

# Indian Judicial Doctrines

## Judicial Doctrine

A doctrine is a principle, belief, or position, often held by authorities such as courts. A doctrine can be a rule, a theory or a tenet of law. There are many judicial doctrines applied under the Constitution of India. Some of the most important ones are described in this article.

## Doctrine of Basic Structure

The Basic Structure Doctrine basically contends that the basic structure of the Indian Constitution cannot be abrogated even by a constitutional amendment. It follows that the Parliament cannot enact a law that would alter the basic structure of the Constitution. This doctrine is not mentioned in the Constitution itself and has evolved over time and many Supreme Court judgements.

To know more about the [Basic Structure Doctrine](#) and related cases, click on the linked article.

## Doctrine of Pith and Substance

The Doctrine of Pith and Substance holds that the union and the state legislatures should not encroach upon each other's spheres. This doctrine helps in examining the true nature of a legislation and deciding which list it belongs to, central or state.

Read more on the [Doctrine of Pith and Substance](#) and related SC judgements in the linked article.

## Doctrine of Severability

The Doctrine of Severability or Separability is a doctrine that protects the [fundamental rights](#) enshrined in the Indian Constitution. It derives its validity from Article 13 and states that all laws that were enforced in India before the commencement of the Constitution, inconsistent with the provisions of fundamental rights shall to the extent of that inconsistency be void.

You can get a clearer picture of the [Doctrine of Severability](#) and related cases in the linked article.

## Doctrine of Eclipse

This doctrine states that any law that violates fundamental rights is not null or void ab initio, but is only non-enforceable, i.e., it is not dead but inactive.

Know more about the [Doctrine of Eclipse](#) by clicking on the linked article.

## Doctrine of Laches

This doctrine states that the court will only assist those people who are vigilant about their rights and not those who are not. The underlying principle is that the court should not examine stale cases, because the court is to help an individual or party that is vigilant and not indolent.

For more details on the [Doctrine of Laches](#), click on the linked article.

## Doctrine of Territorial Nexus

According to the Doctrine of Territorial Nexus, laws made by a state legislature are not applicable outside that state, except when there is a sufficient nexus between the state and the object. This doctrine derives its authority from Article 245 of the Indian Constitution. The doctrine states that in order for a state law to have an extraterritorial operation, there must be a nexus between the object and the State. Hence, to invoke the doctrine of territorial nexus, it must be clear that the object is located outside the State's territorial limits, however, it ought to have a territorial connection with the State.

## Doctrine of Casus Omissus

### Background

- A "Statute" is the will of the sovereign legislature according to which the governments function.
- The executive must act and the judiciary in the course of administration of justice must apply the law as laid down by the said legislative will.
- Very often occasions will arise where the courts will be called upon to interpret the words, phrases and expressions used in the statute. In the course of such interpretation, the courts have, over the centuries, laid down certain guidelines which have come to be known as "Rules of Interpretation of Statutes".

### Interpretation and construction

- **Interpretation** is the method by which the true sense or the meaning of the word is understood.
- According to Cooley, "interpretation differs from construction in that the former is the art of finding out the true sense of any form of words; **construction**, on the other hand, is the drawing of conclusions respecting the subjects that are beyond the direct expression of the text".
- The term 'construction' has been explained in **CWT vs. Hashmatunnisa Begum** to mean that something more is being got out in the elucidation of the subject matter than can be got by the strict interpretation of the words used. Judges have set themselves in this branch of the law to try to frame the law as they would like to have it.

### Meaning

- The term 'omissus' means "cases of omission".
- Omission in a statute cannot be supplied by construction.
- A matter which should have been provided in a statute cannot be supplied by the courts.
- A casus omissus cannot be supplied by courts by judicial interpretative process except in the case of clear necessity and when the reason for it's found in the four corners of the statute itself.
- The first and primary rule of the construction is that the intention of the legislature must be found in the word used by the legislature itself.

### Inference

- There is no scope for importing into the statute words which are not there. Such importation would be, not to construe, but to amend the statute. Even if there be a casus omissus, the defect can be remedied only by legislation and not by judicial interpretation.
- It is certainly not the duty of the court to stretch the words used by the legislature to fill the gaps or omissions in the provisions of an Act, as given in *Hiradevi v District Board*.

The following table gives a few important terms and concepts related to the judiciary for the IAS exam. Click on the links to read more about them.

<a href="#">Indian Penal Code (IPC)</a>	<a href="#">Constitutionalism</a>
<a href="#">Constitutional Morality</a>	<a href="#">Code of Criminal Procedure (CrPC)</a>
<a href="#">Civil Procedure Code (CPC)</a>	<a href="#">Judicial Activism</a>
<a href="#">Contempt of Court</a>	<a href="#">Preventive Detention</a>
<a href="#">Advisory Jurisdiction of the Supreme Court</a>	<a href="#">Bail</a>
<a href="#">Juristic Person</a>	<a href="#">Ratio Decidendi and Obiter Dicta</a>
<a href="#">Judicial Overreach</a>	<a href="#">Public Interest Litigation (PIL)</a>
<a href="#">Supreme Court</a>	<a href="#">Important SC Judgements</a>
<a href="#">Original Jurisdiction of the SC</a>	<a href="#">High Courts of India</a>

## Doctrine of Colourable Legislation

This doctrine is a tool used to determine the legislative competence of laws enacted by various legislatures. Therefore, it is a means to implement the [separation of powers](#) and impose judicial accountability. Basically, this doctrine implies that whatever is prohibited directly is prohibited indirectly also. This is intended to bar the legislature from doing something indirectly or covertly what it has been prohibited from doing directly.

## Doctrine of Harmonious Construction

According to this doctrine, a provision of the statute should not be interpreted or construed in isolation but as a whole, so as to remove any inconsistency or repugnancy. The courts must avoid a clash on contradicting provisions and they must construe the opposing provisions so as to harmonize them. When the court is unable to reconcile the differences between opposing provisions, the courts must interpret them in such a manner that both the opposing provisions are given effect as much as possible.

## Doctrine of Incidental or Ancillary Powers

This is an addition to the Doctrine of Pith and Substance. It implies that the power to legislate on a particular issue also includes the power to legislate on ancillary matters that are reasonably connected to that issue or subject. For instance, the power to impose taxes would also include the power to search and seizure in order to prevent tax evasion. Nevertheless, if a subject is explicitly mentioned in a Union or State List, it cannot be said to be an ancillary matter.

## Doctrine of Waiver

According to the Doctrine of Waiver, a person intentionally gives up his right or privilege or chooses not to exercise his right or privilege which are conferred on him by the state. It is the intentional or voluntary relinquishment of a known right. The Supreme Court had held that the fundamental rights of a person cannot be waived off in *Basheshar Nath vs The Commissioner Of Income Tax* (1958).

## Judicial Review

Judicial review is defined as the doctrine under which executive and legislative actions are reviewed by the judiciary.