

ART - 13

Law inconsistent with FR.



Q-1. Explain and elucidate in the light of Judicial precedent the meaning of the term 'void' as used in Art. (13(1) & (13(2)) of the Constitution.

Art-13(1) - ~~All~~ Art 13 is not retrospective in effect, it is prospective in nature. All pre-constitutional laws inconsistent with FR, will be void only after the commencement of Constitution. They are not void-ab-initio. Keshva Madhav Menon (1951)

13(2) State shall not make any law which abridges the FR conferred by Part III, and any law made in contravention of FR, shall be void.

Doctrine of Severability

- not the whole law shall be treated as void if it can be ~~sep~~ separated from offending provision.

State of Bombay vs F.M. Balsara

R.M. DC vs UOI

Kihola Hollohan vs Zachiku (1993)

Doctrine of Eclipse

It provides for validation of void laws. It is based on the principle that a law which violates F.R is not void ab initio but become unenforceable

Bhikaji Narayan vs State of M.P (1955)

State of Gujarat vs Ambika Mills (1974)
- pre-post constitutional laws.

Doctrine of Waiver

(1) citizen cannot waive his FRs.



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Behram ~~of~~ vs State of Bombay (1955)

Baskeshwar Nath vs I T Commissioner (1959)

Art (13(3)) -

The term 'law' a very broad connotation which includes any ordinance, order, bye-law, rule, regulation, notification, custom or usage having the force of law.

Law in force includes: 'laws passed or made by legislature or other competent authority.'

An amendment of Constitution enacted u/A 368 is outside Art 13

Art 13(4) ~~is~~ ^{added} (added by 24th Amendment 1971)

Impliedly provides for 'Judicial Review' of all legislation past as well as future. The power of JR has been conferred on S.C & H.C u/A - 32 & 226.

'Judicial Review' is a power vested in the H.C & S.C to decide about the constitutional validity of the provisions of statutes.

The Doctrine of 'JR' was first time pronounced in American case 'Marbury vs Madison' (1803) Sir John Marshall, C.J

Development of the Doctrine of "Basic Structure" & 'Judicial Review'

- ① Shankari Prasad vs UOI (1951) - 31-A
31-B - 9 Schedule
Constitutional amendment will be valid even if it abridges or takes away any FR.
- ② Sajjan Singh vs State of Rajasthan (1965)
approved Shankari Prasad - 31-A
9 Sc - 4
- ③ I.C. Golak Nath vs State of Punjab (1967)
11 member (6:5) prospectively overruled its earlier decision and held 'Parliament has no power to amend Part III, (FR) - Doctrine of Prospective Overruling,
- ④ 24th Amendment Act (1971) to remove difficulties of Golak Nath
24th am by which not only ~~rest~~ restored the amending power of parliament but also extended its scope.



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1 Amendment (1951) -

17 Amendment (1965)

24th, 25th, 26th, 29th amendment

24th Amendment

Art-13 (4) Nothing in this article shall apply to any amendment of the Constitution made u/A-368.

Art 368 (3) Nothing in art-13 shall apply to any amendment made u/A-368

25th Amendment

Added Art-31C - Dividing 31C in two parts we get

- (i) No law for giving effect to directive principles can be declared unconstitutional on the grounds that it is violating Art 14, Art 19 & Art 31 (Rgt to property)
- (ii) - No law containing a declaration for giving effect to such policy shall be questioned in any court on the ground that it does not give effect to such policy.

26th Amendment

Abolition of Privy Purses

29th Amendment

Place land reform acts and amendments u/s Schedule 9 of the Constitution.

Key Narain vs state of U.P (1975)

- Allahbad H.C found the Prime Minister of India Indira Gandhi guilty of electoral malpractices.
- While the appeal was pending in S.C Indira Gandhi's Govt. declared emergency and added 39th Amendment

39th Amendment (1975)

Added 329A which took away power of Supreme Court's power to try electoral disputes relating to election of President, Vice President, Prime Minister and Speaker of Lok Sabha.

(5) Keshwanand Bharti of State of Kerala (1973) C.J. Sikari
the validity of 24th amend. Act was challenged.

13 member Const. Bench 7:6 majority held that parliament has wide powers of amending the Constitution and it extends to all the Articles, but amending power is not unlimited does not include to amend 'Basic Feature' of Const.

(6) L. Chandra of UOI (1997)

~~It has been held that J.R. is the basic feature of Const.~~

(7) 42nd Amendment (1976) Mini Constitution

After Keshwanand Bharti & Indira Nehru Gandhi 42nd Am. was passed which added clause (4) & (5) in Art 368.

Amendment was made on Reconn. of Swarn Singh Committee Report.

This amendment established parliamentary supremacy

Indira Gandhi vs Raj Narain (1975)

→ This was the first landmark judgement in which Kesavananda Bharti was applied by Supreme Court

→ It declared the newly added 329A clause 4 as unconstitutional because it violated the basic structure.

42nd Amend

→ Mini Constitution

→ Added Art 368(4) and 368(5)

which conferred unlimited amending power to the Parliament

→ Art 31-C amended again.

⑦ ~~Minerva~~ **Minerva Mills vs UOI (1980)**

In this case the Court was of the view that Judicial Review is the basic feature of Const. Hence cannot be amended therefore any amendment made by Parliament will go through the Judicial Review.

⑧ **Daman Rao vs UOI (1981)**

The S.C held that amendments to the Constitution made on or after 24 April 1973 (the date of Keswanand Bharti) by which the Ninth Schedule was amended are left open to challenge on the ground that they are beyond the constituent power of Parliament because they damaged the basic structure.

⑨ **I.R. Coelho vs State of T.M (2007)** 9 Judge Bench.

S.C held that any law placed in 9th Schedule after 1973, 24 April will be open to challenge ~~only~~ on the ground that they destroy or damage basic structure.

