

Analyzing the Constitutional provision and Doctrine dealing with the validity of legislation

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Abstract-

In many legal systems, constitutional provisions establish the framework within which legislation must operate, and the doctrines provide guidelines for interpreting and assessing the constitutionality of laws. Constitutions often grant specific powers to legislative bodies, outlining their authority to make laws. Constitutions frequently include provisions protecting individual rights, and any legislation that infringes upon these fundamental rights may be subject to constitutional scrutiny. Similarly, the Constitution may establish a separation of powers between the legislative, executive, and judicial branches. Legislation that exceeds the scope of legislative authority or encroaches on the powers of other branches may be deemed unconstitutional. The question arises as to finding a sense of certainty as to deciding the validity of any legislation, which is backed by the constitutional framework.

Introduction-

The Constitution of India is the supreme law of the nation. The constitution is a document having legal sanctity that sets out the rules, regulations, and functions of the legislature, executive, and judiciary. The Constitution also enshrines rights and the recourse thereto in case of violation of those fundamental rights and gives direction to the Government in the form of Directive Principles of State Policy. In India, the legislature (parliament) has the power to make the laws, and parliament can make laws on every subject, which is mentioned in the VII Schedule, read with Article 246 of the Indian Constitution. At times, it so happens, that the law passed by the parliament, or be it any provision of any enactment, does not align with the constitutional mandate of fundamental rights enshrined under Part III of the Constitution then that legislation is void. The Researcher has endeavored to ponder upon the question of finding certainty as to deciding the validity of any legislation, through relevant constitutional provisions and applicable doctrines.

Article 13 of the Indian Constitution:

Article 13 acts as a safeguard of the fundamental rights under Article 13(1) and Article 13(2) in as much as it emphasizes that if any pre-constitutional and post-constitutional law is inconsistent with fundamental rights then such law will be deemed void. Clauses (1) and (2) of Article 13 decide upon the validity of any legislation or enactment as regards the Fundamental rights. In the case of *Keshavan Madhava Menon v. State of Bombay*, The Hon'ble SC held that Article 13(1) would not have a retrospective effect. If any act is committed before the enactment of the constitution, then the constitution will not apply to that act but the law can be declared void ab inito if it is inconsistent with Fundamental Rights.

Various doctrines under Article 13, which decide the validity of legislation:

Doctrine of Eclipse

Under this doctrine, if any legislation before the commencement of the constitution is inconsistent with fundamental rights, then such legislation will not be declared void but it will be an eclipse or morbid for a particular time being and if that legislation becomes consistent with the fundamental rights later, then it will become operative. In the case of **Bhikaji Narayan vs State of Madhya Pradesh** where the Motor Vehicles Act 1939, authorized the State Transport business to give monopoly, its validity was challenged under article 19(g) of the Indian Constitution violating the fundamental rights. This act

was thus an eclipse for the time being in force, and then later on the government brought an amendment thereby adding article 19(6) sub-clause (ii) authorizing the state to carry on the business of transport with complete inclusion of citizen and court held that doctrine of eclipse applies to pre-constitutional law.

The second issue that came before the Hon'ble Supreme Court was whether the doctrine of eclipse applies to post-constitutional law, if its validity is challenged. This issue was dealt with by the Hon'ble Supreme Court in the case **State of Gujarat vs Ambica Mill**, The Supreme court stated that if any post-constitutional law is inconsistent with the fundamental rights then such law will be deemed void as regards citizens only. But for non-citizens it would remain valid as to non-citizens.

The court was of the view that a post-Constitutional law, which is inconsistent with fundamental rights, is not nullity or non-existent in all cases and for all purposes. Thus, the term "void" in both the clauses of Article 13 makes a law only relatively void, and not void.

Doctrine of severability

The doctrine of severability means to serve or to get separated. This doctrine explains that if any pre and post-constitutional law is inconsistent with the fundamental rights then only the inconsistent part, will be declared void not the complete act. But if the act is completely dependent on that particular inconsistent part then the complete act shall be declared void. In the case of **A.K. Gopalan v. State of Madras** The Supreme Court struck down section 14 of the Preventive Detention Act, 1950 on grounds of being violative of article 22 of the Indian constitution. In **Joseph Shine vs Union of India**, The Supreme Court struck down section 498 of the Indian Penal Code on the grounds of being violative of Article 14 and 21 of the Indian constitution.

Article 32 and 226 of the Indian Constitution

Legislature passes the law and the Executive body executes the law. If any executing body while executing an act is being arbitrary and unreasonable or violates the fundamental rights of the citizens then such act of the executive body can be challenged under Articles 32 and 226 of the Indian Constitution. Under Article 32 person can directly challenge the validity of an Act if it violates the fundamental rights in the Supreme Court of India and under Article 226 person can directly challenge the validity of an act if that act violates the fundamental right or any other rights in The High Court, in both instances, by the means of 5 available writs.

Writ of Habeas Corpus

If any person is illegally detained, arrested, and not produced before the court within 24 hours after illegal detention or arrest then that person's kin, or family can file the writ of habeas corpus. Under the writ of habeas corpus, the person can challenge the validity of his arrest. In the case of **Nilabati Behra v. State of Orissa** the court awarded Rs 150,000 to the petitioner because the petitioner's son was hauled by Orissa police for interrogation and later his body was found on the railway track.

In **Rudul Sah v. State of Bihar** the court gave compensation of Rs 30000/- for a person who was wrongfully detain for fourteen years.

Writ of certiorari

This writ can be issued by the high court and the Supreme Court to certify the order passed by the subordinate court or tribunal, on the grounds of excess jurisdiction, being in the absence of jurisdiction, in unconstitutional jurisdiction, or in violation of the natural justice principles.

Writ of Prohibition

This writ can be issued by the high court and the Supreme Court to prohibit the proceedings pending in the subordinate court or tribunal on the grounds of excess of

jurisdiction, in the absence of jurisdiction, in unconstitutional jurisdiction, or in violation of the natural justice principles.

Legislative Relations - Between Union & state

It is a constitutional mandate of separation of power between the Union & the States. Though this separation is not watertight the Constitution of India has clearly defined the Jurisdiction of the center & state. This division is two-fold in terms of the distribution of legislative power between center & state.

1. Territorial Jurisdiction.

Art 245. Of the Indian Constitution states that: - "Parliament/union has the power to make laws for the whole or any part of the territory of India and the state has the power to make laws for the whole or any part of the state".

Art. 245[2] of the Indian Constitution States that: - "No law made by Parliament shall be considered invalid on the ground that, it would have extra-territorial operation"

- The constitution clearly defines the territorial Jurisdiction of both center & state.
- Accordingly, the Parliament has the power to make laws for the whole or any part of the territory of India.
- This does not mean that Parliament does not have extra-territorial Jurisdiction. Parliament can exercise extra-territorial Jurisdiction.
- However, the state has no such power of extraterritorial Jurisdiction.
- They are restricted to make laws within the territory of India.
- State Jurisdiction is limited only to the state. There is an exception to this general rule by employing the "Doctrine of Nexus".

2. Subject Matter Jurisdiction

Art 246 Provides that, the Union Parliament makes laws concerning any of the matters enumerated in the Union list. The state has the power to make laws on subjects enumerated in the state list. Both the Union legislature & state legislature have the power to make laws on the concurrent list. The seventh schedule of the Indian Constitution cannot be claimed to be scientifically perfect because overlapping might occur between subjects enumerated in the abovementioned three lists. The Court in case of such conflict between these lists may apply the following principles of interpretation and decide the validity of legislation:

- a. Each entry is to be interpreted broadly.
- b. Doctrine of Pith & substance.
- c. Doctrine of severability
- d. Doctrine of Eclipse
- e. Doctrine of colourable legislation

The 7th schedule of the Indian Constitution provides the 3 list that enumerates the division of functions between Centre & State. They include:

1. Union list: The Union list contains Subjects over which only the Union Government has the power to legislate. Some of the important subjects in this list are: Defence, foreign affairs currency, banking, communication & interstate trade & commerce. The Union list contains 98 subjects.

2. State list: The State list contains subjects over which only the State Government has the power to legislate upon. Some of the important subjects in this list are- law & order, health, agriculture, irrigation, local government, and state-level taxes. The state list contains 59 subjects

3. Concurrent list: Concurrent list contains Subject over which both the union and state Government have power to legislate. Some of the imp. Subjects in this list are- education, forest, criminal law, marriage, divorce, and adoption. The concurrent list contains 52 subjects.

Art. 246A: - Added by 101 constitutional Amendment in the year 2016. Under GST both the Centre & State have the power to legislate.

Art. 248 (Residuary Power) - The constitution of India conferred Residuary Powers on the Union Parliament by this provision. Art 248 states that, if any subject is not mentioned in 1st, 2nd & 3rd list, then the parliament has the power to make laws on that particular subject. Ex: Artificial Intelligence.

Art. 249. - National Interest - Art. 249 of the constitution of India grants the Rajya Sabha the power to legislate on a Subject in the state list. This is in furtherance of the national interest & it allows the Parliament to make laws on a matter within the Jurisdiction of the states for a specified period, even if the states are against it.

Art. 250- Under the Proclamation of National Emergency, Parliament shall have the power to make law upon subjects of the state list. It may be in instances of National Emergency State Emergency & Financial emergency.

According to Art. 251 – Nothing shall restrict the power of State legislature to make law. But if any law made by the State legislature is repugnant to the law made by the Parliament, then the law made by the Parliament shall prevail.

Art.252- Power of Parliament to legislate for two or more states by their consent and adoption of such legislation by any other state.

Art. 253 – Confers the legislative power upon the Parliament to give effect to any international treaty, convention, or agreement with any other country made at any international conference, association or any other body.

Doctrine of Territorial Nexus:

Only the Union has been given the power to make laws having extra-territorial operation. State Laws can be challenged on the grounds of being extra-territorial as the State Legislature can make laws only for the State concerned. Thus, State law would be void if it is given extra-territorial operation. However, many times State laws having extra-territorial operation have been held to be valid. It is done by application of the Doctrine of Territorial Nexus. The Privy Council in *Wallace Bros and Co. Ltd. V. Income Tax Commissioner* evolves this Doctrine. In that case, the Appellant Company was incorporated in England and had its registered office there. The company appointed its agent in Bombay and through that agent, the Company carried on its business within the territory of India. A company made an overall profit of Rs. 2.4 million out of which 1.7 million was earned by carrying business within the territory of India. The Income Tax Authorities of India levied Income Tax on the entire income of the company. The company contended that the Indian Income Tax Act, of 1939 could not be applied to it, as it was subject to English Laws. The Privy Council, however, upheld the levy of tax by applying the doctrine of territorial nexus.

For the application of the Doctrine of Nexus, there must be sufficient territorial nexus. The doctrine explains that it is not essential that the object to which the law is applied should be physically located within the boundaries of the State making the law. It is enough if there is a sufficient territorial nexus between the object and the State making the law.

Doctrine of Pith and substance:

In their respective spheres or jurisdictions, both the Centre and the state are complete Sovereigns. However, if a law enacted by one transgresses or encroaches upon the jurisdiction of the others, the Court will decide on the validity of the law. Accordingly, the Court applied the doctrine of Pith and Substance and attempted to identify whether the legislature was competent to enact the law. To adjudge whether any particular enactment is within the Purview of one legislature or the other, it is the Pith and substance of the legislation in question that has to be pondered into. This rule envisions that if the true

nature and intent or the object of the law was within the Jurisdiction of the legislature, then the Court can uphold that there has been no transgression of Jurisdiction.

Doctrine of Severability: - According to Art. 13(2), a restriction is imposed on the power of the state not to make any law that abridges or violates the fundamental rights given in Part III of the Indian Constitution. This article provides that a law is void only to the extent of the inconsistency or contravention of fundamental rights. This means that an Act may not be void as a whole, only a part of it may be void and if that part is severable (separable), from the rest of the provisions of the Act, then the rest provisions being valid continue to stand and remain operative. It means those provisions violative to fundamental rights, are void, and the rest provisions are separated from them then are valid.

The Act as a whole will not be declared void if one of its provisions is void and others are valid, and if void can be separated from the valid provisions but -If a provision violative to fundamental rights is not separable from the other provisions in the Act, and then the whole Act is void and not operative. If a void provision cannot be separated from the valid provision, then the valid provision cannot be given effect. If void provisions are separated from the valid provision, the whole Act fails. If void provision is separated from the valid then the intention of the legislators cannot be given effect.

Doctrine of Waiver: - Fundamental rights are basic, inherent human rights, which are protected, guaranteed and enforceable by law. Fundamental rights are based on public policy. Fundamental rights confer benefits to the public. Fundamental rights are based on public policy and thus the citizens cannot waive them. This principle is applied in several cases. In *Behram Khurshid Pesikaka v. State of Bombay*, it was held that an individual cannot waive his fundamental rights. Fundamental rights are incorporated within the Indian Constitution, as a matter of public policy, and hence they establish that an individual cannot waive any of his fundamental rights.

Doctrine of Colourable legislation: The doctrine implies that, whatever is prohibited directly, is prohibited indirectly also. This is intended to bar the legislature from doing something indirectly or covertly that, which has been prohibited from doing directly. It is a legal principle that limits the ability of a legislature to make laws. It ensures that a legislature is qualified to implement a specific law.

Basic Structure Doctrine:

The Basic Structure Doctrine in the Indian Constitution is a legal principle that was established by the Supreme Court of India in the landmark case of **Kesavananda Bharati v. State of Kerala** in 1973. This doctrine holds that there are certain essential features or basic elements of the Constitution that cannot be amended by the Parliament, even if it has the power to amend the Constitution under Article 368.

The idea behind the Basic Structure Doctrine is to ensure that the core principles and values of the Constitution, which form the foundation of the Indian democratic system, are protected and preserved. The Supreme Court, through this doctrine, asserts its authority to review and strike down constitutional amendments that violate or alter these fundamental features.

Although the *Kesavananda Bharati* case did not explicitly define the exact elements that constitute the basic structure, it did identify some of them, including:

1. **Supremacy of the Constitution:** The basic structure includes the supremacy of the Constitution over the powers of the Parliament.
2. **Democratic and Republican form of Government:** The democratic and republican nature of the Indian political system is considered an integral part of the basic structure.
3. **Secularism:** The principle of secularism, which ensures the separation of religion from the functioning of the state, is considered a fundamental feature.

4. **Federalism:** The distribution of powers between the central and state governments as outlined in the Constitution is considered essential.

5. **Judicial Review:** The judiciary's power to review and strike down laws inconsistent with the Constitution is seen as a basic feature.

6. **Rule of Law:** The principle that all individuals, including the government, are subject to the law is considered part of the basic structure.

7. **Free and Fair Elections:** The democratic process, including free and fair elections, is considered an integral part.

The Basic Structure Doctrine acts as a check on the amending power of the Parliament and ensures that the core principles of the Constitution, which reflect the values of justice, liberty, equality, and fraternity, remain inviolable. It provides a framework for judicial review of constitutional amendments and protects the constitutional identity of India.

Conclusion

Indian Constitution's provisions and doctrines related to the validity of legislation have been discussed. The Constitution's role as the supreme law of the land, detailing legislative powers, and addressing the violation of fundamental rights is noteworthy. Article 13 is discussed, focusing on its safeguarding role, and various doctrines under it, such as the Doctrine of Eclipse and Doctrine of Severability.

The researcher delves into the application of Articles 32 and 226, which empower individuals to challenge acts violating fundamental rights in the Supreme Court and High Court, respectively. Writs like Habeas Corpus, Certiorari, and Prohibition are explained in this context.

The legislative relations between the Union and states are explored, encompassing territorial and subject matter jurisdiction, the distribution of powers in the 7th schedule read with Article 246, and the separation of powers between the two entities. Various constitutional articles related to legislative powers, including Art. 248 (Residuary Power), Art. 249 (National Interest), Art. 250, and others, are discussed.

Additional legal doctrines such as the Doctrine of Territorial Nexus, Doctrine of Pith and Substance, Doctrine of Colourable Legislation, Doctrine of Severability, Doctrine of Waiver, and the Basic Structure Doctrine are outlined. The Basic Structure Doctrine, established in the Kesavananda Bharati case, emphasizes certain unamendable core principles of the Constitution, including supremacy, democracy, secularism, federalism, judicial review, rule of law, and free and fair elections. The doctrine acts as a check on Parliament's amending powers, safeguarding the foundational values of the Indian Constitution.

Reference

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