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## **Constitution of India Art 13 - Laws inconsistent with or in derogation of the fundamental rights**

(1) All laws in force in the territory of India immediately before the commencement of this Constitution, in so far as they are inconsistent with the provisions of this Part, shall, to the extent of such inconsistency, be void.

(2) The State shall not make any law which takes away or abridges the rights conferred by this Part and any law made in contravention of this clause shall, to the extent of the contravention, be void.

(3) In this article, unless the context otherwise requires,—

(a) “law” includes any Ordinance, order, bye-law, rule, regulation, notification, custom or usage having in the territory of India the force of law;

(b) “laws in force” includes laws passed or made by a Legislature or other competent authority in the territory of India before the commencement of this Constitution and not previously repealed, notwithstanding that any such law or any part thereof may not be then in operation either at all or in particular areas.

(4) Nothing in this article shall apply to any amendment of this Constitution made under article 368.

### NOTES

**Doctrine of Eclipse:** Doctrine of eclipse will apply to pre-constitutional law governed by Article 13(1) but not to post-constitutional laws governed by Article 13(2).<sup>1</sup>

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<sup>1</sup> K.K. Poonacha v. State of Karnataka, (2010) 9 SCC 671 cited in Sankaranarayanan 2017

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Nature of fundamental Rights: Fundamental rights have no retrospective effect, *Keshavan Madhava Menon v. State of Bombay*, AIR 1951 SC 128.

Extent of Amendments: An amendment to the Constitution is not “law”, and to the extent that it does not violate the basic structure, Article 13(4) is valid.²

Personal Laws: Personal laws are not “law” for the purpose of Article 13.³

Doctrine of Severability: Article (13)(1), all the laws insofar as they are inconsistent with the fundamental rights, shall to the extent of such inconsistency, be declared void from the date of commencement of the Constitution. But they shall become void only after the courts hold them inconsistent with the fundamental rights, the “doctrine of severability” would be applicable here and the whole Act will not become inoperative. But if a situation arises in which the invalid part of a statute is inextricably linked with the valid part then both the parts cannot be segregated and the whole Act is declared void as the valid part is not able to exist independently if the invalid part is removed or truncated.⁴

Waiver of fundamental right: Fundamental rights cannot be waived.⁵

Waiver of legal right: The fundamental rights guaranteed under part III of the Indian Constitution cannot be waived by any citizen. But in non-fundamental right cases, this right can be

² *Kesavananda Bharati v. State of Kerala*, (1973) 4 SCC 255 cited in Sankaranarayanan 2017

³ *State of Bombay v. Narasu Appa Mali*, AIR 1952 Bom 84, followed in *Ahmedabad Women’s Action Group v. Union of India*, (1997) 3 SCC 573 cited in Sankaranarayanan 2017.

⁴ *R.M.D. Chamarbaugwala v. Union of India*, AIR 1957 SC 628; *Deepak Sibal v. University*, (1989) 2 SCC 145 cited in Sankaranarayanan 2017

⁵ *Basheshar Nath v. CIT*, AIR 1959 SC 49 cited in Sankaranarayanan 2017

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waived provided that the person waiving the right has the knowledge of such waiver.<sup>6</sup>

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<sup>6</sup> M.P. Sugar Mills Co. Ltd. v. State of U.P., (1979) 2 SCC 409 cited in Sankaranarayanan 2017