BLOGS

Detailed Notes on the Doctrine of Severability under Indian Constitution

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Introduction

The doctrine of severability, also known as the separability doctrine or the severability clause, is a legal principle that addresses the issue of whether a contract or a law can remain valid and enforceable even if certain parts of it are found to be invalid or unconstitutional. The doctrine is based on the idea that if a part of a law is deemed to be invalid, that particular provision can be “severed” or removed, allowing the rest of the law to remain in effect.

Applicability of Doctrine of Severability

The primary purpose of the doctrine is to avoid rendering an entire law invalid just because one provision is found to be defective. It aims to preserve the enforceability of the remaining valid provisions. In constitutional law, the severability doctrine is often applied when a court declares a particular statute or provision unconstitutional. The court must then determine whether the rest of the statute can stand independently.

If the doctrine of severability is successfully invoked, the remaining valid provisions of a contract or law continue to be enforceable, and the law is treated as if the invalid part never existed. The application of the doctrine often involves subjective interpretation, leading to debates over the

framers' intent and the impact of severing specific provisions.

Article 13 of the Indian Constitution empowers the judiciary to invalidate any law that violates fundamental rights. This includes provisions within a law that are inconsistent with or infringe upon the fundamental rights guaranteed under Part III of the Constitution.

In cases where only a part of a law is found to be unconstitutional, the doctrine of severability allows the court to strike down only those offending provisions while leaving the rest of the law intact. This ensures that the entire legislation is not invalidated due to the presence of a few unconstitutional provisions.

Landmark Cases on Doctrine of Severability

In **R.M.D.C v. Union of India**, the Supreme Court discussed the doctrine of severability and held that on removing the invalid portion if what remains is a complete law then there is no need to declare the whole act void.

Rules regarding the application of the doctrine of severability were laid down in this case. The doctrine can be applied if:

1. The intention is to check whether the invalid portion of the statute can be severed from the valid part or not.
2. If both the valid and invalid parts can't be separated from each other, then the invalidity of the portion of the statute will result in the invalidity of the whole act.
3. If the valid and invalid parts can be separated, the valid part must be valid and functional post the invalid part has been severed from the law.

In **Kihoto Hollohon v. Zachillhu**, it was contended that the anti-defection law is incompatible with freedom of speech. The Supreme Court held that even on removing para 7 from the 10th Schedule, it remains complete and valid. Since the remaining provisions of the 10th schedule are valid and workable after application of the doctrine.

A.K. Gopalan was detained by the State of Madras under the Preventive Detention Act, 1950. Gopalan challenged his detention, contending that it violated his fundamental rights under Articles 19 and 21 of the Constitution. In the case of **A.K Gopalan vs State of Madras**, it was held by the Supreme Court that barring Section 14 of the Preventive Detention Act, the rest of the Act can be deemed to be constitutionally valid. By removing the section, the rest of the Act was

not affected and thus, remains valid and effective.

The doctrine of severability played a crucial role in the **Minerva Mills case** as the court examined the constitutional validity of various provisions of the 42nd Amendment. The court declared Article 368(4), which sought to exclude the jurisdiction of courts over constitutional amendments, as unconstitutional. It held that judicial review was an essential feature of the basic structure of the Constitution and could not be excluded. The court applied the doctrine of severability to strike down this specific provision while leaving the rest of the 42nd Amendment intact.

Conclusion

The doctrine of severability comes into play when the court is faced with a situation where certain provisions of a law are found to be unconstitutional, and it has to decide whether the entire law should be invalidated or only the offending parts. By allowing the removal of invalid elements while preserving the valid ones, the doctrine strikes a delicate balance between upholding the Constitution’s integrity and addressing specific instances of unconstitutionality.