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# Doctrine of Eclipse

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## ABSTRACT

*Doctrine of eclipse is contended in Article 13(1) of the Indian charter. Article thirteen states that any law which become made before the graduation of the charter have to be regular with the component III of the Indian charter. If any statue that's inconsistence with the provisions supplied underneath element III of the Indian constitution such statue shall emerge as void. on the same time such statue shall no longer be treated as useless but can be within the moribund condition till and until it's far abolished through the Parliament.*

*As a result, any regulation prior to independence if it infringes or is in battle with the fundamental rights then it need to be void up to that inconsistency. It does not make the complete law void however that a part of law that's inconsistent with part-III of the Indian constitution could be void. The regulation isn't dead however can be in moribund circumstance and is at disposal of parliament.*

*If any subsequent amendment to the Constitution removes the inconsistency or contradiction of the existing law with the fundamental rights, then the Eclipse will disappear and that particular law will again become active.*

**Keywords:** *Constitution, Element, Fundamental Rights, Parliament.*

## I. INTRODUCTION

### (A) Meaning of Eclipse:

The Doctrine of Eclipse states that any law inconsistent with fundamental rights is void. Not quite dead, but overshadowed by the fundamental right. The discrepancy (contradiction) can be removed by constitutional amendment. The amendment to the relevant fundamental right will remove the eclipse and the entire law will come into force.

### (B) Doctrine of Eclipse:

It is based on the principle that a law which violates fundamental rights will not be declared void or void ab initio but will only become unenforceable i.e. remain in a moribund state.

The term Eclipse in doctrine means "It is overshadowed by fundamental rights and remains dormant but dead." Such laws which contravene Part 3 are not entirely stricken from the statute book. The Act remains in a moribund state only against citizens as Part III of the Constitution

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is provided only to citizens but remains valid against non-citizens as they are not entitled to the fundamental rights provided by the Constitution of India.

## **II. CASE STUDY**

### **Bhikhaji vs State of MP AIR 1955 S.C. 781**

**Citation:** AIR, 1955 SC 781

**Date of judgment:** 29, September 1955

**Court:** Supreme Court

**Case type:** Civil Appeal

**Petitioner:** Bhikaji Narain Dhakras and Ors.

**Defendant:** The state of MP and Ors.

**Bench:** Sudhi Ranjan Das, Acting CJ.; H. Bhagwati; L.Venkatarama Aiyar; Syed Jaffer Imam; Chandrasekhara Aiyar, JJ.

**Reference:** Article 19(1) g of the Indian Constitution, Motor Vehicle Act, 1939

### **(A) Introduction**

With the help of this case, the Doctrine of Eclipse was promulgated and established in India. It was an important case law. Under the Motor Vehicles Act, 1939, the State Government has vested the power to direct or regulate carriage and its operation in the State of M.P., C.P. and the Berar and Motor Vehicle Act was established. This case challenged the constitutional validity of C.P. and Berar and Motor Vehicle (Amendment) Act 1947 and legalized the impugned act.

### **(B) Facts of Case**

Provincial Transport Company Limited and C.P. Transport Services were companies based in the state of Madhya Pradesh. These companies were the main private transport companies in the area and the unit held approximately 85% of the market share capital, giving the government sole authority to conduct and control the public sector transport business. Five petitions were filed under Article 32 of the Constitution of India and the petitioners filed them in C.P. and the Berar Act, 1947. The appellants were entitled to continue their transport duties under the Motor Vehicles Act, 1939. Implementation and relevance of C.P. The Berar Act would affect the fundamental rights of several citizens working in the transport business and also hand over extensive powers to the state to regulate the business.

**(C) Issued Raised:**

- Whether C.P. and the Berar Amendment Act was constitutionally valid.
- Whether the law was violated Article 19 paragraph 1 letter g) Constitution or not.

**(D) Contention by the Parties**

- Petitioner argued that C.P. The Berar Amendment should be declared invalid as it contravenes Article 19 (1) (f) of the Constitution of India. The law is invalid because it is unconstitutional. The petitioner further contended that it prohibits people from starting their vehicles in the business of transport and violates the citizen's right to property thereby violating Article 31 of the Constitution of India.
- The respondent argued that the first constitutional amendment of 1951 removed the law's lack of consistency. The fundamental rights of the citizens of India under Article 19 are subject to certain limitations mentioned in paragraphs 2 to 6 of the same articles. This was the first constitutional amendment to Article 19(6), which enforces restrictions on the fundamental rights of a citizen to exercise any profession, trade, business or occupation. The law does not violate the basic rights of citizens, the law was adopted with the benefit of the public in mind. This law also directs the state to become a monopoly so that it can work for the common man.

**(E) Judgement**

The court stated that if the amendment to the constitution did not exist, the question in the law would be invalid, as it prevents the right of a citizen to do business, to run a trade or profession. However, the first constitutional amendment came into effect in 1951 and the subject law, which was monopoly control by the state in transportation or transportation, was repealed. The court further noted that Article 19(6) was not contemplative in nature and therefore could not be implemented for rights and obligations arising between 26 January 1950 and 18 June 1955. However, restrictions and limitations apply after the amendment. to all citizens. The court noted that the petition was filed on May 27, 1955, and the defect in law was removed on April 27, 1955.

**III. ELEMENTS OF DOCTRINE OF ECLIPSE**

- It should be a pre-constitutional law
- It must be contrary to the fundamental law
- The law is not a dead bug, it just doesn't work

- If there is an amendment to the Basic Law in the future, it will automatically give effect to the law presented.

#### **(A) Post Constitutional law**

Article 13(3) prohibits the State from making laws which take away or abridge the rights conferred by Part III, i.e. the fundamental right of the Constitution. If the State makes such a law which contravenes or violates Part 3 of the Constitution, it shall be declared ultra vires and void to the extent it is inconsistent with fundamental rights.

It is a nascent right and cannot be revived by removing the constitutional prohibition by subsequently amending the Constitution. Although post-constitutional laws inconsistent with fundamental rights are void ab initio. It will be necessary for the court to decide on their invalidity.

### **IV. CASE STUDY**

#### **Deep Chand vs. The State of Uttar Pradesh and Ors**

**Appellants:** Deep Chand

**Respondents:** The State of Uttar Pradesh and Ors.

**Decided On:** 15 January, 1959

**Judges/Coram:** *Sudhi Ranjan Das, C.J., B.P. Sinha, K. Subba Rao, K.N. Wanchoo and N.H. Bhagwati, JJ.*

**Equivalent Citation:** AIR 1959 SC 648

#### **(A) Statutes Referred**

- The Constitution of India: Articles 13, 19 (1), 31, 32, 37, 132, 133, 245, 246, and 254
- Uttar Pradesh Transport Service (Development) Act, 1955: Sections 3, 4, 5, 8 and 11 (5)
- General Clauses Act, 1897: Section 6

#### **(B) Facts**

- The petitioners were carrying on business as stage transport operators on various routes in Uttar Pradesh under valid permits issued under the Motor Vehicles Act, 1939 along with buses owned by the Government.
- However, the U.P. The Legislature passed the Uttar Pradesh Transport Service (Development) Act, 1955 - under section 3, the government issued a notification for the nationalization of routes.

- The appellants received notice under Section 5 of the U.P. Act and ask them to file any objections. After receiving the objections, they were informed that the same would be heard by the Board.
- The objections filed by all the operators except those from Agra region were heard and the inquiry regarding Agra region was adjourned but the Agra region operators did not appear again.
- The notification was issued under Section 8 of the Act was published in the U.P. Official paper. Additionally, the Secretary, Regional Transport Authority, Agra, has sent an order purportedly issued by the Transport Commissioner to operators in the Agra region prohibiting them from running their stage coaches on the designated routes and also informed them that their permits will be cancelled. transfer to other routes.

### **(C) Issue**

- Are the provisions of Part III of the Constitution enshrining fundamental rights a mere control or limitation of the legislative competence entrusted to the Parliament and state legislators in Articles 245 and 246 read with the relevant entries in the lists in the seventh annex of the Constitution or are they an integral part of the provisions defining, prescribing and granting the legislative power itself?
- Whether the doctrine of eclipse is applicable only to pre-constitutional laws or can it also apply to any post-constitutional law that falls under Article 13(2) of the Constitution?

### **(D) Appellant's Arguments**

- The Motor Vehicles (Amendment) Act, 1956 as passed by the Parliament is totally inconsistent with the provisions of the Uttar Pradesh Transport Service (Development) Act, 1955 and is therefore void under the provisions of Article 254(1) of the Constitution of India; as a result, there is currently no law in force which, according to the Government, could exclude the applicants from exercising their fundamental right under the Constitution, ie to carry on their business in the field of motor transport.
- The regime established by the Act to operate in future and from day to day is an instrument within the meaning of section 68B of the impugned Act and as a result the provisions of the impugned Act would prevail over the regime and after the impugned Act comes into force - it would have no operational force.
- Even if the impugned Act were valid and continued in force in view of the scheme contained therein, it would be violative of the provisions of Article 31 of the Constitution as it was

prior to the Constitution (Fourth Amendment) Act, 1955, as when the State assimilated the petitioner's interest in a business enterprise and no compensation was provided for said interest – as it should be under Article 31 .

### **(E) Respondent's Arguments**

- It was argued on behalf of the State that the Constitution (First Amendment) Act, 1951 and the Constitution (Fourth Amendment) Act, 1955 had the effect of removing the inconsistency and therefore the Amendment Act III of 1948 came into force. again. Moreover, even if the Constitution (Fourth Amendment) Act, 1955 could not be relied upon to uphold the validity of the U.P. Act, there was no deprivation of the property of the appellants.
- The learned Advocate General relied on certain precedents in support of his contention that the word "void" in Article 13(1) and Article 13(2) only means "unenforceable" against persons claiming fundamental rights and the Act continues to remain in the body of laws notwithstanding that it was made in violation of fundamental rights.

### **(F) Judgement**

In the present case, the Supreme Court ruled as follows:

- If any law is passed after January 25, 1950 which is contrary to the constitution, then that law is void from its birth and anything done under it is also void and illegal in India as observed in America, and even condemnation. made under such unconstitutional law will have to be set aside by the exercise of the powers given to this court by the Constitution.
- When comparing the provisions of U.P. Act and the amending Act, it is clear that both Acts are intended to operate in relation to the same subject in the same area. However, the unamended Motor Vehicles Act of 1939 contained no provision for the nationalization of transport services, while the state introduced amendments to implement the road transport nationalization scheme.
- In the result, all the appeals are dismissed with one set of costs for the State of Uttar Pradesh.

## **V. RULE OF LAW**

The provision of law which came under the control of the Hon'ble Supreme Court of India was the Doctrine of Eclipse. It has been made clear that any post-constitutional law infringing fundamental rights is void ab initio and the doctrine of eclipse cannot apply.

### **(A) Exception to post Constitutional Law**

A post-constitutional law which takes away, abridges or violates the right conferred by Article 19 of the Constitution of India will be applied in relation to non-citizens because fundamental rights are not available to non-citizens. Such a law will become void or non-existent only vis-à-vis citizens because fundamental rights are available only to citizens. The void referred to in Article 13, paragraph 2 can be declared invalid only against persons whose fundamental rights are taken away or shortened by law. Non-citizens cannot use it.

## **VI. CONCLUSION**

The doctrine of eclipse thus provides for the validation of pre-constitutional laws which violate the fundamental rights laid down in Part III of the Constitution of India provided that such laws are not void ab initio but remain unenforceable and in a moribund state only to the extent of such non-conformity with fundamental rights. If there is any subsequent constitutional amendment by Parliament which removes the inconsistency or contradiction of the existing law with the fundamental rights, then the eclipse will disappear and the said law will become active again.

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