

Doctrine of Severability

The Doctrine of Severability is a fundamental principle in constitutional jurisprudence, enabling courts to uphold the validity of a statute while excising any unconstitutional provisions, thus preserving the legislative intent to the maximum extent possible. This principle is crucial in maintaining the efficacy of laws by ensuring that entire statutes are not invalidated due to parts that are unconstitutional. In India, this doctrine is implicitly embedded in Article 13 of the Constitution, which mandates that any law in contravention of the fundamental rights is void to the extent of the contravention.

Conceptual Framework

The Doctrine of Severability tests whether the valid and invalid parts of a statute are fundamentally inseparable. If they are, the entire statute must be struck down. However, if the valid portions can stand independently and fulfil the legislative intent on their own, they may be preserved. This approach prevents the derailment of an entire legislative framework due to flaws in segments of the law.

Judicial Milestones in the Application of the Doctrine

A.K. Gopalan vs. State of Madras: In this early case from 1950, the Supreme Court applied the Doctrine of Severability to uphold the validity of certain sections of the Preventive Detention Act, 1950, while others were declared unconstitutional. This case set a precedent for how Indian courts address the severability of statutes.

R.M.D. Chamarbaugwalla vs. Union of India: Perhaps the most significant case regarding the Doctrine of Severability, this 1957 Supreme Court decision involved provisions of the Prize Competitions Act, 1955. The Court held that the sections of the Act that pertained to gambling could be severed from those applying to competitions involving substantial skill. This landmark judgement refined the application of the doctrine, emphasising the need to ascertain the legislative intent and the statute's capability to function independently after severance.

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Kihoto Hollohan vs. Zachillhu and Others:

In this 1992 case, the constitutional validity of the anti-defection law was challenged. The Court demonstrated the application of the Doctrine of Severability by upholding the majority of the Tenth Schedule to the Indian Constitution, despite finding some parts unconstitutional without affecting the overall operational integrity of the Schedule.

Principles Guiding Severability

The doctrine is not applied uniformly but is guided by certain principles:

- **Intrinsic Connection:** If the valid and invalid parts of the statute are so entwined that they cannot be separated without defeating the main purpose of the statute, the entire statute may be struck down.
- **Independent Operation:** If the valid part of the statute is capable of independent operation and serves the original intent of the legislation, it can be sustained.
- **Legislative Intent:** Understanding the legislative intent is crucial. If the intent remains intact without the invalid portions, the valid parts can be preserved.

Doctrine of Severability in Arbitration

The Case of NHA v. Trichy Thanjavur Expressway Ltd.

In this particular case, the Court faced cross petitions challenging an arbitral award dated August 7, 2022. The petitions sought not a

wholesale invalidation of the award but a targeted removal of specific parts deemed inconsistent with the legal framework.

Principles and Application

Distinct and Independent Components:

The court noted that the arbitration award was composed of various findings, each capable of standing alone. This modular structure of the award meant that removing one part would not necessarily impact the integrity or applicability of the others.



Legal Precedents and Guidance: The judgement referred to several precedents, notably the Supreme Court's ruling in *M. Hakeem*, which clarified that while modification of an award is not permitted, severing parts of an award is distinct and allowable under law. This distinction is crucial in maintaining the efficacy and fairness of arbitration as a method of dispute resolution.

Practical Implications: The court detailed how in practice, severability should be applied. For example, if a part of the award related to damages is found faulty due to an erroneous legal standard, that part can be set aside without affecting the validity of the rest of the award, provided that the findings are separable and independent.