Subject Name: Constitution Law
Topic Name: Article 13

Table of Content:-

Introduction..... 1
Doctrine of Severability..... 1
Doctrine of Eclipse..... 2
The Doctrine of Eclipse: Its Application to Pre- and Post-Constitution Laws..... 3

Introduction

Article 13 of the Constitution of India addresses laws inconsistent with or derogatory to fundamental rights.

(1) All laws effective in the territory of India prior to the enactment of this Constitution, to the extent of their inconsistency with the provisions of this Chapter, shall be deemed void.

(2) The State is prohibited from enacting any legislation that infringes upon or diminishes the rights granted under this Part. Any law enacted in violation of this provision shall be null and void to the extent of the violation.

(3) For the purposes of this article, unless the context indicates otherwise:

(a) "law" encompasses any ordinance, order, by-law, rule, regulation, notification, custom, or usage having the force of law within the territory of India;

(b) "laws in force" includes legislation passed or promulgated by the Legislature or other competent authority in the territory of India prior to the commencement of this Constitution and not previously repealed, regardless of whether such legislation or any part thereof is then operative in whole or in part in specific areas.

(4) This article shall not apply to any amendment of this Constitution carried out under Article 368.

Doctrine of Severability

The Doctrine of Severability, also known as the Doctrine of Separability, entails that if a particular provision of a statute is found to be unconstitutional, only that offending part should be deemed void, rather than the entire statute. This principle was elucidated in the case of **State of Bombay v F.N. Balsara (1951)** under the Bombay Prohibition Act, 1949.

Article 13 of the Indian Constitution states, "to the extent of such inconsistency be void," indicating that only the conflicting provisions of a law should be invalidated by the courts, not the entire statute.

The key criterion is whether the remaining parts of the law are so intertwined with the invalid portion that they cannot stand independently. The Doctrine of Severability applies to legislation that is partially ultra vires, meaning beyond the legislative competence of the legislature. Article 254 addresses such situations, applicable to acts that fall within the legislative competence of a legislature but contain provisions outside its scope.

A landmark case illustrating this doctrine is **R.M.D.C. v Union of India (1957)**, where certain provisions of the Prize Competition Act were found to be severable due to their inclusion of competitions involving gambling.

The court emphasised that legislative intent is crucial, assessing whether the valid parts would have been enacted independently if the invalid portion were known. If the valid and invalid sections are distinct and the remaining statute forms a complete and enforceable code, it will be upheld. However, if they are inseparable or if the statute cannot be enforced without alterations, the entire act is void.

Considerations for legislative intent include the history, purpose, title, and preamble of the legislation. For instance, if an act is intended to regulate gambling competitions, its provisions may be severed to apply only to gambling-related aspects. If a provision covers both constitutional and unconstitutional restrictions and cannot be separated, the entire act is invalidated.

In various cases, including **Chintaman Rao v State of M.P. (1951), A.K. Gopalan v State of Madras (1950), Minerva Mills Ltd. v UOI (1980), and Kihota Hollohan v Zachithu (1993)**, the Supreme Court applied the Doctrine of Severability. Whether striking down provisions of a constitutional amendment or dissecting composite amendments, the Court ensures that the remaining statute is constitutionally sound and workable.

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Doctrine of Eclipse

The Doctrine of Eclipse serves to validate laws that were initially void due to their violation of fundamental rights. According to this principle, a law that contravenes fundamental rights is not inherently null and void from the beginning but rather remains unenforceable, akin to being dormant or overshadowed by the fundamental rights. It is described as being in a state of eclipse—still existing but rendered ineffective by the constitutional provisions.

The landmark case of **Bhikaji Narain Dhakras v States of M.P. (1955)** exemplifies this doctrine. The provision of the C.P. and Berar Motor Vehicles Act 1947 empowered the State government to monopolise motor transport business, which was valid at the time of enactment but became void upon the advent of the Constitution in 1950 due to its infringement of Article 19(1)(g) of the Constitution.

However, with the enactment of the Constitution (First Amendment) Act in 1951, which amended Article 19(6) to authorise the government to monopolise any business, the impugned Act was freed from its blemish or infirmity, thus becoming enforceable again.

The court elucidated that the Doctrine of Eclipse applies to pre-Constitution laws that were valid at the time of enactment but became inconsistent with the Constitution upon its enforcement. During this period, the law is said to be eclipsed.



When the inconsistency is removed, typically through constitutional amendments, the law regains its enforceability. However, between the Constitution's enforcement on January 26, 1950, and the First Amendment on June 18, 1951, the impugned Act could not impede citizens' exercise of their fundamental rights under Article 19(1)(g).

All laws, whether existing or enacted subsequently, that are inconsistent with the provisions of Part III of the Constitution are rendered void to the extent of such inconsistency by Article 13. These laws apply to past transactions, rights, and liabilities incurred before the Constitution's enactment, as well as to individuals who were not granted fundamental rights by the Constitution, such as non-citizens. However, these laws remain dormant or in a moribund condition only concerning citizens. After June 18, 1951, the impugned Act ceased to be unconstitutional and regained enforceability against both citizens and non-citizens.

Therefore, the petitioner's argument that a law, once void due to unconstitutionality, could only be revitalised through re-enactment, was not tenable in light of the aforementioned legal position.

The Doctrine of Eclipse: Its Application to Pre- and Post-Constitution Laws

The doctrine of eclipse primarily applies to pre-Constitution laws, as articulated in Article 13(1). This clause addresses existing laws that were inconsistent with fundamental rights at the time of the Constitution's commencement. These laws are deemed void to the extent of their inconsistency and require a judicial declaration to establish their invalidity.

However, Article 13(2) deals with post-Constitution or future laws, presenting a different scenario. Unlike pre-Constitution laws, post-Constitution laws that contravene fundamental rights are considered void ab initio, or void from their inception. This means they are null and non-existent from the outset, and convictions under such laws must be set aside. Additionally, these laws cannot be revived by subsequent constitutional amendments.

The case of **State of Gujarat v Shri Ambica Mills Ltd. (1974)** clarified the application of the doctrine of eclipse to both pre- and post-Constitution laws. In this case, the Bombay Labour Welfare Fund Act was challenged by Ambica Mills on the grounds of violating the fundamental right to property under Article 19(1)(f). The High Court held the provisions unconstitutional, but the Supreme Court disagreed.

The Supreme Court ruled that post-Constitution laws inconsistent with fundamental rights are not entirely null and void. Instead, they remain in force against non-citizens, as fundamental rights do not extend to them. Only against citizens do these laws become void due to the contravention of their fundamental rights. Thus, the Bombay Labour Welfare Fund Act was upheld in relation to non-citizens like Ambica Mills.

However, some earlier cases like **Deep Chand v State of U.P. (1959)** and **Mahendra Lal Jain v State of U.P. (1963)** held that the doctrine of eclipse only applies to pre-Constitution laws and not to post-Constitution laws. Nevertheless, the Supreme Court in subsequent cases rejected this distinction, emphasising that voidness is not absolute but pertains to the extent of contravention of fundamental rights.

The court further clarified that while a law lacking legislative competence is absolutely null and void, a law within legislative competence but violative of constitutional limitations is initially unenforceable. Yet, once the limitation is removed, such a law becomes effective again.

In **Dularey Lodh v Additional District Judge, Kanpur (1984),** the Supreme Court applied the doctrine of eclipse to post-Constitution laws even against citizens. The court held that a void statute can be revived by constitutional amendment, as illustrated by the Amendment Act of 1976, which rendered a dormant decree executable.

Overall, while the doctrine of eclipse primarily pertains to pre-Constitution laws, its application to post-Constitution laws has been recognized by the Supreme Court in various judgments, particularly in cases involving fundamental rights and constitutional amendments.