

DOCTRINE OF ECLIPSE

In *Keshavan Madhava Menon v. State of Bombay*¹, the law in question was an existing law at the time when the Constitution came into force. That existing law imposed on the exercise of the right guaranteed to the citizens of India by Article 19(1) (g) restrictions which could not be justified as reasonable under clause (6) as it then stood and consequently under Article 13(1) that existing law became void “to the extent of such inconsistency”. It was argued on behalf of the petitioners that the impugned Act, being void under Article 13(1), was dead and could not be revived by any subsequent amendment of the Constitution, but had to be re-enacted. This contention was rejected by a unanimous decision of the Supreme Court, which laid down that after the amendment of Article 19(6) in 1951, the constitutional impediment was removed. The Act, therefore, ceased to be unconstitutional, and became revived and enforceable.

The court said that the law became void not *in toto* or for all purposes or for all times or for all persons but only “to the extent of such inconsistency”, that is to say, to the extent it became inconsistent with the provisions of Part III which conferred the fundamental rights on the citizens.

This reasoning was also adopted in the case of *Bhikaji v. State of Madhya Pradesh*². The Court held that:

“On and after the commencement of the Constitution, the existing law, as a result of its becoming inconsistent with the provisions of article 19(1)(g) read with clause (6) as it then stood, could not be permitted to stand in the way of the exercise of that fundamental right. Article 13(1) by reason of its language cannot be read as having obliterated the entire operation of the inconsistent law or having wiped it out altogether the statute, book. Such law existed for all past transactions and for enforcement of rights and liabilities accrued before the date of the Constitution. The law continued in force, even after the commencement of the Constitution, with respect to persons who were not citizens and could not claim the fundamental right”.

The court also said something that we today know of as the crux of Doctrine of Eclipse.

“The true position is that the impugned law became, as it were, eclipsed, for the time being, by the fundamental right.”

Such laws are not dead for all purposes. They exist for the purposes of pre-Constitution rights and liabilities and they remain operative, even after the commencement of the Constitution, as against non-citizens. It is only as against the citizens that they remain in a dormant or moribund condition.

¹ [1961] S.C.R. 288

² AIR 1955 SC 781

Thus the Doctrine of Eclipse provides for the validation of Pre-constitution Laws that violate fundamental rights upon the premise that such laws are not null and void *ab initio* but become unenforceable only to the extent of such inconsistency with the fundamental rights. If any subsequent amendment to the Constitution removes the inconsistency or the conflict of the existing law with the fundamental rights, then the Eclipse vanishes and that particular law again becomes active again.

In the above context again question arises does the doctrine of eclipse apply to a post-constitutional law? In *Deep Chand v. State of U.P.*³ it was held that there is a clear distinction between the two clauses of Article 13. Under clause (1) a pre-Constitutional law subsists except to the extent of its inconsistency with the provisions of Part III, whereas as per clause (2), no post-Constitutional law can be made contravening the provisions of Part III and therefore the law to that extent, though made, is a nullity from its inception.

*Mahendra Lal Jaini v. State of U.P.*⁴ is the most authoritative decision for the impossibility of reviving post-Constitutional laws by a Constitutional amendment. The Court based its finding on the two grounds. First, the language and scope of Article 13(1) and 13(2) are different. Clause (1) clearly recognizes the existence of pre-Constitutional laws which were valid when enacted, and therefore could be revived by the Doctrine. Clause (2) on the other hand begins with an injunction to the State not to make a law which takes away or abridges the rights conferred by Part III. The legislative power of Parliament and State Legislatures under Article 245 is subject to the other provisions of the Constitution and therefore, subject to Article 13(2). Second, "contravention" takes place only once the law is made. This is because the contravention is of the prohibition to make any law, which takes away or abridges the fundamental rights. It is no argument to say that simply because the Amendment removes any subsequent scope for contravention, the law is no longer in conflict with the Constitution. However, the scope of the principles established above stands drastically curtailed in view of the Supreme Court decision in *State of Gujarat v. Shree Ambica Mills*,⁵ wherein Matthew, J. held that like a pre-Constitutional law, a post-Constitutional law contravening a fundamental right could also be valid in relation to those, whose rights were not infringed upon. For instance, when a post-Constitutional law violates a fundamental right like Article 19 which is granted to citizens alone, it would remain valid in relation to non-citizens. The court was of the view that a post-Constitutional law which is inconsistent with fundamental rights is not

³A.I.R. 1959 S.C. 648

⁴A.I.R. 1963 S.C. 1019

⁵A.I.R. 1974 S.C. 1300

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 absolutely void. In view of this judgment it can be concluded that the doctrine applies to both pre-Constitutional and post-Constitutional law.

In this regard, however, it can be submitted that this is not the correct proposition of law. In order to have a better understanding we have to examine one question- when a post-Constitutional law is held inconsistent with a fundamental right, can it be revived by amending the Act in question so as to remove the blemish, or will it have to be re-enacted as a whole? The Delhi High Court in *P.L. Mehra v. D.R. Khanna*⁶ observed that the legislation will have to be re-enacted and it cannot be revived by mere amendment. There is, therefore, no need to apply the Doctrine of Eclipse to post-Constitutional laws. Of course there is no direct Supreme Court ruling on this point. The closest authority on this issue is *Shama Rao v. State of Maharashtra*⁷, wherein an Act was challenged on the ground of excessive delegation, and pending the decision, the Legislature passed an Amendment Act seeking to remove the defect. The Supreme Court ruled by a majority that when an Act suffers from excessive delegation, it is still-born and void *ab initio*. It cannot be revived by an amending Act seeking to remove the vice, and must be re-enacted as a whole. It is submitted that this ruling supports the proposition that an Act held invalid under Article 13(2) would not be revived merely by amending it, but would have to be re-enacted.

⁶ A.I.R. 1971Del. 1

⁷ A.I.R. 1967 SC 480