

# Article 13 under Constitution of India

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

- 13 (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
- **article 13(1) talks about the pre-constitutional laws i.e.** the day from which the constitution came in existence there were many laws in the country and when the constitution came into existence fundamental rights do came, therefore 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.

- 13 (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
- **article 13 (2) talks about the post constitutional laws** i.e. 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.

- 13(3) In this article, unless the context otherwise requires law includes any Ordinance, order, by law, rule, regulation, notification, custom or usages having in the territory of India the force of law; laws in force includes laws passed or made by 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or other competent authority in the territory of India before the commencement of this Constitution and not previously repealed, notwithstanding that any such law or any part thereof may not be then in operation either at all or in particular areas

- **article 13(3)** talks about the meaning of law i.e. the laws whether by laws, notifications, rules, regulations, customs, usage, etc if do effect the legal rights of the citizens do come under the definition of law, thus would be considered as laws under article 13 but
- there are two exceptions to the same,
  1. 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.
  2. Second exception is the personal laws which are not being covered under article 13.

- **13 (4)** Nothing in this article shall apply to any amendment of this Constitution made under Article 368
- This clause of was inserted by **24<sup>th</sup> CAA 1971**
- It says that 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.

- **Doctrine of severability:**
- The doctrine says that if some parts of the statute 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.

# Case laws

- A.K Gopalan v. State of Madras, AIR 1950
- Romesh Thapar vs. State of Madras 1950
- Kihota Holahan vs. Zachillhu 1992
- State of Bombay Vs FN Balsara
- RMDC vs. Union of India 1957



- Doctrine of eclipse

- The doctrine says that 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. they would be in dormant state, such laws are over-shadowed by the fundamental rights.
- These dormant laws are applicable to non-citizens.

# Case laws

- **Bhikaji Narain Dhakras vs State of MP 1955**
- **Sagir Ahmed vs. State of Uttar Pradesh 1954**
- **Deep Chand vs. State of UP 1959**
- **State of Gujrat v. Ambika mills, AIR 1974**

- **Doctrine of waiver**

- In India no person can waive or abandon his fundamental rights. The doctrine of waiver has no application in part 3 of the constitution.
- Supreme Court in **Bhesh Nath vs Income Tax commissioner 1959** held that these rights have not only been enriched in constitution for personal benefit but also for the benefit of entire society. Court has said in clear words that American doctrine of waiver does not apply to Indian Constitution.