends to corrupt, and absolute power corrupts absolutely", which he made in a letter to an Anglican bishop²¹. So there should be no existence of absolute power in one's hand. That's why the constitution lays down the limitation on the powers exercised by the organs of a state. The constitution being the supreme, all the organs owe their existence to it. None can claim superiority over the other and each has to function within the four corners of the constitutional provisions and implied limitations arise there from.

¹⁷ P.M. Bakshi, Interpretation of Statutes(1st ed.2014), P 718.

¹⁸ V. Sessa Varma V. State of Andhra Pradesh, AIR 1960 AP 461.

¹⁹ State of Bombay V. F. N. Balsara (1951) AIR 318; SCR 682.

²⁰ State of Rajasthan V. G. Chawla (1959) AIR 544; SCR Supl.(1) 904.

²¹ https://en.wikipedia.org/wiki/John_Dalberg-Acton,_1st_Baron_Acton#cite_note-lmcone-4

Therefore, implied limitations will send into the exercise of power by all the organs of the constitution.

5. CONCLUSION AND SUGGESTION:

Conclusively this research study found the significant role of the Supreme Court in interpreting the constitution. Interpretation is not a simple task especially while deciding a constitutional validity cases. The judges must be aware of the consequences before making a law as an unconstitutional and void. In constitution the word “shall” mean “may” and the word “may” mean “shall”. That’s why the interpretation needs to be done with more cautious. Though there are many articles for the fundamental rights²², while interpreting the fundamental rights of the Indian constitution the GOLDEN TRIANGLE will always play an important role.



Also we have to keep in mind about the exceptions to the fundamental rights which are otherwise called as “Reasonable Restriction”. It is one of the main limitations while interpreting the fundamental rights of the Indian constitution. However the parliament will exercise the supreme role in ‘law making’ for example if the Supreme Court over rule the law made by parliament after interpreting the constitution and decided the same as unconstitutional. After the judgment passed, the parliament may by law implement another relevant amendment with small modifications. Similarly the judgments of Supreme Court can be reviewed also²³. Hence the Supreme Court is also not exercising the absolute power. Thus the power should not be absolute in one’s hand and at the same time the three major organs should exercise their own powers and not to encroach upon others.

²² Art. 12 to 35

²³ Art. 137 [REVIEW PETITION].