



## Judicial Doctrines

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### Introduction

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#### Judicial Doctrine:

- A doctrine is a principle, theory, or position that is usually applied and upheld by courts of law.
- In Indian Constitutional law also, there are different judicial doctrines that develop over time as per the interpretation given by the judiciary.
- Some of the important judicial doctrines are discussed in this article.

### Doctrine of Basic Structure

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- **About:**

- The constituents of basic structure are not clearly defined by the Supreme Court of India.
- Parliamentary democracy, fundamental rights, secularism, federalism, judicial review etc. are all held by courts as the basic structure of Indian Constitution.

- **Origin:**

The origins of the basic structure doctrine are found in the German Constitution which, after the Nazi regime, was amended to protect some basic laws.

- **Important Judgements:**

- In **Kesavananda Bharati case 1973**, the **Supreme Court of India** for the first time ruled that the parliament has the power to amend any part of the constitution but it **cannot alter the “basic structure of the constitution”**.
- It was reaffirmed by the SC in the **Indira Nehru Gandhi v Raj Narain case (1975)**.
  - The SC court invalidated a provision of the **39<sup>th</sup> Amendment Act (1975)** which kept the election disputes involving the Prime Minister and the Speaker of Lok Sabha outside the jurisdiction of all courts.
- Basic structure doctrine was reaffirmed in the ***Minerva Mills case, 1980*** and later in the ***Waman Rao case, 1981***.
  - In this case the Supreme Court examined the validity of **Article 31A** and **Article 31B** of the Constitution of India with respect to the doctrine of basic structure.

## Doctrine of Separation of Powers

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- **About:**

- It mainly **signifies the division of powers between various organs of the state**; executive, legislature and judiciary.
- **Separation of powers** signifies mainly three formulations of Governmental powers:
  - The same person should not form part of more than one of the three organs of the state.
  - One organ should not interfere with any other organ of the state.
  - One organ should not exercise the functions assigned to any other organ.

- **Constitutional Provisions:**

**Article-50 of the Directive Principles of State Policy (DPSP)** of the Indian Constitution separates the judiciary from executive as, “the state shall take steps to separate judiciary from the executive in the public services of the state and except this there is no formal and dogmatic division of power”.

- **Important Judgements:**

- In ***Ram Jawaya v. State of Punjab (1955) case***, the SC held: “Indian Constitution has not indeed recognized the doctrine of separation of powers in its absolute rigidity but the functions of the different parts or branches of the government have been sufficiently differentiated.”
- In **Indira Nehru Gandhi v. Raj Narain (1975)**, the SC held: “Separation of powers is part of the basic structure of the constitution. None of the three separate organs of the republic can take over the functions assigned to the other”.

## Doctrine of Pith and Substance

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- **About:**  
Pith means ‘true nature’ and Substance means ‘the most important or essential part of something’.
- **Origin:**  
The doctrine was **first acknowledged in the Canadian Constitution** and In India, it came to be adopted in the pre-independence period, under the **Government of India Act, 1935**.
- **Applicability:**
  - The **Doctrine of Pith and Substance** is usually applied where the **question arises of determining whether a particular law relates to a particular subject (mentioned in Seventh Schedule)**, the court looks to the substance of the matter.
  - Apart from its applicability in cases related to the competency of the legislature (**Article 246**), the Doctrine of Pith and Substance is also applied in **cases related to repugnancy in laws** made by Parliament and laws made by the State Legislatures (**Article 254**).  
The doctrine is employed in such cases to resolve the inconsistency between laws made by the Centre and the State Legislature.
- **Important Judgement:**  
In ***Prafulla v. Bank of Commerce (1946)***, the SC held that a State law, dealing with money lending (a State subject), is not invalid, merely because it incidentally affects promissory notes.

## Doctrine of Incidental or Ancillary Powers

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- **About:**
  - It has **developed as an addition to the Doctrine of Pith and Substance**.
  - This doctrine is invoked **when there is a need to aid the principal legislation** in question.
  - The Doctrine of Pith and Substance deals only with subjects but the Doctrine of Incidental or Ancillary Powers **deals with the power to legislate on such subjects and the matters connected thereto**.
- **Origin:**  
The evolution of this Doctrine can be traced back to “***R. v. Waterfield (1963)***”, a decision of the **English Court of Appeal**.
- **Constitutional Provision:**
  - Article 4 talks about **power to make consequential changes in the law on matters supplemental and incidental** to the law providing for altering the names of states under Article 2 and 3.
  - **Article 169** talks about the power given to the parliament on abolition or creation of Legislative Councils in States “as may be necessary to give effect to the provisions of the law and may also contain such supplemental, incidental and consequential provisions as Parliament may deem necessary.”

- **Important Judgement:**

The SC in the ***State of Rajasthan v. G Chawla (1958)*** stated: “The power to legislate on a topic of legislation carries with it the power to legislate on an ancillary matter which can be said to be reasonably included in the power given.”

## Doctrine of Severability

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- **About:**

- It is also known as the **doctrine of separability** and protects the **Fundamental Rights** of the citizens.
- As per clause (1) of the **Article 13** of the Constitution, if any of the laws enforced in India are inconsistent with the provisions of fundamental rights, they shall, to the extent of that inconsistency, be void.

The **whole law/act would not be held invalid, but only the provisions which are not in consistency** with the Fundamental rights.

- **Limitation:**

If the valid and invalid part are so closely mixed up with each other that it cannot be separated then the whole law or act will be held invalid.

- **Origin:**

The Doctrine of Severability **finds its roots in England** in the case of ***Nordenfelt v. Maxim Nordenfelt Guns and Ammunition Company Ltd.*** where the issue was related to a Trade clause.

- **Important Judgements:**

- In ***A.K. Gopalan v. State of Madras (1950)***, the SC held that in case of inconsistency to the Constitution, only the disputed provision of the Act will be void and not the whole of it, and every attempt should be made to save as much as possible of the act.
- In ***State of Bombay v. F.N. Balsara (1951)***, eight sections of the Bombay Prohibition Act were declared invalid, the Supreme Court said that the portion which was invalid to the extent of fundamental rights was separable from the rest of the act.

## Doctrine of Eclipse

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- **About:**

- It is applied when any law/act **violates the Fundamental Rights (FR)**. In such a case, the **FR overshadows the law/act and makes it unenforceable but not void ab initio (Having no legal effect from inception)**.
- They can be reinforced if the restrictions posed by the fundamental rights are removed.
- It is **only against the citizens** that these laws/acts remain in a dormant condition but **remain in operation as against non-citizens** who are not entitled to fundamental rights.

- **Constitutional Provisions:**

Doctrine of eclipse is contained in **Article 13(1)** of the Indian Constitution. The doctrine of eclipse **does not apply to post-constitutional laws**.

- **Important Judgement:**

It was first introduced in India in ***Bhikaji Narain Dhakras v. State of Madhya Pradesh (1955)*** where in the Central Provinces and Berar Motor Vehicles (Amendment) Act, 1947 empowered the Provincial Government to take up the entire Provincial Motor Transport Business, these are violative of article 19(1) (g). The Supreme Court held that the impugned law became, for the time being, eclipsed by the fundamental right.

## Doctrine of Territorial Nexus

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- **About:**

It says that laws made by a State Legislature are **not applicable outside the state, except when there is a sufficient nexus** between the state and the object.

- **Constitutional Provisions:**

The doctrine **derives its power from Article 245** of the Indian Constitution.

Article 245 (2) provides that no law made by the Parliament would be invalid on the ground that it would have **extra-territorial operation** i.e. takes effect outside the territory of India.

- **Important Judgements:**

- In ***A.H. Wadia v. Income Tax Commissioner (1948)***, it was held that a question of extraterritoriality of enactment can never be raised against a Supreme Legislative Authority on the grounds of questioning its validity.
- In the ***State of Bombay vs RMDC (1952)***, the SC held that there existed a sufficient Territorial Nexus to enable the Bombay Legislature to tax the respondent as all the activities which the competitor is ordinarily expected to undertake took place mostly within Bombay.

## Doctrine of Colourable Legislation

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- **About:**
  - This Doctrine is also called “**Fraud on the Constitution**”.
  - The **Doctrine of Colourable Legislation** comes into play when a Legislature does not possess the power to make law upon a particular subject but nonetheless indirectly makes one.  
By applying this principle the fate of the Impugned Legislation is decided.
- **Origin:**

This Doctrine traces its origin to a Latin Maxim which, in this context, implies: “**Whatever legislature cannot do directly, it cannot do indirectly**”.
- **Constitutional Provision:**

The doctrine is usually applied to **Article 246** which has demarcated the Legislative Competence of the Parliament and the State Legislative Assemblies by outlining the different subjects under **Union list, State list and Concurrent list**.
- **Limitation:**
  - The doctrine has **no application where the powers of a Legislature are not fettered** by any Constitutional limitation.
  - It is also **not applicable to Subordinate Legislation**.
- **Important Judgement:**

In **R.S Joshi v. Ajit Mills (1977)**, the SC observed that “In the statute of force, the colourable exercise of or extortion on administrative force or misrepresentation on the constitution, are articulations which only imply that the assembly is clumsy to authorise a specific law, albeit the mark of competency is struck on it, and afterwards it is colourable enactment.”

## Doctrine of Pleasure

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- **Origin:**

The doctrine of pleasure has its **origins in English law** as per which, a civil servant holds office during the pleasure of the Crown.
- **Constitutional Provisions:**
  - Under Article 155, the **Governor of a State** is appointed by the President and **holds the office during the pleasure of the President**.
  - Under Article 310, the civil servants (members of the Defence Services, **Civil Services**, All-India Services or persons holding military posts or civil posts under the Centre/State) **hold office at the pleasure of the President or the Governor** as the case may be.
- **Limitation:**

**Article 311** places restrictions on this doctrine and provides safeguards to civil servants against any arbitrary dismissal from their posts.

- **Important Judgements:**

- The SC in ***State of Bihar v. Abdul Majid (1954)***, held that the English Common Law has not been adopted in its entirety and with all its rigorous implications.
- ***In Union of India v. Tulsiram Patel (1965)***, the SC held that the “pleasure doctrine” was neither a relic of the feudal age nor was it based on any special prerogative of the British Crown but was based upon public policy.

## **Doctrine of Harmonious Construction**

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- **About:**

- The term harmonious construction refers to such construction by which harmony or oneness amongst various provisions of an enactment is arrived at.
- When the words of statutory provision bear more than one meaning and there is a doubt as to which meaning should prevail, their interpretation should be in a way that each has a separate effect and neither is redundant or nullified.

- **Origin:**

The Doctrine of Harmonious construction originated through interpretations given by courts in a number of cases.

The evolution of the doctrine can be traced back to the very first amendment made in the Constitution of India with the landmark judgment of ***Shankari Prasad v. Union of India***.

- **Principles of rule of Harmonious construction:**

In the landmark case of ***CIT v. Hindustan Bulk Carriers (2003)*** the supreme court laid down five principles of rule of harmonious construction:

- The courts must avoid a head-on clash of seemingly contradicting provisions and they must construe the contradictory provisions.
- The provision of one section cannot be used to defeat the provision contained in another unless the court, despite all its efforts, is unable to find a way to reconcile their differences
- When it is impossible to completely reconcile the differences in contradictory provisions, the courts must interpret them in such a way so that effect is given to both the provisions as much as possible.
- Courts must also keep in mind that interpretation that reduces one provision to useless number or death is not harmonious construction.
- To harmonize is not to destroy any statutory provision or to render it fruitless.

- **Important Judgements:**

- In the ***Re-Kerala education bill 1951*** case it was held that in deciding the fundamental rights the court must consider the directive principle and adopt the principle of harmonious construction. So, two possibilities are given effect as much as possible by striking a balance.
- In ***East India hotels ltd. V. Union of India (2001)*** case, it was held that an Act is to be read as a whole, the different provisions have to be harmonized and the effect to be given to all of them.