

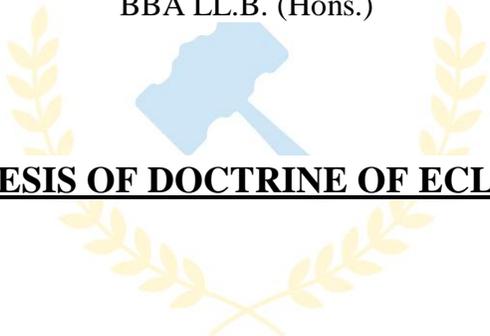
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**GENESIS OF DOCTRINE OF ECLIPSE****Abstract**

This paper describes the evolution of eclipse theory through judicial claims by exploring its basic premises, and then delves into the controversial issue of expanding applicability. its for post-constitutional laws. Prominent jurists stand on this point at opposite ends of the academic spectrum, and conflicting judicial claims add to the confusion. The author argues that much of this debate has focused on whether it is possible to make a distinction between a law that has no legislative authority and a law that has no effect due to a violation of the constitutional limits of legislative power, and whether the word "null" in Article 13 (2) is given a meaning other than that given in Article 13, paragraph 1; and seeks to explore these controversies in an attempt to clarify the current legal situation. Finally, the author seeks to highlight one of the most important, but often overlooked features in India, of the Doctrine, namely its relevance as a dispute resolution tool. Central State's mortgage under Articles 251 and 254, and to reflect on whether it has outlived its utility.

Introduction

The literal meaning of "eclipse" refers to the appearance of one object overshadowing another. With regard to constitutional law, the doctrine of eclipse is known to be applied in cases where an act or law tends to violate the fundamental rights guaranteed by the Constitution of India.

The Eclipse doctrine stipulates that any law that is incompatible with fundamental rights is not invalid. It did not completely die out, but was obscured by basic rights. The inconsistency (conflict) can be eliminated through constitutional amendments. The related fundamental rights amendment will eliminate the eclipse, and the entire law will come into effect.

The Doctrine of Eclipse advocates the concept of fundamental rights being prospective [1]. Ideally, this shows that if a law enacted by the legislator is inconsistent with Part Three of the Indian Constitution (which deals with fundamental rights), then that law will be considered void, as it is obscured by fundamental rights.

In short, laws that infringe on fundamental rights are concealed by fundamental rights because of their supremacy, which casts a shadow over fundamental rights. That is the law inoperative, unenforceable and takes the shape of a sleeping provision. It is not nullity or void ab initio ¹. In order to make the law enforceable and operable again, the restrictions must be eliminated by modifying the corresponding basic rights.

Subject to Article 13 (1) of the Constitution of India, all laws in force in the territory of India immediately before the entry into force of this Constitution, if inconsistent with the provisions of this part, to the extent that such it is incompatible, are void. Such laws do not completely void but once again become valid if the restrictions imposed by fundamental rights are removed.

In addition, those eclipsed laws apply to cases that occurred before the Constitution came into force. Therefore, the current fundamental rights conceal the opposite part of these laws and make this part of the law invalid.

For a law to come under the ambit of the doctrine of eclipse it is essential that, the law in question should be

¹ Doctrine of eclipse- <http://lexcliq.com/doctrine-of-eclipse-by-madhvi-patidarlexcliq/>

- 1) Pre-constitutional in nature
- 2) The law must be in conflict with the fundamental rights
- 3) The law only becomes inoperative not void.
- 4) An amendment that removes conflict with fundamental rights can easily make the law operative again.

The theory of this doctrine is explained in the context of article 13 of the Constitution of India, which provides for the application of four fundamental rights principles. Article 13 deals with laws that do not respect or derogate from fundamental rights.

Applicability of the Eclipse Doctrine to Post-Constitutional Laws-

In *Sagir Ahmed v. State of Uttar Pradesh*, AIR 1954 SC 728², the Supreme Court has ruled that the Eclipse Doctrine applies only to pre-constitutional laws and not to post-constitutional laws³. The Court held that post-constitutional laws, if violated Part III, would not be effective and that a subsequent constitutional amendment could not restore them. On the other hand, the invalidity of the pre-constitutional law is not original, but only counted from the effective date of the Constitution. The Supreme Court made a distinction between Articles 13(1) and Article 13(2) and ruled that Article 13(2) applies to post-constitutional statutes and prohibits the state from making laws that violate a fundamental right while Article 13(1) applies to pre-constitutional statutes. law and there is such a prohibition.

Then in the *State of Gujarat v. Ambica Mills*, AIR 1974 SC 1300⁴, the court changed the position expressed in *Deep Chand case*, *Mahendra Lal Jain case* and *Sagir Ahmed case*.

The court ruled that post-constitutional laws, incompatible with fundamental rights, were not null and void for all purposes. Void within the meaning of Article 13, paragraph 2, means void in

² Available at: <https://www.casemine.com/judgement/in/56090a74e4b0149711172302> (Last Accessed on 24.10.2021).

³ Available at: <https://racolblegal.com/doctrine-of-eclipse-and-post-constitutional-laws/> (Last accessed on 24.09.2021)

⁴ Available at: <https://indiankanoon.org/doc/681436/> (Last accessed on 24.09.2021)

respect of persons whose fundamental rights have been withdrawn. If a post-constitutional law removed the rights provided for by Article 19, that law would only be null and void for citizens because Article 19 rights are granted only to citizens. Such law shall be duly applied to non-citizens. Since such laws are not null and void for all intents and purposes, the doctrine of eclipses can also be applied to post-constitutional laws.

In other words, the court ruled that if the law violated a fundamental right limited to citizens, it would continue to apply to non-citizens. The court clearly ruled that such a law could not be restored to citizens simply by amending a fundamental right. This is because Article 13, paragraph 2, affects the legislator's authority to pass laws that preclude fundamental rights. This means that the law will have to be enacted after the fundamental rights change if it is to be put into effect.

However, the Supreme Court in *L. Jagannath v. The competent officer*, AIR 1972 SC 425 has ruled that if a law is declared unconstitutional on the grounds of section 13(2), it can only be reactivated when it is included in the third schedule. nine because section 31B remedial action is contrary to retroactive law. Later, the Supreme Court in *Dulare Lodh v. Additional third district judge, Kanpur*, AIR 1984 SC 1260 applied the doctrine of eclipses in post-constitutional law against citizens.

In this way, Doctrine of Eclipse preserves the inactive state of the fundamental rights as indicated in Art. 13. Since this doctrine is prospective in nature, it will apply only to pre-constitutional laws and not to laws in force after January 26, 1950 as under Article 13 (2).

This aspect was explained in detail in *Deep Chand v. Uttar Pradesh*, where the Supreme Court ruled that the post-constitutional laws violate the fundamental rights but are not yet dead. They are just inactive.

Furthermore, in the landmark case of *A.K. Gopalan v. Madras State*, the Supreme Court found that section 14 of the Pre-trial Detention Act violated section 14 of the Indian Constitution. The court ruled that in this scenario, only part 14 of the action should be struck out, not the entire act.

Evolution of Doctrine of Eclipse-

Prospective/ Retrospective Nature of Article 13(1) was discussed in “The Keshavan case”, which raised a number of difficult questions regarding the Doctrine, response, retrospective and future nature of Article 13(1) and the meaning of the word "null" in Article 13(1). In the historic Keshavan Madhava Menon case against Bombay State, the applicant was prosecuted under the Press (Emergency Powers) Act 1931 of India for publishing a pamphlet without permission. The case is pending as the Constitution of India begins. The main question is whether the provisions of the law violate Article 19(1)(a). The Court ruled that the relevant provisions violated Article 19(1)(a) and that they were “null and void” to the extent of their incompatibility. The Court further concluded that fundamental rights are fundamentally promising in nature and that the word "null" does not mean annulment of a law or provision.

Behram Khurshid Pesikaka v. The State of Bombay⁵ highlights the connection between Article 13(1) and Pre-Constitutional Laws. This was one of the first case to explain the logical connection between Article 13(1) and pre-constitutional statutes. In that case, the appellant was charged under section 66(b) of the Bombay Prohibition Act of 1949. Before that, section 13(b) of the same Act had been declared null and void in the case of F. N. Balsara, because he violated section 19(1)(f). The appellant gives the example of F.N. Balsara as before. Second, section 66(b) is deemed inoperative and not applicable. The court ruled that part of the law would be unconstitutional and not the whole of it. In addition, they argue that the defendant has the responsibility to prove his citizenship and illegal nature.

The genesis of this doctrine can be found in Bhikaji Narain Dhakras v. State of Madhya Pradesh⁶. In this case, the CP and Berar Motor Vehicle Amendment Act of 1947 were opposed for violation of section 19 (1) (g) of Part III. This amending law is a pre-constitutional act. As a result, the Eclipse Doctrine was adopted and the provisions of the law were no longer in force. Soon after, in 1951, section 19(1)(g) was amended by the First Constitutional Amendment Act, abolishing the eclipse and making the law applicable to both citizens and non-citizens. The Supreme Court opined that “*the effect of the amendment was to remove the shadow and to make*

⁵ Doctrine of eclipse- <http://lexcliq.com/doctrine-of-eclipse-by-madhvi-patidarlexcliq/>

⁶ Doctrine of eclipse- <http://lexcliq.com/doctrine-of-eclipse-by-madhvi-patidarlexcliq/>

the impugned Act free from all blemish or infirmity"⁷. The Court also observed that it will still be enforceable against non-citizens.

Conclusion-

The theory of eclipse theory is essential in India as it seeks to protect the country's pre-constitutional laws from the complete erasure of the law books as to their applicability. It embodies both the rule of law and the theory of constitutionalism.

The Eclipse Doctrine illustrates a subtle and nuanced aspect of constitutionalism and the rule of law theory. It protects the country's pre-constitutional laws from being completely removed from legislative texts in terms of enforceability.

The differences in the boundaries between pre- and post-constitutional laws are well balanced by this doctrine in order to maximize the effect of the provisions and ensure justice. There is no compromise on the functioning of the administrative and legislative wings in the country; this theory avoids the waste of time and precious resources that can arise during the reestablishment of the rule of law.

⁷ Available at: <https://www.srdlawnotes.com/2018/04/doctrine-of-eclipse.html> (Last accessed on 24.09.2021)