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# Article 13

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# About Article 13

- Upholds the supremacy of Indian constitution
- Paves the way to judicial review.
- Enables us to review the pre-constitutional and existing laws
- Power of judiciary is considered to be the supreme in guarding and enforcing the fundamental rights guaranteed in the Indian constitution under part III.
- Is a restriction /check on parliament and state legislatures.
- Rights and freedom of people get the protection from the arbitrary invasions of the state.

# **Art. 13. Laws inconsistent with or in derogation of the fundamental rights**

(1) All laws in force in the territory of India immediately before the commencement of this Constitution, in so far as they are inconsistent with the provisions of this Part, shall, to the extent of such inconsistency, be void.

(2) The State shall not make any law which takes away or abridges the rights conferred by this Part and any law made in contravention of this clause shall, to the extent of the contravention, be void.

(3) In this article, unless the context otherwise requires,—

(a) “law” includes any Ordinance, order, bye-law, rule, regulation, notification, custom or usage having in the territory of India the force of law;

(b) “laws in force” includes laws passed or made by a Legislature or other competent authority in the territory of India before the commencement of this Constitution and not previously repealed, notwithstanding that any such law or any part thereof may not be then in operation either at all or in particular areas.

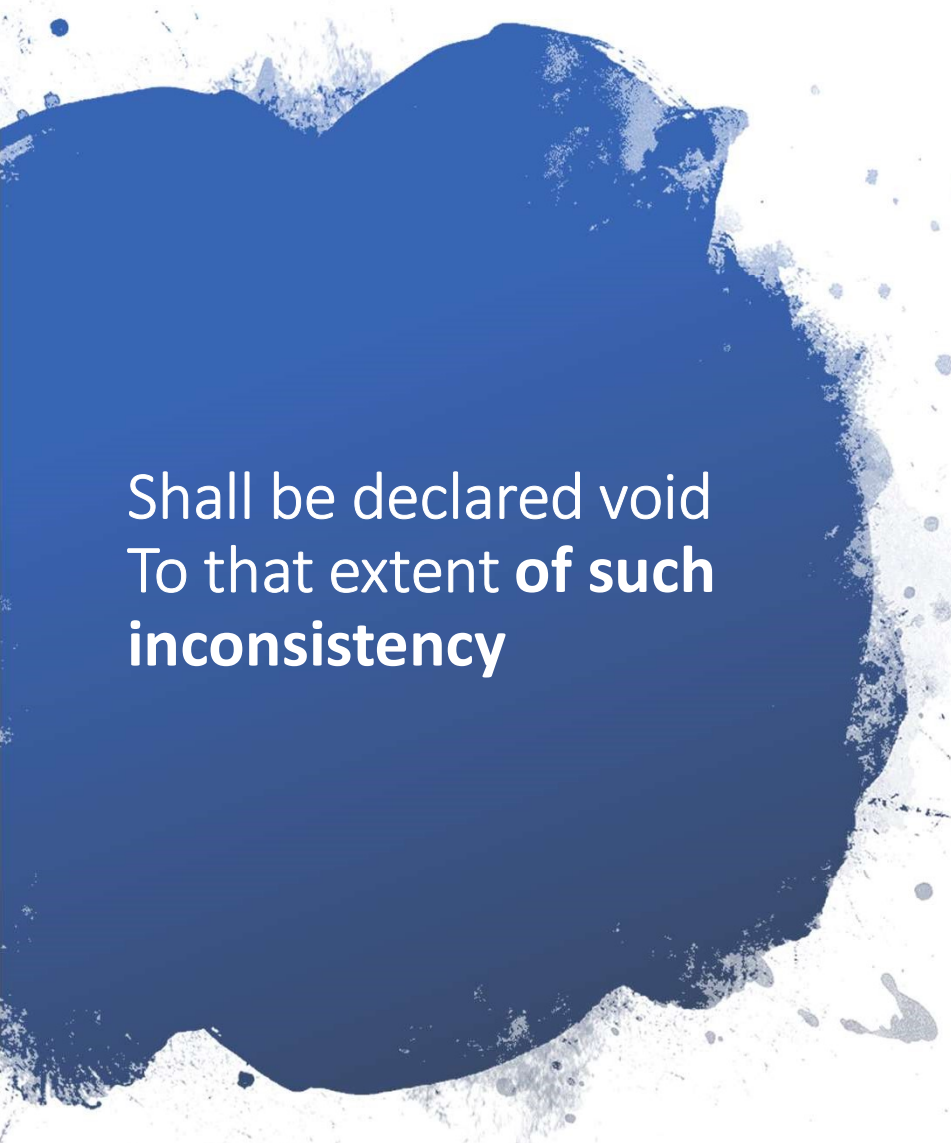
(4) Nothing in this article shall apply to any amendment of this Constitution made under article 368

## Clause (1)

- Pre constitutional laws
- Inconsistency with fundamental rights
- Shall be declared void
- **To that extent of such inconsistency**
- By the court

## Clause (1)

- Fundamental rights exist from the date on which the Indian constitution came into force i.e on 26th January 1950 hence fundamental rights became operative from this date only.
- **Pre-constitutional laws** - the laws before the existence of the constitution **must prove their compatibility with the fundamental rights**
- only then these laws would be considered to be valid otherwise they would be declared to be void.



Shall be declared void  
To that extent **of such  
inconsistency**

- **Doctrine of separability**
- If some parts of the statute/Act
- are inconsistent with that of the fundamental rights,
- then the whole statute would not be declared to be void
- but that particular clause would be treated to be void by the court of law.
- all the pre-existing constitutional laws are to be filtered out.

## Case law

### *A.K Gopalan v. State of Madras, air 1950*

- Section 14 of Preventive detention Act, 1950 was challenged
- Section 14 says that if any person is being detained under this Act then he or she may not disclose the grounds of his or her detention in court of law.
- This particular statement is inconsistent with that of fundamental rights as per Article 22 of the Indian constitution
- thus if we do apply the doctrine of severability here so the whole act (preventive detention act, 1950) would not be declared as void but only section 14 of the act would be declared as void as it is inconsistent with the fundamental rights.





## Doctrine of eclipse

- If some laws are violating fundamental rights ,
- they would not be declared void ab-initio
- but would be unenforceable for a time being
- i.e such laws are over-shadowed by the fundamental rights,
- thus in the case of non-citizens of India the law may be applicable.
- Separability doctrine tries to make laws valid.
- This one tries to make inconsistent laws dormant.



## Case law

### ***Bhikaji v St. of M.P. AIR 1955***

- Berar Motor Vehicles Act 1947 challenged
- Authorized state government to monopolize motor business
- When enacted valid
- After 1950 became invalid Art. 19(1)(g)
- In 1951, art 19 amended and clause (6) and authorised monopoly of government

## Art. 13(2)

*(2) The State shall not make any law which takes away or abridges the rights conferred by this Part and any law made in contravention of this clause shall, to the extent of the contravention, be void.*

- talks about the post constitutional laws
- it says that once the constitution is framed and came in effect then any of the state may not make laws that takes away or abridges the fundamental rights of an individual
- and if done so then it would be void till the extent of contravention.

# Post constitutional laws

Doctrine of eclipse apply?

*Deep Chand v St of U.P. 1959*

Post consti law is nullity and void ab initio at the inception.(Majority)

Minority differed.

# Case law

Mahendralal Jain v St. of U.P.

- Article 13(1) applies to laws that are not still borne.
- Article 13(2) applies to still borne law.
- So doctrine of eclipse does not apply to post constitutional laws.

# Case Law

## **State of Gujrat v. Ambika mills, AIR 1974**

- Certain labour welfare fund Act was challenged, as certain sections in it were against the fundamental rights.
- Since the fact that the laws made by the state after the constitution is framed would be declared void if those laws are against the fundamental rights,
- but here the question arose that fundamental rights are only granted to citizens but what will happen in the case of non-citizens or a company (company here is the respondent i.e Ambika mills).
- It was held by the apex court that since the fundamental rights are only granted to the citizens but not to the company or any non-citizen, therefore the labour welfare fund Act is valid.

# Case law

- Tata Engg. Ltd. V State of Bihar
- R.C.Cooper v U.O.I.
- Corporation is not a citizen for Article 19.
- Keshav Madhav Menon v State of Bombay
- Law declared void under 13(1)- remains operative for non citizens.

# Doctrine of Waiver

- F.Rs.- obligations imposed on the State
- No person can relieve the State from this obligation
- Fear of exploitation
  
- Bashesharnath v IT commissioner



# Article 13(3)(a)

(3) In this article, unless the context otherwise requires,—

(a) “law” includes any **Ordinance, order, bye-law, rule, regulation, notification, custom or usage** having in the territory of India the **force of law;**

- but there are two exceptions to the same, firstly the administrative and the executive orders are being covered under article 13 but if their nature is just to give instructions or guidelines then they would not be covered under article 13. Second exception is the personal laws which are not being covered under article 13
- Ordinances under 123 and 213
- personal laws excluded

## Art 13(3)(b)

(b) “laws in force” includes

- laws passed or made by a Legislature or other competent authority in the territory of India
- Includes administrative orders by executive
- before the commencement of this Constitution and
- not previously repealed,
- notwithstanding that any such law or any part thereof may not be then in operation either at all or in particular areas.

## Art 13(4)

*(4) Nothing in this article shall apply to any amendment of this Constitution made under Article 368.*

- Any of the amendment made in Article 368 of the Indian constitution would not be challenged under Article 13.
- Moreover if the amendment so made would be against the fundamental rights then also it would not be challenged under Article 13.
- Art 13 refers to "Legislative Law" (made by legislature) as opposed to "Constituent Law" (made to amend the Constitution).
- Gave birth to a landmark doctrine- **Basic structure doctrine**
- *Kesavananda Bharti v. State of Kerala, AIR 1973*

# Whether Law (Art. 13(2)) includes constitutional amendments?

- Considered for the first time in **Shankari Prasad v U.O.I.** – held- word Law under Art. 13(2) does not include Constitutional amendments/law made by Parliament under Art. 368.
- Followed in **Sajjan Singh v State of Rajasthan**.
- But in **Golaknath v State of Punjab** – S.C. overruled its own decision- held- law includes every branch of law- statutory, constitutional etc.-any amendment which takes away F.R.- will be declared void.
- Remove difficulty- **24<sup>th</sup> Amendment 1971**- new clause added in Art. 13 as 13(4)
- Validity of 24<sup>th</sup> Amendment considered in **Keswanand Bharti** case- golaknath case overruled – upheld validity of 24<sup>th</sup> Amendment Act.



# Judicial review

- Based on –Power corrupts a man and absolute power corrupts absolutely which ultimately leads to tyranny, anarchy and chaos.
- Theory of two laws, viz.. an ordinary law and a supreme law i.e Constitution.
- Theory of limited government.
- Theory of -1) separation of power  
2) Checks and balance



# Judicial Review

- Power of court to pronounce upon the constitutionality of legislative acts(within their jurisdiction) to enforce and the power to refuse to enforce and declare them void.
- Judicial review is an integral part of our constitution and a power has been vested in the High Courts and the Supreme Court to decide about the constitutional validity of the provisions of statutes.



# Judicial Review

- First time propounded by the Supreme Court of America in the case of *Marbury vs Madison* 2. LEd.60.
- Even acknowledged by Federal Court of India under Government of India Act 1935.
- Our constitution expressly includes provisions
- In India, judicial review broadly covers three aspects;
  - (1) judicial review of legislative action
  - (2) judicial review for administrative action
- Art. 32, Art. 226, Art. 136, Art. 227



## Judicial review – case laws

- **The State of madras v V.G. Row-** Unlike America our constitution has express provisions for judicial review. Courts are crusaders to protect F.Rs.
- **Keswanand bharti case-** it is basic structure of constitution – cannot be damaged or destroyed by amending under Article 368
- **L. Chandra kumar v U.O.I.** – Power of courts under Art. 32 and 226 are part of basic structure.