



## Evolution of Indian Judiciary

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This article is based on **“The four phases of constitutional interpretation”** which was published in The Hindu on 27/01/2020. It talks about the evolution of the Indian Judiciary.

The Constitution of India came into force 70 years ago, on January 26, 1950. Its enactment was an ambitious political experiment as it sought to implement universal adult franchise, **federalism** in a region consisting of over 550 princely states, and social revolution in a society that was divided on the lines of caste, religion, etc.

However, it was equally a unique achievement in terms of constitutional design which has been under the guardianship of Indian Judiciary. Evolution of Judiciary and how it interpreted the Constitution can be understood in the following phases:

### Phase One: Textualist Approach

- In its early years, the Supreme Court adopted a textualist approach. It focused on the **literal meaning of the words** as mentioned in the Constitution.
- For example, in **A.K. Gopalan v. State of Madras (1950) case**, the Supreme Court interpreted the Fundamental Rights under Part III.
  - In this case, the leaders of the Communist Party of India claimed that preventive detention legislation 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 upheld the validity of preventive detention and decided that each of those articles covered entirely different subject matter, and were to be read as separate codes rather than being read together.
- At that time, the most controversial questions pertaining to Indian Constitution had been whether there are any limitations on Parliament's power to amend the Constitution, especially Fundamental Rights.

However, the Court in its early years read the Constitution literally, concluding that there were no such limitations.

## Phase Two: The Structuralist Approach

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- 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 Supreme Court concluded that Parliament's power to amend the Constitution did not extend to altering its **Basic Structure**.
- The Supreme Court in **Maneka Gandhi v. Union of India (1978) case** reversed its earlier stand that it took in A K Gopalan case.
  - In this case, 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**.
  - In order to implement this, the Supreme Court of India, pioneered the **Public Interest Litigation (PIL)** thereby throwing upon the portals of Courts to the common man.

PIL has today acquired unprecedented legitimacy and binding power and is acknowledged as a powerful weapon to combat governmental lawlessness and social oppression.

## Phase Three: Challenge of Heterogeneity

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- The Supreme Court's interpretive philosophy turned far more **result-oriented** but it lacked thorough reasoning of the issues. Reasons for this:
  - The Supreme Court which at its inception began with **eight judges** grew to a sanctioned strength of **34 judges**.
  - However, with the increasing burden of cases, it began to sit in panels of two or three judges, effectively transforming it into a **"polyvocal" group**.
- Further, **Judicial Activism** helped Indian Judiciary to become one of the most powerful judiciaries in the world. However, the **Indian Judiciary has been alleged of Judicial Overreach** (interfering in the domain of executive and legislature), nepotism and protecting itself of any reform under the guise of independence of the Judiciary.

This can be reflected in cases like rendering the **National Judicial Appointment Commission** (99<sup>th</sup> Constitutional Amendment) as ultra vires or **Master of the Roster controversy**.

## Phase Four: Social Revolution and Transformation

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Recently, the Supreme Court has passed many judgments recognising the individual's rights and thereby ushering an era of social transformation. For example:

- **Lifting the ban on entry of women (aged 10-50) inside Sabarimala Temple:**

The Supreme Court held that "Devotion cannot be subjected to gender discrimination" and removed a ban that prevented women between 10 and 50 years of age from entering Kerala's Sabarimala temple.

- **Decriminalisation of Homosexuality:** Supreme Court in 2018 decriminalized homosexuality stated under **Section 377 of the Indian Penal Code.**

- **Adultery Not A Crime:** The Supreme Court unanimously struck down a 150-year-old law that considered adultery to be an offence committed against a married woman by another man. Defined under **Section 497 of the IPC**, adultery law came under sharp criticism for treating women as possessions rather than human beings.

The **Supreme Court declared Section 497 as unconstitutional.** Adultery is no longer a crime but if it leads to someone committing suicide, the act will be treated as a crime - abetment to suicide.

Apart from these, Indian Judiciary has also taken reforms that sought to instil transparency in Indian judicial system like **live streaming of Supreme Court** and **bringing of CJI under RTI**. However, Indian Judiciary should strive to strike a balance between transparency & accountability and maintaining the independence of the Judiciary.

### ***Drishti Mains Question***

The strength to Indian Constitution can be attributed to evolution in Indian Judiciary with changing times. Comment.

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