

Judicial Review.

14
Saturday

↓ check the constitutional validity

Art. 13(1) All laws enforce within the territory of India before commencement of constitution shall be void to the extent to which they are inconsistent with the provision of Part III.

Legislative
Law making

Judiciary
Law Challenging.

Art. 13(2) State shall not make any law which takes away or abridges the fundamental right conferred by the part III of constitution any law made in contravention of fundamental right will be void-ab-initio

Art. 13(3) Law has been given a broad connotation which included ordinance, orders, bye law, Rules Regulations, notifications, custom or usage having force of law. This means that not legislative enactment anything mention here ~~be~~ can be challenged if it is infringed the fundamental right.

15
Sunday

The meaning of Judicial Review means Art. 13 of Judicial review of all the legislation in past as well as future in India. The power under constitution Art. 32 supreme court and 226 under High court. The law can be confirmed or unconstitutional to check the inconsistency with the part III of the constitution.

16
Monday

Fundamental rights case - Keshavamand Bharti's case (1973.)
- Maneka Gandhi case

Tuesday

Judicial Review is an integral part of constitution and power has vested to High court of Supreme Court to decide the constitutional validity of law. If the provision of any statute are found inconsistent with any Article or provision of constitution the Supreme court of High court has been given power under Article 13 to strike down that provision.

Judicial Review is judicial restraint on the legislative and executive organs of governments. Judicial Review was observed for the first time in Marbury v/s Madison case in America. In India A.K. Gopalan v/s State of Madras in year (1950). The decision based on constitution is supreme and statute law should be valid must be in conformity in constitutional requirement and it is for the judiciary to decide whether that particular enactment is constitutional or not.

18

Wednesday

In Keshavamand Bhanth's case Judicial Review is the basic structure of the constitution and cannot be overriden by Art. 368.

17.8.12
8:30 AM

In Keshavamand Bhanth Supreme court said that Judicial Review is the basic feature or basic structure of the constitution and therefore cannot be destroyed by art. 368.

N. Chandrababu Naidu v/s Union of India (1997) Supreme court held that Judicial Review legislative action under Article 226 of Art. 32 is part of basic structure.

Art. 13 Not retrospective: - Art 13(1) is prospective in nature as pre constitutional law inconsistent with fundamental will become void after commencement of constitution they are not void ab initio before the constitution made those laws are legally were ~~correct~~ correct.

Thursday

Keshava Madhav Menon v/s State of Andhra Pradesh. It says that there is no fundamental right a person shall not be prosecuted and punished for an offence committed before the constitution came into force.

1. Doctrine of Severability: - Separated
Severable

When a part of statute is declared as an unconstitutional then question arises that whether the whole of the statute is to be declared void ~~or~~ or only the ~~or~~ part which is unconstitutional declared as such to solve the problem Supreme Court given the doctrine of severability. This means offending provision can be separated which is constitutional then only that part which is offending declared void and not the entire statute. In Art. 13 "To the extent of such inconsistency will be void."

20
Friday

The provision of repugnant shall be treated as ~~void~~ void and not the entire statute. [In the particular period 1949, 1950, & 1951]

✓ A.K. Chopalam v/s State of Madras - ~~or~~
See. 14 of prevention of detention Act ultra vires the court held that as ~~see. 14~~ as ultra vires it does not affect the validity of rest of the act.

21
Sunday

State of Bombay vs Balsara

provision which has been
declared as void do not effect as entire
statute.

Exceptions:

1. If the void provision is so closely connected with the invalid provision that it cannot be separated without any provision then such a case the court will hold that entire Act as void. The test is that doctrine of severability will succeed or not when the provision will survive independently or not then in such case whole act as declared as void.

I Ramesh Thappa vs State of Madras

The court held that ~~where~~ where it is not possible to separate & the whole law will struck down.

22

II R. M. D. C vs Union of India (1957)

The court held that where void part can be separated from invalid then no need to strike down the whole act.

23

Monday

III. Kihoto Hollohan vs Zachithi (1992)

In this particular case 5th and 10th schedule was declared as an unconstitutional as it could be separated from the main provision of 10th schedule.

Thursday Only for non citizen. Art 13(2) states that the state cannot make any law which takes away or abridges rights conferred by part III of constitution. Under post constitutional law any law violating fundamental right is void ab initio or is still born law and cannot be revived by subsequent amendment anything done under this law which is void ab initio will be wholly illegal and the person or victim for relief.

Deepchand v/s state of U.P. (1959)

Doctrine of waiver : (good bye कब्र, सोझ देणे)
fundamental rights are inherent.

Doctrine of waiver does not apply
part III of constitution or R.R. fundamental right.
A.R. - Art IV

Basweshwarnath v/s Income Tax commissioner

The court held that a citizen cannot waived any fundamental right conferred by part III of the constitution.

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day
Ojige Tellis v/s B.M.C (1986)

January '12
22/8/12
8:30 AM

28
Saturday

LAW VIA 13

Law is defined as ordinance, orders, by law, regulation, notification, custom or usage having force of law, law includes enacted law or legislations. Law includes custom usage having the force of law. All the personal laws Hindu, Muslim, Christian it includes ordinance issue by the president VIA 123 and Governor Art. 213. A Government notification by law of municipal authority can also be considered to be law under Art. 13.

Constitutional Amendment: Whether law VIA 13(2) This point was considered firstly in 1951 in case Shankari Prasad v/s Union of India VIA 13(3) does not include the constitution amendment made VIA 368 at this time. In Sajjan Singh v/s State of Rajasthan in 1967 The Supreme court overruled its own decision in Golaknath case, The Supreme

29
Sunday

court held that the word law VIA 13(2) included every branch of law statutory, constitutional etc. In order to remove difficulties created in Golaknath case the constitution 24th amendment Act 1971 was enacted.

30
Monday

The new clause 4 added which made clear that constitutional amendment passed at VIA 368 shall not be considered as law VIA 13 in 1973. The 24th amendment Act was challenged in Keshavanand Bharti's case and the new doctrine "Basic Structure" of doctrine was evolved.

In 1997 N. Chandrababai v/s Union of India: Supreme court took for granted that all the constitutional courts, High courts and Supreme courts were empowered to exercise the extra ordinary powers under basic structure doctrine the ~~critic~~ criticism was



31

Tuesday

Saturday, February 12

against Supreme court decision of N Chandr. Kumar that there cannot be Judicial Review of an order passed by an authority in exercise of its powers of Judicial Review. The S.C. held that even administrative tribunals have possess the powers of Judicial Review then it also get the powers to strike down constitutional amendment. if it is violating basic structure.

There are many tribunals are our country if administrative tribunals start striking for constitutional amendment under Art. 368 there would be constitutional key as N. Chandrakumar decision it self was criticised by legal fraternity this decision was create more confusion regarding the concept of Judicial Review. The urgent need is required for S.C. to exercise its own decision through Supreme Court and classify the status of Administrative Tribunals.