BLOGS

Article 13 of Indian Constitution

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Introduction

Article 13 of Indian Constitution stipulates the provision of judicial review for all past and future legislation. **Article 32** of the Indian Constitution empowers the Supreme Court to declare a law unconstitutional if it is found to be inconsistent with any of the provisions outlined in **Part III** of the Constitution. The Supreme Court of America was the first to propose the doctrine of judicial review. In 1800, the Supreme Court of America assumed the power of judicial review in a landmark case known as **Marbury v. Madison**.

Judicial Review in India

The 1973 case of **Keshavananda Bharti versus the State of Kerala** is commonly referred to as the “Fundamental Rights Case”. In this case, the Supreme Court has pronounced the power of judicial review as a fundamental characteristic of the Indian constitution. Consequently, it is impervious to harm or annihilation when exercising authority pursuant to **Article 368 of the Indian Constitution**.

In the case of **L. Chandra Kumar versus the Union of India** the Supreme Court held that the authority of judicial review is an integral component of the fundamental framework of the Constitution and cannot be abrogated under Article 368.

It was held in the case of **IR Coleho. v. State of Tamil Nadu** by the Supreme Court that the power of judicial review is a fundamental characteristic that cannot be abrogated by any parliamentary legislation.

Pre-constitutional laws in India

Article 13 of Indian Constitution does not have retroactive effect. The provision outlined in **Article 13(1)** is considered to have a prospective nature. As per the provisions of Article 13(1), any pre-constitutional or existing laws that were in force prior to the commencement of the Constitution shall be deemed null and void to the extent that they are found to be inconsistent with fundamental rights, effective from the date of the Constitution's commencement. These entities do not lack legal existence from the outset (not void ab initio). However, so far as past acts are concerned such inconsistent laws are not wiped out.

Doctrine of Severability

The legal principle of severability entails that in the event of a provision being inconsistent with others, it may be isolated from those that are consistent. Consequently, only the inconsistent portion is deemed void rather than the entire Act.

In the case of **AK Gopalan vs. State of Madras (AIR 1950)**, the Supreme Court deemed **Section 14 of the Preventive Detention Act of 1950** as ultra vires. The Court noted that the impugned Act can remain unaffected, except for Section 14. In the event that an invalid provision of an act is so intricately intertwined with valid provisions that it cannot be extracted without rendering the remaining portions incomplete, the court will deem the entire act null and void.

The Supreme Court, in the case of **Romesh Thapar vs. State of Madras (AIR 1950)**, made an observation regarding the imposition of restrictions on fundamental rights through the law. The Court stated that if the language used in the law is broad enough to encompass restrictions that fall both within and outside the constitutional limits, and if it is not feasible to distinguish between the two, then the entire law must be invalidated.

The Supreme Court of India in **RMDC v. Union of India** in 1957 determined that the removal of the invalid provision resulted in a comprehensive code, thereby obviating the need to declare the entire act invalid.

Doctrine of Eclipse

The principle underlying this doctrine is that a law that contravenes fundamental rights does not become void ab initio but rather becomes unenforceable, thereby remaining in a state of

dormancy. The law in question continues to be eclipsed by the more prominent fundamental rights and remains in a state of inactivity, yet it does not cease to exist.

Enforcement of laws inconsistent with Fundamental Rights

Can a constitutional amendment revive and enforce a law that has become unenforceable after the implementation of the Constitution?

The Supreme Court developed the doctrine of eclipse in the **Bhikaji v. State of Madhya Pradesh**. This legal principle was established in 1955 and has since been utilised in various legal contexts. The provision of consumer protection and the **Berar Motor Vehicles (Amendment) Act of 1947** granted authorization to the state government to monopolise the entire motor transport business in the province, thereby excluding motor transport operators.

The aforementioned provision, while initially deemed valid upon its enactment, was rendered null and void upon the implementation of the Constitution in 1950 due to its infringement upon **Article 19(1)(g) of said Constitution**.

In 1951, an amendment was made to Clause 6 of Article 19 through the Constitutional (First Amendment) Act, which granted the government the authority to establish a monopoly over any business.

According to the ruling of the Supreme Court, the amendment had the outcome of eliminating any negative consequences and rendering the challenged Act legally sound. The fundamental right temporarily superseded this law. Upon the removal of the eclipse, the law commenced its operation again.

Post-constitutional laws in India

According to **Article 13(2) of Indian Constitution**, it is not allowed for a state to enact legislation that deprives individuals of the rights granted under Part III. In the event that the state enacts such legislation, it will be considered **null and void** from the outset to the extent that it violates existing laws or regulations.

Does the Doctrine of Eclipse apply to a law that comes into effect after the adoption of a constitution?

The Apex Court ruling in the case of **Deep Chand v. State of Uttar Pradesh** established that any constitutional law created under Article 13 Clause 2 that violates a fundamental right is considered null and void from its inception.

The doctrine of eclipse is inapplicable to laws that have been enacted subsequent to the constitution, and as such, a subsequent amendment to the constitution cannot serve to revive it. The application of the doctrine of eclipse is limited to the realm of pre-constitutional law and does not extend to post-constitutional laws.

In 1974, in the case of **State of Gujarat versus Ambika Mills**, the Supreme Court revised its stance as previously expressed in the Deep Chand case. The court ruled that a post-constitutional law that contradicts fundamental rights is not necessarily void in all circumstances.

The doctrine of eclipse shall be applicable to post-constitutional law concerning individuals who are not eligible for fundamental rights as per **Article 19**, including non-citizens.

The Supreme Court, in the case of **Dulare Lodh vs. ADJ Kanpur** established that the doctrine of eclipse is applicable to both pre-constitutional and post-constitutional laws.

Doctrine of Waiver

The doctrine of waiver is a legal principle that refers to the voluntary relinquishment or abandonment of a known right or privilege. The Supreme Court, in the case of **Basheshwar Nath v. Income Tax Commissioner (1959)**, ruled that it is impermissible for any citizen to waive their fundamental rights.

The inclusion of these rights in the Constitution is not solely for the advantage of the individual but rather as a public policy measure for the betterment of the overall populace. The Constitution imposes a mandatory duty on the state.

Can a Constitutional Amendment be considered a “law” as defined in Article 13(2)?

The Supreme Court ruled in **Shankari Prasad v. Union of India (1951)** that the term “law” does not encompass amendments made under Article 368.

In the 1967 case of **Golak Nath v. State of Punjab**, the Supreme Court overturned its earlier decisions and ruled that the term “law” as used in Article 13(3) includes any amendments made by the Parliament.

The Supreme Court’s decision in the **Golak Nath case** presented a challenge, which led to the enactment of the Constitutional 24th Amendment Act of 1971. The aforementioned amendment added a novel clause (4) to Article 13 that expressly states that constitutional amendments ratified under Article 368 are not to be considered laws in the sense of Article 13 of Indian Constitution.

The Supreme Court, in the case of Keshavananda Bharti, upheld the constitutional validity of the 24th Amendment. In the case of **Golak Nath**, the Supreme Court employed the principle of prospective overruling to revoke its prior rulings in **Shankari Prasad and Sajjan Singh**.

It was determined that, following this decision, Parliament lacked the authority to modify Part III. It was determined that the aforementioned ruling will solely apply to future cases, thereby allowing the 1st, 4th, and 17th Amendments to remain in effect. The Golak Nath case does not have retrospective effect, therefore all preceding cases are considered to be legally binding.