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PROTECTING FUNDAMENTAL RIGHTS THROUGH RESTRICTED LEGISLATIVE COMPETENCE: APPLICATION OF THE DOCTRINE OF ECLIPSE AND SEVERABILITY

Muhammad Ekramul Haque

Introduction

Human being always struggled for their rights against the government since the inception of the state, though the state is in fact the creation of the peoples themselves. Even before the emergence of modern state, there was always a conflict between the common people and the persons who were in position of the leaders. Absolute liberty and freedom is neither possible, nor desirable and that cannot be implemented since it may have harmful effect over the others and other holders of such freedom also may encroach the so-called absolute liberty of some others. That is why people created the state for better protection of their rights and even to curtail the rights where it is really necessary for the protection of individual and common interest. However, there is no static list of the rights to be granted by the state. It differed from state to state and time to time. The rights differed also as regards their modes of recognition and enforcement mechanisms. However, there are some rights that are recognized by different human rights documents as the common reflection of the thought of mankind. The rights those are inherent and inalienable in nature, universal in form and essential for survival as human being reasonably are human rights. These human rights have been recognized in different states in different ways, even every state adopted different mechanisms to ensure different sets of human rights. The struggle of mankind goes on with the number of rights and the mode and degree of their protection as well. Fundamental rights, legally speaking, are the rights that are recognized by the constitution and are awarded with better protection mechanisms in comparison with other rights. Here also the states differed in protecting these rights, some even afford better protection to certain rights though those are not termed there as fundamental rights. Thus, fundamental right is in fact used as a technical legal term to mean the rights recognized and protected by the written constitution. The constitution that incorporates fundamental rights within its fold also restricts the legislative competence so as to protect these rights from unwanted encroachment to be made by the lawmakers. The constitution of Bangladesh recognized certain human rights as

fundamental rights and certain others as the fundamental principles of state policy. The object of writing this article is to assess the constitutionality of the laws made violating fundamental rights in the context of Bangladesh and the application of the doctrine of eclipse and severabilty in this regard so as to make clear the legal consequences of all such totally or partially derogatory laws.

Philosophy and utility of incorporation of Fundamental Rights in the constitution

'The philosophical foundation of fundamental rights according to some is natural law, and the history of rights of man is bound with the history of natural law'.[1] 'The object of the fundamental rights is not merely to ensure inviolability of certain essential rights against political changes, but also to impress upon the people the fact that they have attained a new level of national existence.'[2] Jackson, J explained the reason for incorporation of fundamental rights in American Constitution through the Bill of Rights by different amendments in the following words:

> The very purpose of a Bill of Rights was to withdraw certain subjects from the vicissitudes of political controversy, to place them beyond the reach of majority and officials, to establish them as legal principles to be applied by the Courts. One's right to life, liberty, and property, to free speech, a free press, freedom of worship and assembly and other fundamental rights may not be submitted to vote, they depend on the outcome of no election.[3]

Thus, incorporation of fundamental rights ensures certain common standard to be maintained by every government and it also ensures better stability so that the people need not fight always with change in the government if that perceives a different attitude towards the fundamental rights. It has also been argued conversely during the time of insertion of fundamental rights in American Constitution that inclusion of certain rights as fundamental rights in the constitution may lead to the idea that the other rights will not be available against the state.[4] Thus the American Constitution contains by its 9th Amendment that 'the enumeration in the Constitution of certain rights, shall not be construed to deny of disparage others retained by the people.'

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1. Tope, T. K.., *Constitutional Law of India*, Eastern Book Company, India, 1988, p.32.
2. Ibid.
3. *West Virginia state Board of Education V. Barnette*, 319 US 624.
4. See, Tope, supra note 1.

Munir, M., the former Chief Justice of Pakistan traced the history of incorporation of fundamental rights in the constitutions in the following words:

> The origin of fundamental rights, also called basic rights, is traceable to the philosophy of some European writers of the seventeenth and eighteenth centuries, particularly Locke and Rousseau, the theory of natural law, English Common Law and the economic theory of individualism with its guiding principle *laissez faire*. These vague and not precisely defined notions of natural rights were taken by the settlers to the American continent where they were given by lawyers a precise legal form in the Constitution of the United States and its subsequent amendments. The American Judges expounded, explained and defined them further for almost a century and a half till they were crystallized into a definite branch of American Jurisprudence. From America they were borrowed by the constituent bodies which were called upon to make Constitutions for the European States reconstituted after each of the two World Wars. Japan and Eire inserted them into their own Constitutions and when Pakistan, India and Burma became independent and framed their own Constitutions, these rights received special attention in their scope and formulation.[5]

More responsibilities are being imposed on the state with the concept of welfare state becoming popular. That is why this is also a modern claim to increase the ambit of the fundamental rights so as to include some more important rights as fundamental rights in different constitutions.

However, most of the fundamental rights have been qualified in the common interest of the people and society. Only a few are absolute in terms. The rights have been designed in the form so that the enjoyment of these rights by a person will not affect adversely others. Thus, the law has not merely recognized the rights, it has also prescribed the mode of enjoyment and demarcated legal boundaries around the rights.

Legislative competence and fundamental Rights

Article 26 at first declares all existing laws inconsistent with the provisions of the Fundamental Rights chapter as void. Such a law will be void to the extent of its inconsistency with Fundamental Right on and from the day of commencement of the Constitution. Then, Article 26(2) takes away further legislative power to make a law that is inconsistent with Fundamental Right. It says that 'The state shall not make any law

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5. Munir, M., *Constitution of the Islamic Republic of Pakistan: Being a commentary of the Constitution of Pakistan, 1962,* All Pakistan legal Decisions, Lahore, 1965, pp. 83-4.

inconsistent with any provisions of this Part, and any law so made shall, to the extent of such inconsistency, be void'.

Meaning of the term 'void'

Article 26 declares all existing laws that are inconsistent with fundamental rights as void and if any law is made after the Constitution comes into force that is inconsistent with fundamental rights that will also be void. What is the meaning of the term 'void' in these two cases? Munim, says:

> The effect of inconsistency with, or contravention of, the constitutional rights will be that the impugned statute will become' void', the word used in Article 26. But will the statute be void as a marriage is void on a declaration of nullity or a contract is void within the meaning of Section 2(g) of the Contract Act? Will it become non-existent in the eyes of the judges? Will it be deemed to be no law at all?[6]

Balck's Law dictionary defines the term 'void' as 'null and void; ineffectual, having no legal force of binding effect, unable in law to support the purpose for which it was intended; nugatory and ineffectual so that nothing can cure it; not valid.'[7] 'If a thing is void, it is empty—without force. Can a cistern be more empty, or a body be more than still?'[8] Lord Macmillan affirming this position says that 'you cannot slay the slain.'[9]

Cooley[10] also affirms the view that a law that is void does not have any legal force as he says the following:

> When a statute is adjudged to be unconstitutional, it is as if it had never been. Rights cannot be built up upon it... And what is true of an Act void in *toto* is true also as to any part of any Act which is found to be unconstitutional, and which, consequently, is to be regarded as having never, at any time, been possessed of any legal force. ... An unconstitutional Act is not law, it confers no rights; it imposes no duties; it affords no protection; it creates no office; it is, in legal contemplation, as inoperative as though it had never been passed. ... A statute void for

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6. Munim, F. K. M. A., Rights of the Citizen Under the Constitution and Law, 1975, the Bangladesh Institute of Law and International Affairs, Dhaka, p. 27.
7. Pirzada, Sharifuddin, *Fundamental Rights And Constitutional Remedies in Pakistan*, PLD, 1966, p. 124.
8. Ibid. Pirzada with reference to Stroud's judicial Dictionary.
9. *Denny, Mott & Dickson Ltd. V. J. B. Fraser & Co. Ltd.*, 1944, AC 265.
10. Cooley, Thomas M., *The General Principles of Constitutional Law in the United States of America*, 1931, Boston, Little, Brown, and Company, 4th ed. Revised and Enlarged, Reprint 1994, Hindustan Law Book Company, Calcutta

> unconstitutionality is dead and cannot be vitalized by a subsequent amendment of the Constitution removing the constitutional objection, but must be re-enacted.

Willoughby goes one step ahead raising the objection that how can an unconstitutional law be termed as law since it is not a law at all and it will be a paradox to term this so-called law even as unconstitutional law since the term law cannot be attached with such a rule. He makes the point clear in the following words:

> '... the unconstitutional statute is not law at all, whatever its form or however solemnly enacted and promulgated. There are not and cannot be degrees of legal validity. Any given rule of conduct or definition of a right either is or is not law. When, therefore, we describe any particular measure as an unconstitutional law, and therefore, void, we are, in fact, strictly speaking, guilty of a contradiction of terms, for if it is unconstitutional it is not a law at all; or if t is a law, it cannot be unconstitutional. Thus, when any particular so-called law is declared unconstitutional by a competent court of last resort, the measure in question is not annulled, but simply declared never to have been law at all, never to have been, in fact, anything more than a futile attempt a legislation on the part of the Legislature enacting it.'[11]

Chief justice Field said in an American case that 'An unconstitutional Act is not a law, it imposes no duties, it affords no protection, it creates no office; it is, in legal contemplation, as inoperative as though it has never been passed.'[12] Australian Chief Justice Latham in a case says that a 'pretended law made in excess of power is not and never has been a law at all.'[13]

On the other hand Bouvier's Law Dictionary takes a different stand that says 'this word is often used as in effect meaning voidable only and is seldom, unless in a very clear case, to be regarded as implying a complete nullity.'[14] Chief Justice Hughes's view in another American case seems to be in conformity with Bouvier's Dictionary's expression that says that 'It is quite clear that such broad statements as to the effect of a

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11. The Constitutional Law of the United States, vol. 1, pp. 9-19, quoted from Pirjada 125-6.
12. *Norton V. Shelby County*, 1885, 118 US 425.
13. *South Australia V. The Commonwealth*, 1942, 65 CLR 373 (408), quoted form Pirjada 126.
14. Supra Note 7, p. 124-5.

determination of unconstitutionality must be taken with qualifications.'[15] Shaw, CJ observed:

> It may well be doubted whether a formal act of legislation can ever, with strict legal propriety, be said to be void; it seems more consistent with the nature of the subject, and the principles applicable to analogous cases, to treat it as voidable. But whether or not a case can be imagined in which an act of the legislature can be deemed absolutely void on the ground that it exceeds the just limits of legislative power, and thus injuriously affects the rights of others, it is deemed to be void only in respect of those particulars, and as against those persons whose rights are thus affected.[16]

Article 13(1) and 13(2) of Indian Constitution are similar to Article 26(1) and 26(2), respectively, of the Constitution of Bangladesh. The term void has been used in both the clauses. One declares inconsistent pre-constitution laws as void and another declares post-constitution laws as void. In fact, though both make the laws ineffective and has the same meaning in this sense but the timing is different. One makes a law void on and from the day the Constitution comes into force, not from the day of inception of the law, that is in case of pre-constitution laws. Another declares the laws as void *ab initio*, void form very inception that is in case of post-constitution laws. Such meaning of the term void has been nicely distinguished in an Indian case in the following words:[17]

> It is however urged on behalf of the respondents that this would give a different meaning to the word 'void' in Art. 13(1) as compared to Art. 13(2). We do not think so ..... The meaning of the word 'void' for all practical purposes is the same in Art. 13(1) as in Art. 13(2), namely, that the laws which were void were ineffectual and nugatory and devoid of any legal force or binding effect. But the pre-Constitutional laws could not become void from their inception on account of the application of Art. 13(1). The meaning of the word 'void' in Art. 13(2) is also the same, viz., that the laws are ineffectual and nugatory and devoid of any legal force or binding effect, if they contravene Art. 13(2). But there is one vital difference between pre-Constitution and post-Constitution laws in this matter. The voidness of the pre-Constitution laws is not from inception.

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15. *Chicot* case, 308 US 371 (374), quoted form pirjada 126.
16. *Re Wellington*, 16 Pick (mass) 96; This principle has been accepted by the supreme Court of Pakistan in *Province of East pakistan V. Mehdi Ali Khan*, PLD 1959 SC 389, quoted from *Munim (Supra)* 29.
17. *Mahendra Lal V. State of U. P.*, AIR 1963 SC 1019, as quoted by Pirjada at 131.

> Such voidness supervened when the Constitution came into force; and so they existed and operated for sometime and for certain purposes; the voidness of post-Constitution laws is from their very inception and they cannot therefore continue to exist for any purpose. This distinction between the voidness in one case and the voidness in the other arises from the circumstance that one is a pre-Constitution law and the other is a post-Constitution law but the meaning of the term 'void' is the same in either case, namely, that the law is ineffectual and nugatory and devoid of any legal force or binding effect.

Nature of the operation of Article 26

Article 26 is retrospective in its operation. Article 26(1) merely declares all existing laws that are found inconsistent with the fundamental rights as void and thus it never gives retrospective effect so as to declare these inconsistent laws as void from their very inception, rather, these have become void only on and from the day the Constitution comes into force. There is no indication in the language of this article that may give retrospective effect. So, these pre-Constitution laws cannot be obliterated for all purposes. Again, Article 26(2) restricts future law making power and declares the law made in violation of that prohibition as void. Thus, it is absolutely clear that Article 26 does not give any retrospective effect and as such it is obviously prospective in its operation. Such matter also has been made clear in India where the corresponding provision is Article 13, as Das, J. observes:

> As the fundamental rights became operative only on and from the date of the Constitution the question of the inconsistency of the existing laws with those rights must necessarily arise on and from the date those rights came into being. It must follow, therefore, that Article 13(1) can have no retrospective effect but is wholly prospective in its operation. After this point is noted, it should further be seen that Article 13(1) does not in terms make the existing laws which are inconsistent with the fundamental rights void *ab initio* or for all purposes. On the contrary, it provides that all existing laws, in so far as they are inconsistent with the fundamental rights, shall be void to the extent of their inconsistency. They are not void for all purposes but they are void only to the extent they come into conflict with the fundamental rights. In other words, on and after the commencement of the Constitution no existing law will be permitted to stand in the way of the exercise of any of the fundamental rights. Therefore, the voidness of the existing law is limited to the future exercise of the fundamental rights. Article 13(1) cannot be read as obliterating the entire operation of the inconsistent laws, or to wipe them out altogether from

> the Statute Book, for to do so will be to give them retrospective effect which, we have said, they do not posses. Such laws exist for all past transactions and for enforcing all rights and liabilities accrued before the date of the Constitution.[18]

Thus, the validity of the transactions past and closed cannot be questioned on the ground of its subsequent unconstitutionality and consequential voidness. Pirjada cites the following two references:

> "In *Nabhirajiah V. State of Mysore*[19] an order was passed before the commencement of the Constitution by the Rent Controller allotting the vacant house of the petitioner to X and directing him to deliver the possession thereof to X. on the failure of the petitioner to deliver possession, forcible possession was taken under an order passed after the Constitution came into force. It was held that an order of allotment was validly made before the Constitution came into force, the fact that possession was actually taken after the commencement of the Constitution is immaterial as the petitioner's right to possession was lost earlier. The actual dispossession was merely a consequence of that order."
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> "In *Abdul Khader V. State of Mysore*[20] the appellant was tried and convicted by a Special Court. A review petition was pending when the Constitution commenced. It was held that it was not possible to impeach the validity of that part of the proceedings which had taken place under the inconsistent law, prior to the commencement of the Constitution."

If an offence is committed under any law and that law becomes void subsequently on the ground of its inconsistency with fundamental rights, can a person who committed that offence prior to the Constitution be prosecuted still? It was established in an Indian case that that person's prosecution will not be affected as it was held that 'Art. 13(1) could not apply to him as the offence had been committed before the enforcement of the Constitution and, therefore, the proceedings against him were not affected.'[21]

"In *Ahuja V. State of Bombay*[22] the Bombay Public Safety measures Act, 1947, was impugned as being discriminatory and violative of Article 14

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18. *Keshavan Madhava Menon V. The State of Bombay,* AIR 1951 SC 128.
19. AIR 1952 SC 339
20. AIR 1953 SC 355.
21. *Keshavan Madhava Menon V. Bombay,* AIR 1951 SC 128.
22. AIR 1952 SC 235.

of the Indian Constitution. The respondent, on the authority of the decision in K. M. Menon's case, contended that the Fundamental Rights had no retrospective operation and the proceedings started before the constitution could not, therefore, be void under Article 13. The Supreme court of India distinguished *Menon's* case, in which substantive rights were involved, and held the petitioner entitled to protection against the operation of a discriminatory procedural law."[23]

"In *Syed Qasim Rizvi V. State of Hyderabad*[24], the question was whether, after excising discriminatory provisions of the Hyderabad Special Tribunal Regulation, a fair trial could be secured to the petitioner. A substantial part of the trial took place before the Constitution and a part of it followed after the Constitution. The Supreme Court held that in trial after the Constitution the procedure that was applied was valid as it secured fair treatment to the petitioner. Bose J dissented and pointed out that 'the Court should not have deviated from the principle set by it in Ahuja's case'."[25]

Thus the continuing transactions have to be declared void.[26] 'If the right was to be found to be still subsisting and capable of being enforced or there was still something left to be done to complete the extinction of the right even after the conferment of the fundamental rights, as for example, if a person was detained under a law, which provided for preventive detention without trial, before the incorporation of the fundamental rights, he would certainly be entitled to challenge the order then made for his detention if the detention continued even after the coming into force of the fundamental rights on the ground that the law under which his detention was ordered was inconsistent with the security of person guaranteed to him.'[27] Likewise, 'the procedure through which rights and liabilities were enforced in the pre-Constitution era is a different matter and a discriminatory procedure becomes void after the commencement of the Constitution and so it cannot operate even to enforce the pre-Constitution rights and liabilities.'[28]

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23. Supra Note 6, pp. 40-41.
24. AIR 1953 SC 156.
25. Supra Note 6, p. 41.
26. *Abul A'la Maudoodi V. Government of West Pakistan*, PLD 1964 SC 673.
27. Supra Note 6, pp. 42-3.
28. M P Jain with reference to *Lachmandas V. Bombay*, AIR 1952 SC 235.

Doctrine of eclipse: meaning, principles and application

It has been rightly commented about an eclipsed law that 'It is really a state of hibernation rather than one of death.'[29] A law that was valid at its inception, but becomes void subsequently for its contradiction with any constitutional provision, is eclipsed. Such a law does not die, but remains in dormant position that does not revive till removal of that contradiction.

Article 13 of the Indian Constitution that is corresponding to Article 26 of our Constitution gives rise to the doctrine of eclipse. Both these articles declare all existing laws that are found inconsistent with fundamental rights as void. But, according the principle of eclipse such laws are not wiped out altogether, rather remains in quiescent condition with a chance of revival. If subsequently, any constitutional change is brought that removes the conflict of that latent law with the constitution, the dormant law revives. Such a law is revived automatically that does not require to be reenacted. A law enacted in 1948 that authorized the Indian state government to exclude all motor transport business was found to be inconsistent with Article 19(1)(g) of the Indian Constitution. But, afterwards[30], by way of an amendment to this article Indian Constitution gave state government the right to monopolize any business. This constitutional change makes the law of 1948 free from the accusation of unconstitutionality and thus it revives as a valid law without reenactment. Das, J[31] observed that the 1948 statute was fully operative as regards non-citizens since the statute violated only rights of the citizens and as regards citizens it revives from it's shadowed site.

However, this doctrine of eclipse cannot be applied in case of a post constitution law. Because, in case of post constitution unconstitutional law the law suffers from legislative incompetence from its very inception. Such an infirmity cannot be removed in any way. Such a law becomes void ab initio without any chance of further revival in any way. Even any subsequent amendment in the statute to make it free from blemish cannot cure its intrinsic defect. In such a circumstance, mere amendment will not suffice and the whole statute has to be reenacted.[32]

Doctrine of severability: meaning, principles and application

Sometimes a law may have several parts. In such a case, if any one or more parts, but not all, become void on the ground of unconstitutionality,

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29. *Supra note 26.*
30. *Bhikaji Narain Dhakras V. State of M. P.*, AIR 1955 SC 781.
31. Ibid.
32. *P. L. Mehra V. D. R. Khanna*, AIR 1971 Delhi 1; *Shama Rao case*, AIR 1967 SC 1480.

then the whole law is not to be declared void. Excluding the void parts of that law what remains that may exist as a good law. Obviously, if the law does not become severable then no such possibility is there.[33] This is generally termed as the doctrine of severability.

This doctrine has been accepted as a general principle in different legal systems. In Bangladesh, the root of this doctrine is found in the Constitution itself. As Article 26 says that a law inconsistent with Fundamental Rights will be void to the extent of inconsistency, and the whole law has not been declared void. This in fact recognized the concept of severability that only inconsistent part with Fundamental Rights will be void on the ground of unconstitutionality and the rest of the law will be as valid as it has been enacted. Kaikus, J rightly observed:

> The Constitution could not have said 'any law which is inconsistent with the provisions relating to fundamental rights will be void ' for that could have been interpreted as meaning that the whole of an enactment which contained an inconsistent provision would be void, whereas the intention was that a whole enactment should not be void if after deleting the offending portion a good workable law remained. The intention being only to render void whatever was in conflict with a fundamental right, the only way to put it, and at least a proper way to put it, was to say that to the extent of inconsistency the law shall be void.[34]

Though this doctrine has been discussed here in the context of Fundamental Rights, but it has in fact general application in case of all laws. 'The doctrine of sevarablity means that when some particular provision of a statute offends against a constitutional limitation but the provision is severable from the rest of the statute, only that offending provision will be declared void by the Court and not the entire statute.'[35] 'When a statute is in part void, it will be enforced as regards the rest, if that is severable from what is invalid.'[36] If the law is divisible and one part becomes void, then the other part will be valid provided this can stand separately.[37] 'The real question is whether what remains is so inextricably bound up with the part declared invalid that what remains

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33. *Romesh Thapper V. State of Madras*, AIR 1950 SC 124; *Chintaman Rao V. State of Madhya Pradesh*, AIR 1951 SC 118.
34. *Hasham V. Tribunal*, PLD 1959 Karachi 286.
35. Supra Note 7, pp. 157-8.
36. *R. M. D. Chamarbaugawalla V. Union of India*, AIR 1957 SC 628.
37. See, *A. G. for Manitoba V. A. G. for Canada*, 1925 AC 561.

cannot independently survive or, as it has sometimes been put, whether on a fair review of the whole matter it can be assumed that the Legislature would have enacted what survives without enacting the part that is *ultra vires* at all.'[38]

The following general principles relating to the doctrine of severability have been summed up by Pirzada, Sharifuddin:[39]

Section 5 of the Government of Ireland Act, 1920 says that '..... Any law made in contravention of the restriction imposed by this subsection shall, so far as it contravenes those restrictions, be void.' Lord Chief Justice Mac Dermott gives the following observation about this section 5 (1):

> I am not aware of any authority for the view that language such as this necessarily means that contravention must produce an actual gap in the statute book in the sense that the measure concerned or some specific part thereof, simply drops out of the authorized text. As well as this vertical severablity, if I may so describe it, I see no reason why, if the circumstances warrant such a course, the terms of section 5(1) should not be sufficiently met by what I may call a horizontal severance, a severance that is, which, without excising any of the text, removes from its ambit some particular subject-matter, activity or application. This, I think, would give effect to the words 'so far as it contravenes' without impinging on the meaning or weight to be attached to the word 'void'.[40]

Based on the above observation, Sheridan discussed the following three possibilities as regards the consequences of a void law:

> First, some words may be wholly inoperative (i.e. *ultra vires* in all their conceivable applications) and the result of holding them void is that they are to be ignored without prejudice to the validity of the rest of the Act (vertical severance). Secondly, some words may be susceptible of *intra vires* and *ultra vires* applications, and the result of so holding is (a) the same as in the first case, or (b) that they are to be ignored as to their *ultra vires* applications without prejudice to their validity in applying to other situations (horizontal severance). Finally, a holding

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38. *A. G. for Anberta V. A. G. for Canada,* AIR 1948 P. C. 194 at .199.
39. Supra Note 7, pp. 158-9.
40. *Ulster Transport Authority V. James Brown & Sons Ltd.*, 1953, NI 79, quoted from Pirzada 127.

> that any words are susceptible of any *ultra vires* application may mean that the whole statute is to be ignored.[41]

Following general principles regarding the doctrine of severability may be found from the writing of Cooley:[42]

1. A statute may sometimes be valid in part and invalid in other particulars.
2. The general rule is that the fact that part of a statute is unconstitutional does not justify the remainder being declared invalid also, unless all the provisions are connected in subject-matter, depending on each other, operating together for the same purpose, or otherwise so connected together in meaning that it cannot be presumed the legislature would have passed the act otherwise than as a whole.
3. It is immaterial how closely the valid and invalid provisions are associated in the act; they may even be contained in the same section, and yet be perfectly distinct and separable, so that the one may stand though the other fall.[43]
4. The point is not whether they are contained in the same section; for the distribution into sections is purely artificial, but whether they are essentially and inseparably connected in substance.
5. If, when the unconstitutional portion is stricken out, that which remains is complete in itself, and capable of being executed in accordance with the apparent legislative intent, wholly independent of that which was rejected, it must be sustained.
6. The difficulty is in determining whether the good and bad parts of the statute are capable of being separated within the meaning of this rule, this is a question of legislative intent.[44]

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41. In 17 Modern Law Review 249. Mr. Sheridan discussed these possibilities with reference to the case of *Ulster Transport Authority V. James Brown & Sons Ltd.*, 1953, N. Y. L. R. 79, quoted from *Munim* 36 (Supra Note 6).
42. Cooley, Thomas M., *The General Principles of Constitutional Law in the United States of America*, 1931, Boston, Little, Brown, and Company, 4th ed. Revised and Enlarged, Reprint 1994, Hindustan Law Book Company, Calcutta, pp.197-8; Cooley, *Constitutional Limitations*, 8th ed., pp. 359-361.
43. *Commonwealth V. Hitchings*, 5 Gray (Mass.), 482; *Hagerstown V. Dechert*, 32 Md. 369; *State V. Clarke*, 54 Mo. 17.
44. *Dorchy V. Kansas*, 264 US 286.

7. If a statute attempts to accomplish two or more objects, and is void as to one, it may still be in every respect complete and valid as to the other.
8. But if the intent of the act is to accomplish a single purpose only, and some provisions are void, the whole must fail unless sufficient remains to effect the object without the invalid portion.
9. And if they are so mutually connected with and dependent on each other as conditions, considerations, or compensations, as to warrant the belief that the legislature intended them as a whole, and that, if all could not be carried into effect, the legislature would not pass the residue independently, then, if some parts are unconstitutional, all the provisions that are thus dependent, conditional, or connected must fall with them.[45]

The Appellate Division of the Supreme Court of Bangladesh on principle has also recognized the doctrine of severability in appropriate cases. It was observed in Anwar Hossain Chowdhury V. Bangladesh[46]:

> No argument was advanced directly though, but an attempt was made whether by running a blue pencil the Court would severe the bad part from the good part of the enactment. The answer is in the negative; because what is the purpose of this amendment, namely, to set up permanent Benches with full jurisdictions, powers and functions of the High Court Division. The other provisions in the amended Article are so interwoven with the scheme that they cannot be separated. Therefore, the full Article is liable to be declared ultra vires.

Thus, it appears that if a law becomes divisible then the good part will remain valid by severing it from bad part that will be treated as void.

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45. *State V. Commissioners*, 5 Ohio St 497; *State V. Dousman*, 28 Wis. 541; *Campau V. Detroit*, 14 Mich. 276; *Williard V. People*, 5 Ill. 461; *Commonwealth V. Potts*, 79 Penn. St. 164; *Baker V. Braman*, 6 Hill (N.Y.), 47; *Pollock V. Farmers' Loan and Trust Co.*, 158 U. S. 601.
46. 1989 BLD (Spl) 1, at 113.