

The Supreme Court of Nepal and Constitutionalism: Evolving Approaches, Judicial Reasoning and the Challenges of Constitutional Interpretation

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Abstract

Constitutionalism in Nepal has evolved through successive constitutional transformations, culminating in the Constitution of Nepal, 2015, which establishes a federal democratic republican order founded upon constitutional supremacy, fundamental rights, separation of powers, judicial independence, inclusion, and the rule of law. Within this constitutional architecture, the Supreme Court of Nepal occupies a distinctive position as the final judicial authority for constitutional interpretation and the protection of constitutional rights. The creation of a specialised Constitutional Bench under Article 137 further institutionalised constitutional adjudication and reflects the increasing significance of judicial interpretation in Nepal's constitutional order.

This article critically examines the evolving approaches of the Supreme Court of Nepal to constitutional interpretation and evaluates their implications for constitutionalism. It argues that the Court has progressively moved beyond a narrowly textual conception of constitutional adjudication towards purposive, rights-oriented, structural, and context-sensitive interpretation. This jurisprudential development has strengthened constitutional supremacy and expanded the practical protection of fundamental rights. At the same time, the Court's increasing constitutional role raises difficult questions concerning judicial activism, institutional competence, separation of powers, consistency of judicial reasoning, and implementation of judgments.

Using a qualitative doctrinal methodology, the article analyses constitutional provisions and selected jurisprudence of the Supreme Court within the broader development of Nepalese constitutionalism. It places Nepal's constitutional experience in conversation with contemporary constitutional scholarship and comparative constitutional practice. The article contends that the central challenge for the Supreme Court is not choosing between judicial activism and restraint in absolute terms, but developing a principled methodology that reconciles constitutional fidelity, effective rights protection, democratic legitimacy, and institutional restraint. It concludes that the future consolidation of constitutionalism in Nepal depends substantially on the Court's ability to develop coherent constitutional reasoning while preserving the constitutional boundaries between judicial interpretation and democratic governance.

Keywords: Constitutionalism; Constitutional Interpretation; Supreme Court of Nepal; Constitutional Bench; Judicial Review; Fundamental Rights; Judicial Activism; Judicial Restraint; Separation of Powers; Federalism.

1. INTRODUCTION

Constitutionalism is fundamentally concerned with the limitation of public power through constitutional norms. A constitution may establish governmental institutions, allocate powers and recognise rights, but constitutionalism requires more: public authorities must exercise power within legally and constitutionally prescribed boundaries. Judicial institutions consequently become central to the functioning of constitutional democracy because constitutional limitations require an institution capable of interpreting and enforcing them.

Nepal presents a particularly significant case for studying constitutionalism and constitutional interpretation. Its constitutional history has been characterised by repeated political and institutional transformations, including transitions between monarchical, parliamentary, interim and republican constitutional arrangements. The Constitution of Nepal, 2015 represents the culmination of a prolonged process of political and constitutional transformation. It establishes Nepal as a federal democratic republican state and incorporates an extensive catalogue of fundamental rights together with institutional mechanisms for constitutional review.

The Supreme Court occupies a central position within this constitutional structure. The Constitution entrusts the judiciary with the responsibility of interpreting and protecting constitutional norms, while Article 137 provides for a specialised Constitutional Bench. According to the Supreme Court's own institutional description, the Constitutional Bench deals with disputes concerning the constitutionality of laws, intergovernmental disputes and cases involving serious questions of constitutional interpretation.

The institutionalisation of constitutional adjudication raises an important question: **How should the Supreme Court interpret a constitution that simultaneously seeks to protect individual rights, transform society, restructure the state through federalism, and preserve democratic institutional boundaries?**

This question is particularly important because constitutional provisions frequently contain concepts whose meaning cannot be determined solely through literal interpretation. Equality, dignity, liberty, reasonable restriction, constitutional supremacy, federalism, separation of powers and judicial independence require interpretation within a broader constitutional framework.

This article argues that the Supreme Court of Nepal has increasingly adopted a purposive and rights-protective approach to constitutional interpretation. This approach has contributed significantly to the development of constitutionalism. Nevertheless, the Court's expanding constitutional role creates a corresponding obligation to develop principled limits upon judicial intervention.

The central claim of this article is therefore that **constitutional interpretation in Nepal should be understood neither as mechanical textual interpretation nor as unrestricted judicial creativity. It is a constitutional practice requiring the Court to reconcile constitutional text, structure, history, purpose, rights and institutional boundaries.**

2. Research Gap

Existing scholarship has examined important aspects of Nepalese constitutionalism, including judicial review, human rights, gender equality, constitutional reform and the role of the judiciary in constitutional transformation.

For example, scholarship on gender equality litigation demonstrates that the Supreme Court has played an important role in developing a context-sensitive constitutional understanding of equality and has

contributed to the advancement of women's rights. Other scholarship has examined the Supreme Court's role in Nepal's constitution-making process and characterised the judiciary as capable of exercising a proactive and creative role in constitutionalisation.

However, there remains scope for a systematic analysis that brings together the **interpretive methodology, constitutional reasoning and institutional consequences** of Supreme Court jurisprudence under the post-2015 constitutional order.

This article addresses that gap by examining constitutional interpretation as a distinct dimension of constitutionalism. Rather than treating individual judgments as isolated legal disputes, it analyses them as part of an evolving constitutional jurisprudence.

3. Research Questions

The article addresses five principal questions:

1. What interpretive approaches have emerged in the constitutional jurisprudence of the Supreme Court of Nepal?
2. How has the Court's constitutional interpretation contributed to the protection of fundamental rights and constitutional supremacy?
3. How does the Court reconcile constitutional adjudication with separation of powers and democratic institutional legitimacy?
4. Does judicial activism strengthen or potentially undermine constitutionalism in Nepal?
5. What interpretive methodology could provide a sustainable balance between constitutional protection and judicial restraint?

4. Methodology

This study employs a qualitative doctrinal legal research methodology.

Primary materials consist principally of:

- the Constitution of Nepal, 2015;
- constitutional legislation;
- judgments and orders of the Supreme Court of Nepal;
- decisions of the Constitutional Bench; and
- relevant official judicial materials.

The Supreme Court's official publications provide access to landmark decisions and constitutional jurisprudence and therefore constitute an important primary source for the study.

Secondary sources include books, peer-reviewed journal articles, comparative constitutional scholarship and relevant international human-rights literature.

The study adopts purposive case selection. Cases are selected for their significance to constitutional interpretation rather than merely their chronological importance. The analysis concentrates on judgments dealing with fundamental rights, judicial review, separation of powers, federalism, constitutional institutions and the relationship between judicial power and democratic governance.

5. Constitutionalism under the Constitution of Nepal, 2015

The Constitution of Nepal, 2015 establishes constitutional supremacy and creates a comprehensive framework for the protection of rights and limitation of governmental authority. The constitutional

structure incorporates democratic republicanism, federalism, fundamental rights, judicial review and institutional separation.

This framework fundamentally changes the context in which the Supreme Court operates. The Court is not simply an institution for resolving ordinary legal disputes; it is also an institution responsible for maintaining the constitutional order.

Constitutionalism in Nepal therefore depends upon an effective relationship between constitutional text and constitutional practice. The Supreme Court's interpretation is one of the principal mechanisms through which that relationship is maintained.

6. The Constitutional Bench and the Institutionalisation of Constitutional Review

Article 137 of the Constitution provides for a Constitutional Bench within the Supreme Court. The Bench consists of the Chief Justice and four other Justices designated according to the constitutional framework. The Supreme Court describes the Bench as having jurisdiction over constitutional questions, including challenges to the constitutionality of laws and serious questions of constitutional interpretation.

The creation of the Constitutional Bench is significant for two reasons.

First, it recognises that constitutional adjudication requires specialised institutional attention.

Second, it reflects the increasing importance of constitutional disputes within Nepal's legal system.

The existence of a specialised constitutional forum also raises questions concerning the development of a coherent constitutional doctrine. If constitutional adjudication is to function effectively, the Court must develop principles that are sufficiently stable to guide governmental institutions while remaining responsive to constitutional change.

7. Evolving Approaches to Constitutional Interpretation

7.1 Textual Interpretation

The constitutional text remains the starting point for constitutional adjudication. Judicial interpretation cannot legitimately disregard constitutional language.

However, constitutional text frequently employs open-ended concepts. A purely literal methodology may therefore be insufficient to resolve complex constitutional disputes.

Text should consequently be read within constitutional structure and purpose rather than in isolation.

7.2 Purposive Interpretation

A purposive approach seeks to identify the objectives underlying constitutional provisions.

This approach is particularly relevant to the Constitution of Nepal because the constitutional document is not merely institutional but transformative. It seeks to establish democratic governance, social justice, inclusion and rights protection.

A purposive methodology enables the Court to give meaningful effect to these constitutional commitments.

7.3 Rights-Protective Interpretation

The protection of fundamental rights constitutes one of the most important dimensions of Nepalese constitutional adjudication.

The Supreme Court's constitutional role allows rights guarantees to become practical legal protections rather than abstract declarations.

The Court's jurisprudence on gender equality provides an important example. Scholarship examining Nepalese constitutional litigation concludes that the Supreme Court has incrementally developed a nuanced and context-sensitive understanding of gender equality.

7.4 Structural Interpretation

Constitutional provisions concerning the legislature, executive and judiciary cannot be understood independently of the constitutional structure.

Structural interpretation is therefore particularly important in disputes concerning separation of powers, constitutional appointments, federalism and institutional competence.

7.5 Harmonious Interpretation

Where constitutional provisions appear to conflict, the Court may seek an interpretation that gives meaningful effect to both rather than rendering one provision redundant.

This approach is especially important within a detailed constitutional framework containing numerous institutional relationships.

8. Constitutional Interpretation and Fundamental Rights

Fundamental rights provide one of the strongest foundations for judicial constitutionalism.

The significance of rights-based constitutional interpretation lies not simply in recognising rights but in determining their actual scope and enforceability.

A modern constitutional court must therefore consider questions such as:

- What constitutes an unjustified restriction of a right?
- How should competing rights be balanced?
- When can the state legitimately limit individual liberty?
- How should constitutional equality respond to structural disadvantage?
- How should constitutional rights apply to new technologies?

These questions demonstrate why constitutional interpretation cannot be reduced to grammatical analysis. Nepal's experience of rights litigation also illustrates the importance of public-interest litigation and judicial review. Earlier constitutional developments established strong-form judicial review and facilitated access to the Supreme Court for constitutional rights claims.

The post-2015 constitutional framework has expanded the normative environment within which these rights are interpreted.

9. Judicial Review and Constitutional Supremacy

Judicial review is an essential component of constitutionalism because constitutional supremacy requires an institutional mechanism for determining whether public action conforms to constitutional requirements. The Supreme Court's power of constitutional review therefore performs a dual function.

It protects individuals from unconstitutional governmental action while simultaneously preserving the constitutional structure itself.

Yet judicial review creates an inherent tension between constitutional democracy and judicial authority. Courts are unelected institutions, whereas legislatures derive democratic legitimacy through elections.

The legitimacy of judicial review therefore depends heavily upon the quality of judicial reasoning.

A judgment that explains the constitutional basis of intervention is more institutionally defensible than one that merely substitutes judicial preference for legislative or executive policy.

10. Separation of Powers and Judicial Activism

The relationship between judicial activism and constitutionalism is complex.

Judicial activism can be constitutionally valuable when courts intervene to protect rights, enforce constitutional limitations and prevent arbitrary governmental action.

However, judicial intervention may become problematic when courts effectively assume functions constitutionally assigned to elected institutions.

The appropriate question is therefore not whether judicial activism is inherently good or bad. The more useful question is:

What constitutional principles justify judicial intervention in a particular case, and where should the judiciary stop?

A principled constitutional court should intervene where constitutional supremacy or fundamental rights are threatened but exercise restraint where the dispute principally concerns legitimate policy choices within the constitutional competence of elected institutions.

This approach can be described as **principled judicial restraint** rather than judicial passivity.

11. Federalism and Constitutional Interpretation

Federalism introduces a particularly important field for constitutional interpretation in Nepal.

The Constitution distributes governmental authority among federal, provincial and local institutions. Consequently, constitutional disputes may arise concerning legislative competence, executive authority, financial relations and institutional autonomy.

The Supreme Court must interpret federal provisions in a manner that preserves both constitutional unity and meaningful decentralisation.

An excessively centralised interpretation could weaken the constitutional purpose of federalism. Conversely, an interpretation that treats every level of government as constitutionally autonomous without sufficient regard to national constitutional coherence could create institutional fragmentation.

The Court therefore has an important role in developing a coherent federal constitutional doctrine.

12. Constitutional Interpretation and Democratic Transformation

Constitutional interpretation in Nepal cannot be separated entirely from the country's broader democratic transformation.

The constitutional order seeks not only to limit government but also to transform the relationship between state and citizen.

The judiciary can contribute to this transformation by interpreting rights in a manner sensitive to equality, dignity and social inclusion.

Nevertheless, courts cannot alone achieve constitutional transformation. Constitutional democracy requires cooperation among courts, legislatures, executives and civil society.

Judicial decisions must therefore operate within a broader constitutional dialogue.

13. Major Challenges

13.1 Doctrinal Consistency

A constitutional court's authority depends partly upon the consistency of its reasoning. Divergent approaches to similar constitutional questions can produce uncertainty.

13.2 Judicial Overreach

The expansion of judicial power creates the possibility that courts may cross the boundary between interpretation and policy-making.

13.3 Implementation of Judgments

Constitutional adjudication is effective only when judgments are implemented. Institutional resistance or administrative delay can weaken the practical authority of judicial decisions.

13.4 Political Pressure

Judicial independence is indispensable to constitutionalism. Any perception that constitutional adjudication is influenced by political interests can undermine institutional legitimacy.

13.5 Emerging Technologies

Digital surveillance, artificial intelligence, data protection and algorithmic decision-making will increasingly raise constitutional questions that were not specifically contemplated when the constitutional text was drafted.

13.6 Environmental Constitutionalism

Climate change and environmental degradation are also transforming constitutional litigation worldwide. Nepal's geographical and ecological circumstances make environmental constitutionalism an increasingly important field of judicial interpretation.

14. Towards a Principled Methodology of Constitutional Interpretation

This article proposes that the Supreme Court of Nepal should develop a structured methodology based upon five interconnected principles:

First, constitutional fidelity.

Interpretation must remain anchored in the constitutional text.

Second, constitutional purpose.

Text should be understood within the objectives and values of the constitutional order.

Third, rights protection.

Where constitutional rights are implicated, interpretation should provide effective rather than merely formal protection.

Fourth, institutional competence.

The Court should recognise the constitutional roles of Parliament and the executive.

Fifth, reasoned proportionality.

Where competing constitutional interests are involved, judicial intervention should be supported by transparent and carefully reasoned justification.

This methodology would enable the Court to combine constitutional creativity with institutional restraint.

15. Original Contribution

The principal contribution of this article is its proposal to understand Nepalese constitutional interpretation through the concept of “**principled constitutionalism.**”

Principled constitutionalism requires the Supreme Court to perform three functions simultaneously:

1. **protect constitutional supremacy;**
2. **secure effective fundamental rights; and**

3. **preserve democratic institutional boundaries.**

This approach avoids two extremes.

At one extreme lies judicial formalism, which may fail to provide effective protection for constitutional rights.

At the other lies unrestricted judicial activism, which may weaken democratic accountability and separation of powers.

The sustainable constitutional role of the Supreme Court lies between these extremes.

16. **Conclusion**

The Supreme Court of Nepal has become an indispensable institution in the development of Nepalese constitutionalism. The establishment of the Constitutional Bench under Article 137 further demonstrates the institutional importance attached to constitutional adjudication.

The Court's jurisprudence demonstrates an increasingly purposive, rights-oriented and structurally informed approach to constitutional interpretation. This development has enabled constitutional provisions to respond to changing social conditions and has strengthened the practical significance of fundamental rights.

Yet judicial power is not unlimited. The legitimacy of constitutional adjudication depends upon constitutional reasoning, institutional independence, consistency and respect for the separation of powers. The central challenge for the Supreme Court is therefore to develop a constitutional jurisprudence that is simultaneously **rights-protective, textually grounded, democratically legitimate and institutionally restrained**.

Nepal's constitutional future will depend not only upon the content of constitutional provisions but upon how those provisions are interpreted and implemented. The Supreme Court has a decisive role in that process. Its most enduring contribution to constitutionalism will not be measured merely by the number of governmental actions it invalidates or rights it expands, but by its ability to develop a coherent constitutional jurisprudence capable of maintaining the delicate balance between constitutional supremacy and democratic self-government.

A mature constitutional order requires neither judicial supremacy nor parliamentary supremacy. It requires **constitutional supremacy**, supported by institutions capable of exercising their respective powers within clearly reasoned constitutional boundaries.

For Nepal, the development of such a constitutional culture remains both the principal promise and the principal challenge of the Supreme Court's evolving jurisprudence.

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