

### Article 13 Judicial Review & IX Schedule

- **A.13(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.
- **A.13(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.

### Judicial Review-

- Judicial innovation, not implicit but explicit in A. 13.
- Marbury vs Madison was the 1<sup>st</sup> case in USA (1803), Supreme Court asserted -> to review constitutionality of Congress's Acts.

### Doctrine of Eclipse-

- Pre constitutional law-> inconsistent with FRs-> not wiped out altogether
- Can exist for rights & liabilities -> before the Constitution
- Law eclipsed -> by relevant FR -> law in dormant condition -> not dead for all purposes.

### Doctrine of Severability-

- Law is void -> to extent of inconsistency
- Act not void as whole -> part of it is void -> that part severable from remaining valid statute -> remaining statute valid.

### Shankari Prasad case 1951-

- Challenged 1<sup>st</sup> amendment that inserted A. 31-A & A.31-B
- A. 31-A insulated land reforms from Judiciary & A.31-B created IX Schedule.
- Zamindars challenged 1<sup>st</sup> amendment.
- Expression 'law' under A.13 (2) includes amendments?
- Supreme Court said no.

### Sajjan Singh vs State of Rajasthan 1965-

- 17<sup>th</sup> put 44 statutes in IX Schedule, it was challenged.
- Supreme Court upheld 17<sup>th</sup> amendment.
- Justice Mudholkar & Justice Hidayatullah doubted correctness of Court in Shankari Prasad case.

**Golaknath vs State of Punjab 1967-**

- Landowners deprived of their landholdings under state land reform laws.
- Supreme Court ruled that an amendment is same as 'law' under A. 13(2).
- FRs -> sacrosanct.
- Parliament passed 24<sup>th</sup> amendment - inserted A.13 (4) & A. 368(3).
- A.13(4) - excluded amendments from JR
- Parliament passed 25<sup>th</sup> amendment - inserted A. 31-C.
- A.31-C -> laws implementing A.39(b) & .39(c) -> shall not be void because they violate A.14, A.19 & A.31.

**Keshvanand Bharti vs State of Kerala 1973 -**

- 29<sup>th</sup> amendment 1972 -> two land reform laws in IX Schedule.
- Petitioners challenged -> 24<sup>th</sup>, 25<sup>th</sup> & 29<sup>th</sup> amendment.

**Supreme Court verdict on Keshvanand Bharti-**

- 24<sup>th</sup>, 25<sup>th</sup> & 29<sup>th</sup> amendments are valid, except clause that curtailed Court's jurisdiction.
- Nullified Golaknath judgement
- No implied limitations on Parliament's power to amend the Constitution.
- Parliament can't alter the 'basic structure' of the Constitution.

Parliament passed 42<sup>nd</sup> amendment and inserted A. 368(4) & A. 368(5).

- **Minerva Mill vs UOI 1980**- this was the last attempt to establish Parliamentary supremacy over Constitution. A.368(4) & A.368(5) are invalid
- **Waman Rao vs UOI, 1981**- amendments after Keshavanad Bharti ->open to challenge even if put in IX Schedule.
- **IR Coelho vs State of Tamil Nadu 2007**- any law even if put in IX Schedule violates the golden triangle then it will be void.