

DOCTRINE OF SEVERABILITY

- › This doctrine was devised by the Supreme Court to resolve the problem of the validity of laws which are declared unconstitutional.
- › When a part of law is declared as institutional, then a question arises whether the whole of the law is to be declared void or only that part of the law, which is unconstitutional should be declared void.
- › According to this doctrine, if the offending provision of the law can be separated from that provision which is constitutional, then only that part of the law, which is offending, is to be declared void and not the whole of the law.



Basis of the Doctrine

- › Article 13(1) deals with the pre-constitution laws and declares that all such laws are void to the extent to which they are inconsistent with the Fundamental Rights.
- › Article 13(2) deals with the post-constitution laws and prohibits the state from making a law which takes away any such law is void to the extent of the contravention.

Important Cases

- › A.K Gopalan vs. State of Madras(1950)
- › Minerva Mills vs. Union of India(1980)
- › Kihoto Hollohan vs. Zachillhu (1992) (popularly known as the Defection case)

DOCTRINE OF WAIVER

- › The doctrine of waiver is based on the premise that a person who is entitled to a right or privilege is at liberty to waive or give up that right or privilege. It is a voluntary renunciation of a known right or privilege.

Waiver is an intentional relinquishment of a right. It involves conscious abandonment of an existing legal right, advantage, benefit, claim or privilege, which except for such a waiver, a party could have enjoyed.

- › It must be noted here that the doctrine of waiver is not applicable to the fundamental rights in India. In other words, a citizen cannot waive his fundamental rights in India. On the other hand, the doctrine of waiver is applicable to the fundamental rights in USA.



Important Cases

- › Behram Khursid Pesikaka vs. State of Bombay (1954)
- › Nar Singh Pal vs. Union of India (2000)
- › Basheshar Nath vs. Commissioner of Income Tax (1958)

IMPORTANT DOCTRINES OF CONSTITUTIONAL INTERPRETATION



DOCTRINE OF ECLIPSE

- › The prospective nature of the provision under Article 13(1) of the constitution has led to the emergence of this doctrine.
- › This provision deals with the pre-constitution laws and declares that all such laws are void to the extent to which they are inconsistent with Fundamental Rights. This doctrine is only applicable to the pre-constitution not to the post-constitution laws because as per Supreme Court, a post-constitution law which contravenes fundamental rights is a nullity or void from its very inception and a stillborn law.



Important Cases

- › Mahendra Lal Jain case(1962)
- › Deep Chand case(1959)
- › Bhikaji case(1955)

DOCTRINE OF TERRITORIAL NEXUS

- › The doctrine of territorial nexus is related to Article 245 which deals with the extent of laws made by the parliament and the state Legislature.
- › The Parliament is empowered to make laws for the whole or any part of the territory of India. In addition, it can also make "extra-territorial legislation". This implies that the parliamentary laws are applicable not only to the persons and property within the territory of India but also to Indian citizens and their property in any part of the world.
- › A state legislature is empowered to make laws for the whole or any part of the state. Unlike the parliament, a state legislature cannot make "extra-territorial legislation".



DOCTRINE OF PITH AND SUBSTANCE

- › According to this doctrine, a law in question must be looked into as an organic whole and not as a mere collection of sections, for determining the true nature and character of the impugned law i.e. the pith and substance of the law.
- › If it is found that the pith and substance of the impugned law relate to the subject within the domain of the legislature enacting the law, then the law would be held valid even though it incidentally encroaches on subjects who have been assigned to another legislature.

Important Cases

- › State of Bombay vs F.N Balsara(1951)
- › D.N Banerji vs. P.R. Mukharjee(1952)
- › Zameer Ahmed Latifur Rehman Sheikh vs. State of Maharashtra(2010)

