

Doctrine of Severability

Legal doctrines and principles are important topics for the UPSC IAS exam as they help understand how the judicial machinery works in the country. You can also expect questions based on them in the UPSC Prelims. In this article, you can read all about the Doctrine of Severability for the [UPSC exam](#).

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Doctrine of Severability

With the adoption of the Constitution of India in the year 1950, Part III in the form of [fundamental rights](#) also came into effect.

- The fundamental rights are a set of inherent rights which guarantees to every citizen of this country a life of dignified existence and holistic all-round development.
- Any law that infringes upon these rights is liable to be struck down by the courts.
- The question however arises as to what happens when only a portion of the impugned law is violative of fundamental rights, and it is in instances like these that the doctrine of severability is invoked.

The doctrine derives its validity from **Article 13** which states,

“All laws in force in India, before the commencement of the Constitution, in so far as they are inconsistent with the provisions of fundamental rights shall to the extent of that inconsistency be void.”

- As an extension of Article 13, the doctrine states that when some particular provision of the statute infringes or violates the fundamental rights, but the provision is severable from the rest of the statute, and then only that provision will be declared void by the courts and not the entire statute.
- The doctrine essentially lays down that if violative and non-violative provisions are separated in a way that the non-violative provision can exist without the violative provision, then the non-violative provision will be upheld as valid and enforceable.

Doctrine of Severability - Cases

One of the earliest instances of using the doctrine was the case of *Nordenfelt v. Maxim Nordenfelt Guns and Ammunition Company Ltd, 1876* where the court struck down the violative portion of a contract but held that the rest of the contract could go ahead after severing the violative portion.

The doctrine of severability was discussed at length in the case of **R.M.D.C v. the State of Bombay**, and the court laid down the following principles.

- In order to find out whether the valid part of the statute can be separated from the invalid part, the intention of the legislature is the determining factor.
- In case the valid and non-valid parts of a particular statute are inseparable then it will invariably result in the invalidity of the entire statute.
- When the statute stands independently after the invalid portion is struck out then it will be upheld, notwithstanding that the rest of the Statute has become unenforceable.
- In cases where the valid and invalid parts are separable but both of them were intended to be part of the same scheme, then the whole scheme will be invalid.

- There may be instances where the valid and invalid parts are separable and not part of the same scheme, however, invalidating the valid part leaves the rest too thin and truncated, then also it will be invalidated as a whole.
- Severability is to be determined by reading the statute as a whole and not specific provisions or parts.
- In order to find the legislative intent behind a statute, it will be legitimate to take into account the history, object, title and preamble.

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In **AK Gopalan v. State of Madras**, the Court found Section 14 of the Preventive Detention Act to be violative of Article 14 of the Constitution. The Court added that striking down Section 14 will not change the object of the Act and thus only the impugned provision will be struck down and not the act as a whole. A similar observation was made in *DS Nakara v. Union of India*.

In **State of Bombay v. FN Balsara**, it was held that the violative provisions of the Bombay Prohibition Act, 1949, do not affect the validity of the entire Act and thus there was no need to invalidate the statute altogether.

The Supreme Court declared Sections 4 and 55 of the [42nd Constitutional Amendment Act](#) invalid, for being beyond the amending powers of the Constitution but held the rest of the Act valid.

In **Kihoto Hollohan v. Zachillu**, the Court upheld the validity of the Tenth Schedule while striking down its paragraph 7 for violating the provisions of Article 368(2).

Conclusion

The doctrine of severability opens up the way for the applicability of [judicial review](#). The courts through judicial review invalidate the laws which infringe upon the fundamental rights of individuals. When an individual contends that a particular legislation is taking away his/her fundamental rights, and invokes the Court's right to judicially review that decision, the burden of proof lies on him/her for proving how the impugned legislation has interfered with his/her rights. The doctrine of severability is a principle of great eminence in the Indian constitutional setup. It is the touchstone against which the validity of laws is tested. It is a check on the unfettered powers of the legislature which if left on its own has the capability of going rogue and invading the very basic rights guaranteed to individuals.

