SIGNIFICANCE OF CONSTITUTIONAL INTERPRETATION FOR LEGAL RESEARCH IN INDIA

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ABSTRACT

A Constitution is the supreme source of authority under a modern legal polity. It has to be interpreted broadly and liberally while giving effect to all of its parts, with the presumption that its framers did not intend any conflict or repugnancy. Research, on the other hand, is defined as a systematic study or investigation of existing facts or knowledge related to any subject undertaken with the goal of discovering some truth or reality. The process of discovering the unknown is referred to as research. Legal research is typically defined as any systematic examination of legal rules, principles, concepts, theories, doctrines, decided cases, legal institutions, legal problems, issues, or questions, or a combination of some or all of these. For doing any legal research the constitutional perspective of the concerned law is indispensable and that's why interpretation of constitution becomes pivotal for almost all legal research.

Keywords: Constitution, interpretation, research, legal research, India.

I. INTRODUCTION

A constitution must be construed similarly to any other statute. The general standards for interpreting a written constitution enshrined in a statute are the same as any other statute. As with ordinary statutes, the court looks to the wording used by the architects of the Constitution to determine their intent. When there are multiple reasonable interpretations of a constitutional provision, the one that ensures the Constitution's smooth and harmonious operation is accepted over the one that leads to absurdity, causes practical inconvenience, or renders well-established provisions of existing law null and void. The Constitution must be interpreted liberally and broadly. or repugnancy was intended by its framers. It cannot be construed in a narrow and pedantic sense and the court should be guided with a broad and liberal spirit. While interpreting it is necessary to choose a Constitutional construction that benefits the greatest number of people. Within the framework of the Constitution, Parliament should be given the authority to ensure that the benefits of liberty are shared equally. The Constitution must not be interpreted in a restrictive and pedantic way in order to achieve this goal.

II. MEANING OF LEGAL RESEARCH

In its ordinary sense, research means an act of searching to a matter carefully and closely. In the academic world, research means a systematic study or investigation of existing facts or knowledge related to any matter undertaken with the object of finding some truth or reality. Research is the process of knowing the unknown. The urge to know something beyond the existing knowledge paves the path for research.

Legal research, or law research, usually refers to any systematic study of legal rules, principles, concepts, theories, doctrines, decided cases, legal institutions, legal problems, issues or questions or a combination of some or all of them.[1]

The term ‘legal rules’ is used here to refer to rules recognised and rules recognised and enforceable under any legal system, or rules declared under any constitutional document, or statutory provisions framed by law- making bodies or authorities, or subsidiary legislations framed by administrative bodies or authorities.

[1] Prof. (Dr.) Anwarul Yaqin, *Legal Research and Writing Methods*, p. 2 (LexisNexis, Gurgaon, Haryana, 2008).

The term 'legal principles' means not the actual legal rules but notions, ideas or standards to be followed, that have some significance in the field of law. The terms concept, theories or doctrines are used to refer to ideas, notions, perceptions or abstract principles that represent a particular view or explain the nature purpose or functions of law.[2]

III. GENERAL RULES OF INTERPRETATION OF THE CONSTITUTION

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 favour 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 constitution[3]-

- **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 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 construction which renders either of them inoperative and useless should not be adopted except in the last resort.

[2] Dr. Nirmal Kanti Chakrabarti, *Principles of Legislation and Legislative Drafting,* p. 25 (R. Cambray & Co. Private Ltd., 2014).
[3] M. P. Tandon, *Interpretation of Statutes,* p. 198 (Allahabad Law Agency, Faridabad (Haryana), 2005).

The Hon'ble Supreme Court held in ***Re Kerala Education Bill***[4] 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 the case of ***Quareshi vs. State of Bihar***[5], the Hon'ble 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.

Following general principles are to be followed in interpretation of the Constitution of India

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

IV. DOCTRINES OF CONSTITUTIONAL INTERPRETATION

Following principle/doctrines have frequently been discussed by the courts while interpreting the Constitution:

1. Doctrine of Occupied Field.

2. Doctrine of Pith and Substance.

3. Doctrine of Colourable Legislation.

4. Doctrine of Territorial Nexus.

5. Doctrine of Severability.

6. Doctrine of Prospective Overruling.

[4] (1959) 1 SCR 995.
[5] AIR 1958 SC 731.

7. Doctrine of Eclipse.

1. Doctrine of Occupied Field

The doctrine of occupied field means that when the Union or Central Legislature makes a law on a particular subject and thereby occupies the field, the State Legislatures have no power to enact any law on that field. In the event of their doing so the State Legislation would, to that extent, become unconstitutional. In India, the Constitution grants specific areas of legislation to the Union Parliament and State legislatures in the form of Union List and State List respectively and one cannot encroach upon the powers of the other. It is the Concurrent List, where both the Parliament and State Legislatures have been empowered to enact laws, where the problem comes.[6] Article 254(1) of the Constitution says in this regard that if any provision of a law made by the Legislature of a State is repugnant to any provision of a law made by Parliament which Parliament is competent to enact, or to any provision of an existing law with respect to one of the matters enumerated in the Concurrent List, then, subject to the provisions of clause (2), the law made by Parliament, whether passed before or after the law made by the Legislature of such State, or, as the case may be, the existing law, shall prevail and the law made by the legislature of the State shall, to the extent of the repugnancy, be void. Article 254(2) states that where a law made by the legislature of a State with respect to one of the matters enumerated in the Concurrent List contains any provision repugnant to the provision of an earlier law made by Parliament of an existing law with respect to that matter, then, the law so made by the Legislature of such State shall, if it has been reserved for the consideration of the President and has received his assent, prevail in that State provided that nothing in this clause shall prevent Parliament from enacting at any time any law with respect to the same matter including a law adding to, amending, varying or repealing the law so made by the Legislature of the State.

2. Doctrine of Pith and Substance

The doctrine of Pith and Substance means that if an enactment substantially falls within the powers conferred by the Constitution upon the legislature by which it was enacted, it does not become invalid merely because it incidentally touches upon subjects within the domain of

[6] Doctrine of Occupied Field, *available at:* https://winlegalworld.com/doctrine-of-occupied-field/ (Last visited on September 15, 2021)

another legislature as designated by the Constitution.[7] Consequently, this principle is invoked to judge the legislative competence of a legislature with regard to a particular enactment on the question as to whether that legislature was empowered to make law on that subject as per the entry in the list. Questions frequently come up before the Courts as to whether a law purporting to be made under one or more legislative entries in an authorised list is in fact a legislation within those entries only or is in a law enacted under any other entry in another list in which that legislature is not competent to enact law, and this question is resolved by applying the principle of pith and substance.

In the case of ***Subrahmanyan Chettiar vs. Muthuswamy Goundan***[8], the abovementioned questions arose under Section 100 of the Government of India Act, 1935. While stating that the Privy Council had evolved the rule of pith and substance with respect to the Constitution of Canada when similar questions under Sections 91 and 92 of the British North America Act, 1867 had arisen, Chief Justice Sir Maurice Gwyer observed:

"It must inevitably happen from time to time that legislation, though purporting to deal with a subject in one list, touches also on a subject in another list, and the different provisions of the enactment may be so closely inter-twined that blind observance to a strictly verbal interpretation would result in a large number of statutes being declared invalid because the legislature enacting them may appear to have legislated in a forbidden sphere. Hence, the rule which has been evolved by the Judicial Committee whereby the impugned statute is examined to ascertain its 'pith and substance', or its 'true nature and character', for the purpose of determining whether it is legislation with respect to matters in this list or in that."

The above observation has since become a landmark and has been quoted with approval extensively. It was approved by the Privy Council in ***Prafulla Kunuar Mukherjee vs. Bank of Commerce, Khulna***[9]**.** One of the arguments in that case was that 'pith and substance' is a principle applicable to Canada and Australia and not to India where the framers of the Constitution had correctly foreseen the difficulties and had, therefore, provided three lists and not two clearly designating the areas of legislation by the respective law-making bodies. While rejecting the argument, the Privy Council approved the above quoted observation of Gwyer C. J. and held that clear cut division of legislative powers was not possible and the areas provided

[7] Vepa P. Sarathi, *Interpretation of Statutes*, p. 472 (Eastern Book Company, Lucknow, 2020).
[8] AIR 1941 PC 47.
[9] AIR 1947 PC 60.

under the three lists were bound to overlap. The court agreed that the passage cited above correctly describes the grounds on which the rule is founded, and that it applies to both Indian and Dominion legislation. The enactment must be taken as a whole to determine its true nature and character; its objects and scope as well as the effect of the provisions must always be kept in mind. The Constitution must be taken as an organic occupant and not as a collection of provisions. The question as to whether a legislature has invaded into a territory not its own is a question of substance and not of degree. Once the pith and substance of the legislation is determined and is found to be within its jurisdiction, the extent of invasion outside its purview cannot make the law invalid. The Supreme Court has consistently applied these principles.

In the case of ***State of Bombay vs. F. N. Balsara***[10]**,** the State Legislature enacted the Bombay Prohibition Act, 1949 under Entry of the State List relating to 'Intoxicating liquors, that is to say, the production, manufacture, possession, transport, purchase and sale of intoxicating liquors.' It was challenged on the ground that it was a Union subject under Entry 41 of the Union List relating to 'import and export across customs frontiers' as the prohibit on purchase, use, transport and sale of liquor would affect the import. The Act was held to be valid even though it had an incidental effect on the power of the Union.

In the case of ***Bennett Coleman and Company vs. Union of India***[11]**,** the Hon'ble Supreme Court observed that the tests of pith and substance of the subject matter and of direct and of incidental effect of the legislature are relevant to questions of legislative competence but they are irrelevant to the question of infringement of fundamental rights.

3. Doctrine of Colourable Legislation

The doctrine of colourable legislation really postulates that legislation attempts to do indirectly what it cannot do directly. The doctrine of colourable legislation does not involve any question of bona fides or mala fides on the part of legislature. The doctrine of implication involves reception of a legal inference of something not directly declared.

The following landmark observation of the Supreme Court in the famous case of ***K.C. Gajapati Narayan Deo vs. State of Orissa***[12]**,** aptly describes the doctrine of colourable legislation.

[10] AIR 1951 SC 318.
[11] (1972) 2 SCC 788.
[12] AIR 1953 SC 375.

"If the constitution of a State distributes the legislative powers amongst different bodies, which have to act within their respective spheres marked out by specific legislative entries, or if there are limitations on the legislative authority in the shape of Fundamental Rights, questions do arise as to whether the legislature in a particular case has or has not, in respect of the subject-matter of the statute, or in the method of enacting it, transgressed the limits of its constitutional powers. Such transgression may be patent, manifest or direct, but it may also be disguised, covert and indirect and it is to this latter class of cases that the expression 'colourable legislation' has been applied in certain judicial pronouncements. The idea conveyed by the expression is that although a legislature in passing a statute purports to act within the limits of its powers, yet in substance and in reality it transgresses those powers, the transgression being veiled by what appears on proper examination to be a mere pretence or disguise. In other words, it is the substance and if the subject-matter in substance is something which is beyond the powers of that Legislature to legislate upon, the form in which the law is clothed would not save it from condemnation. The legislature cannot violate the constitutional prohibition by employing the indirect method".

At least four foreign cases have often been quoted with approval by the Indian Supreme Court in this regard. These are ***Union Colliery Company of British Columbia vs. Bryden***[13], ***Attorney General for Ontario vs. Reciprocal Insurers***[14], ***Attorney General for Alberta vs. Attorney General for Canada***[15], and **W.R. Moran Pty Limited vs. Deputy Commissioner of Taxation of New South Wales**[16]**.** In the first case the Privy Council held Section 4 of the impugned Act ultra vires the Provincial Legislature on the ground that prohibition of Chinamen of full age from employment in underground coal workings was not a law relating to 'provincial undertakings' or 'to property and civil rights in province' but to 'naturalisation of aliens', a Dominion subject. In the second case, a Dominion legislation, the Insurance Act, 1910 having been declared ultra vires by the Privy Council on the ground that it tried to control insurance contract within a province a new Section 508(c) was added in the Criminal Code by a Dominion Act of 1917 by which any person who solicited or accepted any insurance risk except on behalf of or as an agent of a company having license under the Insurance Act, 1917 of Canada was made an offence. Rejecting the argument that the Dominion had the exclusive power to

[13] 1899 AC 580.
[14] 1924 AC 328.
[15] 1939 AC 117.
[16] 1940 AC 838.

legislate in the field of criminal law, the Privy Council held that the argument could not be allowed consistently with the principles governing the interpretation of Sections 91 and 92 of the British North America Act, 1867 and the Dominion could not be allowed to use the machinery of the criminal law for the purpose of assuming control of municipal corporation or of provincial railways. Section 508 (c) thus was void as it was an encroachment on the domain of the provincial legislation. In the third case, the question of colourable legislation was a little different in the sense that it was not contained in one statute but in a number of statutes taken together. The Alberta province passed a Bill which was 'An Act respecting the Taxation of Banks'. The Privy Council held the law to be a colourable legislation as it was not related to taxation for provincial purposes under Section 92(2) of the British North America Act, 1867 but was a law under Section 91(15) and (16) the object of which was to prevent the functioning of banks and savings banks in the provinces, both being Dominion subjects. In the fourth case, the question was as to whether a legislative scheme adopted by the common wealth in consultation with States and the States of Australia provided in the Wheat Industries Assistance Acts, 1938 in its preamble was in violation of Section 51(ii) of the Constitution of Australia which empowered the Commonwealth Parliament to legislate on 'taxation; but so as not to discriminate between State or parts of States'. The Privy Council held that there was no disguise and the Act was not a colourable legislation.

In the case of ***State of Bihar vs. Kameshwar Singh***[17]***,*** while the whole law with respect to acquisition of estates was in question, Sections 4(b) and 23(f) of the Bihar Land Reforms Act, 1950 were challenged on the ground that they were colourable pieces of legislation. The former provided that the government was to be the legal holder of all arrears of rent, merged or unmerged in the decree, and half of the same will go to the landholder along with the compensation payable to him. The latter provided that in ascertaining the net assets on which compensation was to be based four to twelve and a half per cent of the gross assets was to be deducted as cost of works for the benefits of raiyats. The Supreme Court by majority of 3:2 held the two provisions to be examples of colourable, legislation, the former on the ground that acquisition of arrears of rent on payment of half of their value was not 'public purpose' within the meaning of the Entries 36 and 42 of List III as they then stood, and the latter on the ground that Entry 42 of List III was applicable to principles on which payment of compensation would be determined. In other words, Section 4(b) providing for taking the whole and returning the

[17] AIR 1952 SC 952.

half only meant taking half which could not be called compensation at all, and Section 23(f) providing for deduction was totally a fictitious item never related to the facts. These two aspects of the case differentiated Kameshwar Singh's case from that of Gajapati.

4. Doctrine of Territorial Nexus

The Constitution of India confers the power upon the state to make laws within its territorial jurisdiction. The state legislature is empowered to make laws for its own purpose. The doctrine of territorial nexus is only applicable when the following conditions are fulfilled. Those conditions are as follows[18]:

(i) The nexus must be legitimate.

(ii) The liability shall be related to the territorial connection.

Whereas Article 245(1) of the Constitution says that subject to the provisions of this Constitution, Parliament may make laws for the whole or any part of the territory of India, and the Legislature of a State may make laws for the whole or any part of the State, according to Article 245(2) no law made by Parliament shall be deemed to be invalid on the ground that it would have extra-territorial operation. Thus, the Constitution confers the power to enact laws having extra-territorial operation only to the Union Parliament and not to the State Legislature, and consequently and extra-territorial law enacted by any State is changeable unless the same is protected on the ground of territorial nexus. If a State law has sufficient nexus or connection with the Subject-matter of that law, the State law is valid even when it has extraterritorial operation. It could, therefore, be said that a State Legislature is also empowered to enact a law having extra-territorial operation subject to the condition that even though the subject-matter of that law is not located within the territorial limits of the State, there exists as sufficient nexus of connection between the two.[19]

The area in which the principle of territorial nexus has been applied most in India is taxation. In the case of ***State of Bombay vs. R.M.D. Chamarbangwala[20],*** a newspaper printed and published at Bangalore had wide circulation in the State of Bombay. Through this newspaper the respondent conducted and ran prize competitions for which the entries were received from

[18] Doctrine of Territorial Nexus, *available at:* https://blog.ipleaders.in/doctrine-of-territorial-nexus/ (Last visited on September 15, 2021).
[19] Ibid.
[20] AIR 1957 SC 699.

the State of Bombay through agents and depots established in the State to collect entry forms and fees for being forwarded to the head office at Bangalore. The Bombay Legislature imposed a tax on the business of prize competitions in the State by enacting the Act of 1952 and amending the Bombay Lotteries and Prize Competitions and Tax Act, 1948. The respondent contended that he was not bound to pay the said tax on the ground of extra-territoriality. The Supreme Court ruled that when the validity of an Act is called in question the first thing for the court to do is to examine as to whether the Act is a law with respect to a topic assigned to the particular legislature which enacted it because under the provisions conferring legislative powers on it such legislature can only make a law for its territory or any part thereof and its laws cannot, in the absence of a territorial nexus, have any extra-territorial operation. For sufficiency of territorial connection, two elements were considered by the court, namely, (1) the connection must be real and not illusory, and (2) the liability sought to be imposed must be pertinent to that connection. It was held that all the activities which the competitor was ordinarily expected to undertake took place in the State of Bombay and there existed a sufficient territorial nexus to enable the Bombay Legislature to tax the respondent who was residing outside the State.

5. Doctrine of Severability

The doctrine of severability means that when some particular provision of a statute offends or is against a constitutional limitation, but that provision is severable from the rest of the statute, only that offending provision will be declared void by the Court and not the entire statute.

It is well-established principle that when the constitutionality of an enactment is in question and it is found that part of the enactment which is held to be invalid can be severed from the rest of the enactment, the part so severed alone shall be declared unconstitutional while the rest of the enactment shall remain constitutional. Naturally, where such severance is not possible, the whole enactment shall have to be held unconstitutional. This doctrine of severability was so explained by the Privy Council in ***Altorney General for Alberta vs. Attorney General for Canada***[21]:

"The real question is whether what remains is so inextricably bound up with the part declared invalid that what remains cannot independently survive or, as it has sometimes been put,

[21] 1939 AC 117.

whether on a fair review of the whole matter it can be assumed that the legislature would not have enacted at all that which survives without enacting the part that is ultra vires."

In the case of ***A.K. Gopalan vs. State of Madras***[22]***,*** the Hon'ble 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.

In the case of ***State of Bombay vs. F.N. Balsara***[23]***,*** eight sections of the Bombay Prohibition Act, 1949 were declared invalid by the court on the ground that they were violative of certain fundamental rights. The Supreme Court held that the parts declared unconstitutional were severable from rest of the Act since they were not inextricably bound up with the remaining provisions of the Act, and ic was different to hold that the Legislature would not have enacted the Act at all without including those provisions which were found to be unconstitutional.

6. Doctrine of Prospective Overruling

The doctrine of Prospective Overruling dictates that a decision made in a particular case would have operation only in the future and will not carry any retrospective effect on any past decisions.

In the case of ***I. C. Golak Nath vs. State of Punjab***[24]***,*** five of the eleven judges, of the Supreme Court laid down the principle of prospective overruling. They were of the view that the Parliament had no authority to amend the fundamental rights. Chief Justice Subba Rao speaking for himself and four of his companion judges posed the questions as to when Parliament could not affect fundamental rights by enacting a bill under its ordinary legislative process even unanimously, how could it then abrogate a fundamental right with only a two third majority and while amendment of less significant Articles of the Constitution require ratification by a majority of States of the Union, how could a fundamental right be amended without this requirement being fulfilled. The learned judge was of the view that Article 368

[22] AIR 1950 SC 27.
[23] AIR 1951 SC 318.
[24] AIR 1967 SC 1643.

laid down only the procedure to amend the Constitution and bestowed no power of amendment which could be found only in the residuary legislative power of Parliament contained in Article 248. He also felt that the word 'law' in Article 13(2) means ordinary law and constitutional law both and consequently the State was not empowered to make any constitutional amendment which takes away or abridges fundamental rights as 'law' includes amendment as well. Thus, while holding that the Parliament was not authorised to amend fundamental rights, these five learned judges jointly declared that the principle would operate only in future and it had no retrospective effect. Therefore, the name 'prospective overruling'. The effect of the decision was that all amendments made with respect to the fundamental rights till the day of the decision in the case would continue to remain valid and effective, and after the date the Parliament would have no authority to amend any of the fundamental rights. The learned judges imposed three restrictions too on the application of the principle-first, that the principle of prospective overruling would for the time being be used in constitutional matters only; secondly, that the Supreme Court alone, and no other court, would have the authority to apply the principle; and thirdly, the scope of the prospectively to be imposed is a matter of discretion for the Supreme Court which is to be moulded in accordance with the justice of the cause or matter before it.

It is clear from the above discussion that the principle of prospective overruling recognises the role of the Supreme Court with respect to both law and policy making. The area of application of this principle is also quite narrow in the sense that it has been applied only is respect of constitutional amendment. The principle also envisages that an overruling decision shall not affect intermediate transactions made on the basis of the overruled decision but will apply to future matters. In other words, a law declared invalid may not have any repercussions on transactions and vested rights already long settled in the past but may operate only with respect to transactions and rights likely to come up in future, that is to say, after the judicial invalidation. While retrospective overruling could often result the harsh results when vested rights are interfered with or when actions have already been taken in accordance with the then existing rules, prospective overruling does away with such hardships. There seem to be at least two valid reasons for the birth of the principle of prospective overruling in India. First, the power of Parliament to amend the fundamental rights, and the First and the Seventeenth Amendments specifically, had been upheld previously by the Supreme Court in ***Shankari Prasad vs. Union of India***[25], and ***Sajjan Singh vs. State of Rajasthan***[26]. Secondly, during

[25] AIR 1951 SC 458.
[26] AIR 1965 SC 845.

1950 to 1867, a large body of legislation had been enacted bringing about an agrarian revolution in India.

7. Doctrine or Eclipse

According to Article 13(1) of the Constitution all laws in force in the territory of India immediately before the commencement of this Constitution, in so far as they are inconsistent with the provisions of this part, shall, to the extent of such inconsistency, be void. Article 13(2) of the Constitution says that, the State shall not make any law which takes away or abridges the rights conferred by this part and any law made in contravention of this clause shall, to the extent of the contravention, be void.[27]

In the case of ***Keshavan Madhava Menon vs. State of Bombay***[28]**,** the questions were as to whether a prosecution commenced under Section 18, Indian Press (Emergency Powers) Act, 1931 before the coming into existence of the Constitution, could be continued even after the presence of Article 13(1) in the Constitution and whether the Act violated Article 19(1)(a) and (2). The Supreme Court, by majority, held that the prosecution would continue because the Constitution could not be given a retrospective operation in the absence of an express or necessarily implied provision to that effect nor was there anything to that effect in Article 13(1) of the Constitution. In the case of ***State of Bombay vs. F.N. Balsara***[29]**,** eight sections of a pre-Constitution legislation the Bombay Prohibition Act, 1949, were held to be unconstitutional in view of Article 13(1) in so far as they prohibited possession, use and consumption of medicinal preparations which was violative or Article 19(1)(f) of the Constitution.

In the case of ***Behranı Khurshed Pesikaka vs. State of Bombay***[30]**,** the petitioner who was prosecuted under the Bombay Prohibition Act, 1949, a pre-Constitution Act, contended that he had merely consumed medicine containing alcohol. Two questions were involved: first, whether the petitioner had the burden to prove that fact; and secondly, what was the legal effect of the decision of the Supreme Court in the Balsara case discussed above wherein Section 13(b) of the Act was held to be violative of Article 19(1). The second question is quite tricky to answer. One view could be that when part of a section is held invalid by the court that does not mean repeal or amendment of the section or addition of a provision or exception to it because

[27] Amita Dhanda, *N. S. Bindra's Interpretation of Statutes,* p. 697 (LexisNexis, 2017).
[28] AIR 1951 SC 128.
[29] AIR 1951 SC 318.
[30] AIR 1955 SC 123.

repeal or amendment in a function of the legislature which is out of bounds for the court. Another view could be that with the declaration of unconstitutionality of the section or a part of it would render the Act void ab initio. A third view could be that declaration of unconstitutionality could be on two grounds; absence of law making power all together, that is to say, legislative incompetence, and violation of constitutional limitations on legislative power. In the first case the law enacted would be a nullity, while in the second case, it would merely be unenforceable. The question remained unanswered and the Supreme Court simply decided that fundamental rights could not be waived as they were matters or policy and not for individual benefit.

In the case of ***Saghir Ahmad vs. State of Uttar Pradesh***[31], the constitutionality of the Uttar Pradesh Road Transport Act, 1951 was in question. The Supreme Court held it to be violative of Article 19(1)(g) and hence void under Article 13(2) observing that an unconstitutional law is a dead law incapable of being vitalised by a constitutional amendment removing the fetters, and that the only course open is its re-enactment.

In the case of ***Bhikaji Narain Dhakras vs. State of Madhya Pradesh***[32]**,** Section 43 of the Motor Vehicles Act, 1939 was amended by the Central Provinces and Berar Motor Vehicles (Amendment) Act, 1947, both being pre-Constitution legislations. The Amendment Act empowered the Provincial Government to take up the entire Provincial motor transport business, and it could run it either in competition with motor transport operator or excluded them totally from this with the coming into being of the Constitution, these became unconstitutional as violative of Article 19(1)(g). By a constitutional amendment of Article 1906) on June 18, 1951 the State was empowered to carry on the business to the notification issued by the Government to this effect was questioned. The respondent Government argued that from January 26, 1950 to June 18, 1951 Section 43 remained void, but the amendment of Article 19(6) on June 18, 1951 made Section 43 valid and operative again. It was held by the Supreme Court that the true position is that the impugned law became, for the time being, eclipsed by the fundamental right. The effect of the Constitution (First Amendment) Act, 1951 was to remove the shadow and to make the impugned Act free from all blemish or infirmity. All laws, existing or future, which are inconsistent with the provisions of Part III of our Constitution are, by the express provision of Article 13, rendered void to the extent of such

[31] AIR 1955 SC 728.
[32] AIR 1955 SC 781.

inconsistency. Such laws were not dead for all purposes. They existed for the purpose of pre-Constitution rights and liabilities and they remained operative, even after the Constitution, as against non-citizens. It is only as against the citizens that they remained in a dormant or moribund condition.

In the case of ***Dularey Lodh vs. III Additional District Judge, Kanpur***[33]**,** the principle of eclipse was applied by the Supreme Court to a section of an Act which rendered. Un-executable an eviction decree already passed against a tenant. The section was amended and given retrospective effect to remove hardship to landlords. It was held that the decree was eclipsed by the original section so that it could not be executed, and after the shadow of the eclipse was removed by the amendment with retrospective effect the decree revived and became executable.

V. CONCLUSION

Constitution is the source of all laws in a legal system. All laws passed by the legislature has to be tested on constitutional parameters. Without constitutional validity a law will be a dead document putting in vein the legislative effort wasting skill, money and most importantly precious time of the legislature.

A researcher must learn the principles of constitutional interpretation while working on any research problem relating to the Constitution or any other legal research problem. Clear understanding of cases involving constitutional interpretation can ease the process of analyzing and deducting desired out comes. Interpretation skill is incomplete without the knowledge of the principles and techniques of constitutional interpretation. It may create difficulties and hurdles for the researcher and may also eventually effect the whole research work. Principles of interpretation of the Constitution is thus an essential requisite in a law research.

[33] AIR 1984 SC 1260.