

DOCTRINE OF SEVERABILITY (SEPARATION DOCTRINE)

**UNDER INDIAN CONSTITUTIONAL LAW
— EXPLAINED CLEARLY**

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Doctrine of Severability (Separation Doctrine)

Meaning

The **Doctrine of Severability** means that **if a particular provision of a statute is unconstitutional**, but the **rest of the statute can stand independently**, then **only the offending (invalid) portion is struck down**, and the valid part continues to operate.

In short: *Only the unconstitutional part is severed (“cut off”) from the rest.*

Constitutional Basis

- Derived from **Article 13(1) & 13(2)** of the **Indian Constitution**, which declare that laws inconsistent with fundamental rights are void **to the extent of the inconsistency**.
 - The phrase *“to the extent of such inconsistency”* gives birth to this doctrine.
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Essence of the Doctrine

If a law violates Fundamental Rights:

1. The **offending portion** is declared void (invalid).
2. The **remaining valid portion** continues to operate if it can function independently.

Leading Case Laws

Case	Facts / Issue	Principle Laid Down
R.M.D.C. v. Union of India, AIR 1957 SC 628	Challenge to a law regulating prize competitions.	The Court held that only unconstitutional parts of the Act should be struck down, not the whole statute.
State of Bombay v. F.N. Balsara, AIR 1951 SC	Bombay Prohibition Act violated Fundamental Rights partially.	Court struck down unconstitutional provisions but upheld the rest — laid the

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318		foundation for severability in India.
A.K. Gopalan v. State of Madras, AIR 1950 SC 27	Preventive Detention Act was partly unconstitutional.	Invalid provisions were severed; rest of the Act remained valid.
Kihoto Hollohan v. Zachillhu, (1992) Supp (2) SCC 651	Tenth Schedule (anti-defection law) challenged.	Only paragraph 7 (bar on judicial review) was struck down; rest of the Schedule upheld — application of severability.
Minerva Mills Ltd. v. Union of India, (1980) 3 SCC 625	Certain amendments to Constitution challenged.	Only the unconstitutional portion of the 42nd Amendment was struck down.

Tests for Applying Doctrine of Severability

Test / Condition	Explanation
1. Legislative intent	Did the legislature intend the valid part to stand without the invalid part?
2. Independent operation	Can the valid part operate independently and still achieve the legislative purpose?
3. Same scheme maintained	If removal of the invalid part destroys the scheme or object of law → whole law is invalid.
4. No rewriting by court	Courts cannot rewrite the law; they can only sever the invalid portion.

Example

Suppose a law says:

“No person shall publish a newspaper or criticize the government.”

- The first part (“no person shall publish a newspaper”) violates **Article 19(1)(a)**.
- The second part (“criticize the government”) may be valid.

The court will **strike down only the first part** and **retain the second** if it can stand independently.

Key Takeaway

The **Doctrine of Severability** ensures that the **entire law is not invalidated** merely because a **part of it violates Fundamental Rights** — preserving legislative intent while protecting constitutional supremacy.



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Only the unconstitutional part of a statute is struck down, while the valid part continues to operate.

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R.M.D.C, v. Union of India	Challenge to law regulating prize competitions	Only unconstitutional parts of Act should be struck down
State of Bombay v. F.N. Balsara	Bombay Prohibition Act violating FLR Fundamental Rights	Court struck down unconstitutional provisions but upheld the rest
A.K. Gopalan v. State of Madras	Preventive Detention Act was partly unconstitutional	Invalid provisions were severed, rest of the Act remained valid
Kihoto Hollohan v. Zachillhu	Challenged Tenth Schedule (anti-defection law)	Only paragraph 7 struck down, rest of Schedule upheld

TESTS FOR APPLYING DOCTRINE

1. LEGISLATIVE INTENT

Is legislature intended valid part to stand without invalid?

2. INDEPENDENT OPERATION

Can operate independently and still achieve legislative

3. SAME SCHEME MAINTAINED

If removing the invalid part destroys the scheme or ob-

4. NO REWRITING BY COURT

Courts cannot rewrite the law: only sever the invalid portion