

Constitutional Doctrine of Eclipse



When the constitution-makers made the constitution of India, their main concern was the citizen of the country who got their freedom after being shackled with colonialism for 200 years. Thus, they inserted fundamental rights for them in part – III. of the constitution which Granville Austin rightly stated as *CONSCIENCE OF CONSTITUTION*.

Now, while drafting the constitution one question might have aroused in the cerebral minds of our founding fathers that what if any law violates our Magna Carta of the constitution (fundamental rights)?

Hence, to solve this issue they inserted ARTICLE 13 in it, which states that

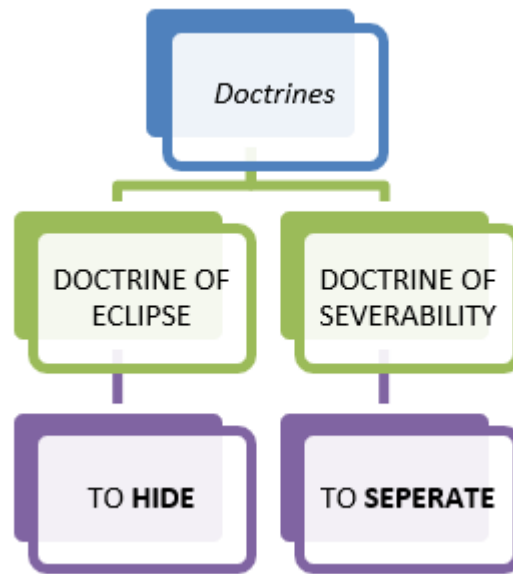
“ANY LAW THAT INFRINGES FUNDAMENTAL RIGHTS OF CITIZEN WILL BE HELD NULL AND VOID.”.

Now, this article was applied both to pre and post-constitutional laws that are mentioned below:

- **pre-constitutional laws** – As we know that all the laws before the formation of constitution were made by outsiders primarily (British legislation), so to filter out any law that infringes fundamental rights which were formed before the formation of constitution clause (1) was inserted in Article 13.

- o **Post constitutional laws** – Then to restrict the state from forming any laws in the future that can be invalid concerning fundamental rights, clause (2) was inserted.

To find such laws, two doctrines were used namely:



Meaning of doctrine of eclipse:

Firstly to understand the entire term one should know what is meant by an eclipse?

When Moon's shadow covers the earth's surface and hides it is called eclipse, and **Doctrine of Eclipse** simply means that any laws that are not in validation with the fundamental rights will be overshadowed by fundamental rights. This doctrine doesnot makes the law entirely dead but inoperative till the time any amendment is not made in the constitution that can activate it again. Can MOON hide the earth's surface forever? No. Likewise, the laws considered null and void by this doctrine can become operative if defect from it is removed.

Origin of doctrine of eclipse:

It is agreed that the actual genesis of this doctrine took place in the **Bhikhaji v. State of M.P case**. In this case the certain sections of C.P. and Berar Motor Vehicles (Amendment) Act 1947 were challenged. **Certain sections in this act gave the state government the ownership of all of the motor business to itself.** This provision was consistent when was adopted, but became void on the commencement of the Constitution in 1950 as it violated Article 19(1) (g) of the Constitution After a while amendment was made and clause (6) was added in article 19 and government was authorized to monopolize and the sections got active.^[1]

Why the laws are eclipsed and not considered dead?

Every debate has a for and against and when the purpose of debate is to understand each other's perspectives then amendments are made. In the same ways if one law knocks down fundamental rights but the rest of them are able to hold the fort then the one with inconsistency is reported to parliament. **The doctrine of eclipse assures that the entire act isn't to be re-enacted but it can revive from the date of the amendment.**

The premise of the evolution of doctrine of eclipse:

Based on the plot that fundamental rights deals with cases after constitution was made , the doctrine of eclipse was evolved.

[ii]In **KESHAVAN MADHAV MENON V/S STATE OF BOMBAY, 1951** case one basic question related to the origin of the doctrine of eclipse was raised that **whether fundamental rights are retrospective in operation.**

If fundamental rights are retrospective, then all pre-constitutional laws inconsistent with fundamental rights must be void ab initio. But in keshavan, **it was established that fundamental rights became operative only on and from the date of commencement of constitution** therefore, the question of the inconsistency of existing laws with those rights must necessarily arise only on and from such date.

Can we apply this doctrine to post-constitutional laws? 

In India, the Doctrine of Eclipse is one such theory that is said to safeguard the pre-constitutional laws from being completely wiped out. It gives us a very refined, nuanced aspect of the rule of law. Theorists believe that of this doctrine was not there, then constitutionalism would've been at stake. This theory has helped break the thin line between pre-constitutional laws and post-constitutional laws.

Article 13 restricts the state from using its arbitrary powers to command over citizens. Our founding fathers ensured that the sovereign people of our nation should not get clasped in the hands of the state again by inserting article 13 (2) in part III.

In **STATE OF GUJRAT V/S AMBICA MILLS, AIR 1974** a labour welfare fund was challenged as in it certain sections were there which were against fundamental rights. In this case, the respondent was a company to which fundamental rights are not granted. So question aroused that fundamental rights are given to citizens then what will be the validity of any law w.r.t non-citizens and companies?

Thus, the Supreme Court held that any law will remain void if they are concerned with citizens but will stay valid if are concerned with non-citizens and companies. In this case, sections didn't become invalid because the respondent was a company and not a citizen.

Case Laws

1. **Doctrine of eclipse and section 309 of IPC;**

[iii]The Doctrine is seen to extend to the provisions under the IPC, as seen in the cases of Rathinam and Gian Kaur. In the case of **Rathinam v. Union of India, Section 309** of IPC that criminalizes attempt to suicide was challenged. The Court linked the strings between article 19 and article 21 and observed that Article 21 holds the right to live, then it must include right to not die and holds Section 309 to be unconstitutional, and therefore it was held . After two years, a five-judge constitutional bench in the case of **Gian Kaur v. the State of Punjab** reversed the Judgment of Rathinam case and upheld the validity of Section 309. Thus, the Eclipse on Section 309 was struck down and it became active again.

o **Doctrine of Eclipse and article 368**

The debate on the validity and absoluteness of Article 368 started with the case of Golaknath. In **I. C. Golaknath v. State of Punjab**, the Punjab Security and Land Tenures Act of 1953 was challenged on the ground that this legislative Act had violated the fundamental right to hold and acquire

property and practice any profession. The judgment left the Parliament Legislature with no power to break the fundamental rights and provided them with limited amending powers under Article 368. Therefore, Article 368 was eclipsed.

The judgment of I. C. Golaknath was overturned in the legendary case of *Keshavananda Bharti v. Union of India*^[1], which stated that the Parliament could amend the fundamental rights of the Indian Constitution but without changing the basic structure of the Constitution and thus, removed the Eclipse from Article 368.

Conclusion:

^[iv]One thing that is to be determined here is whether for the purpose of avoiding the administrative difficulties and expenditure involved in re-enacting a law , a law which was held void on the very delicate and potent ground being inconsistent with part III, should under special concerns be permitted to revive automatically . this also raises very critical questions about legislative competence and the interference of courts in law making.