

# CONSTITUTIONAL LAW, CYBER LAW, IP LAW AND PROFESSIONAL ETHICS

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## Unit-1: Introduction to Constitution of India.



### ➤ **13. Laws inconsistent with or in derogation of the fundamental rights**

➤ (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

- Laws
- In force
- In the territory
- before the commencement of this Constitution.
- Inconsistent with part III
- Extent of inconsistency
- Void

- **13. Laws inconsistent with or in derogation of the fundamental rights**
- (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

- (3) In this article, unless the context otherwise requires
  - (a) law includes any Ordinance, order, bye law, rule, regulation, notification, custom or usages having in the territory of India the force of law;
  - (b) laws in force includes laws passed or made by Legislature or other competent authority in the territory of India before the commencement of this Constitution and not previously repealed, notwithstanding that any such law or any part thereof may not be then in operation either at all or in particular areas
- **(4) Nothing in this article shall apply to any amendment of this Constitution made under Article 368.**

- Article 13(1) : pre-Constitutional law
- Article 13(2): post-Constitutional Law
- Article 13(3): defines laws in force and law in 13(1) and 13(2)
- Article 13(4): exclusion of Constitutional Amendments from preview of Article 13

- Article 13(1) & Article 13(2)
  - Deals with legislation inconsistent with provisions of Part III of the Constitution.
- Void and Void ab initio
  - Article 13(1): pre-constitutional law are void from 26/01/1950
  - Article 13(2): post-constitutional law are void from inception or void-ab-initio

- Three Doctrine pertaining to Article 13
  - Doctrine of Eclipse
  - Doctrine of Severability
  - Waiver of Fundamental Rights

- Doctrine of Eclipse
  - pre-constitutional inconsistent with fundamental rights was not wiped out altogether from the statute book after the commencement of the Constitution
  - continued to exist in respect of rights and liabilities which had accrued before the date of commencement of Constitution
  - the law in question will be regarded as having been eclipsed for the time being by the relevant fundamental right
  - will be in a dormant state for the time being



- A law is void only to the extent of the inconsistency or contravention with relevant fundamental rights. Art 13(1) means that an Act may not be void as a whole, only a part of it may be void and if that part is severable from the rest which is valid, then the rest may continue to stand and remain operative. If it is not possible to separate the valid from the invalid portion, then the whole statute will have to go. The rule the invalidity is only to the extent of inconsistency is not peculiar to the Constitution rather is a general principle of statutory interpretation. In determining whether the valid parts of a statute are severable from the invalid, the intention of the legislature is the determining factor.

- No person can waive of his or her fundamental rights that are guaranteed on him or her by the State, not even with his or her own will.

- **Art. 13(3)b**
- Statutory laws
- Order – made in pursuance of statutory authority
- bye law – local authorities
- Rule- delegated legislation
- Regulation- regulate day to day
- Notification- announcement
- custom or Usages
- Having force of law

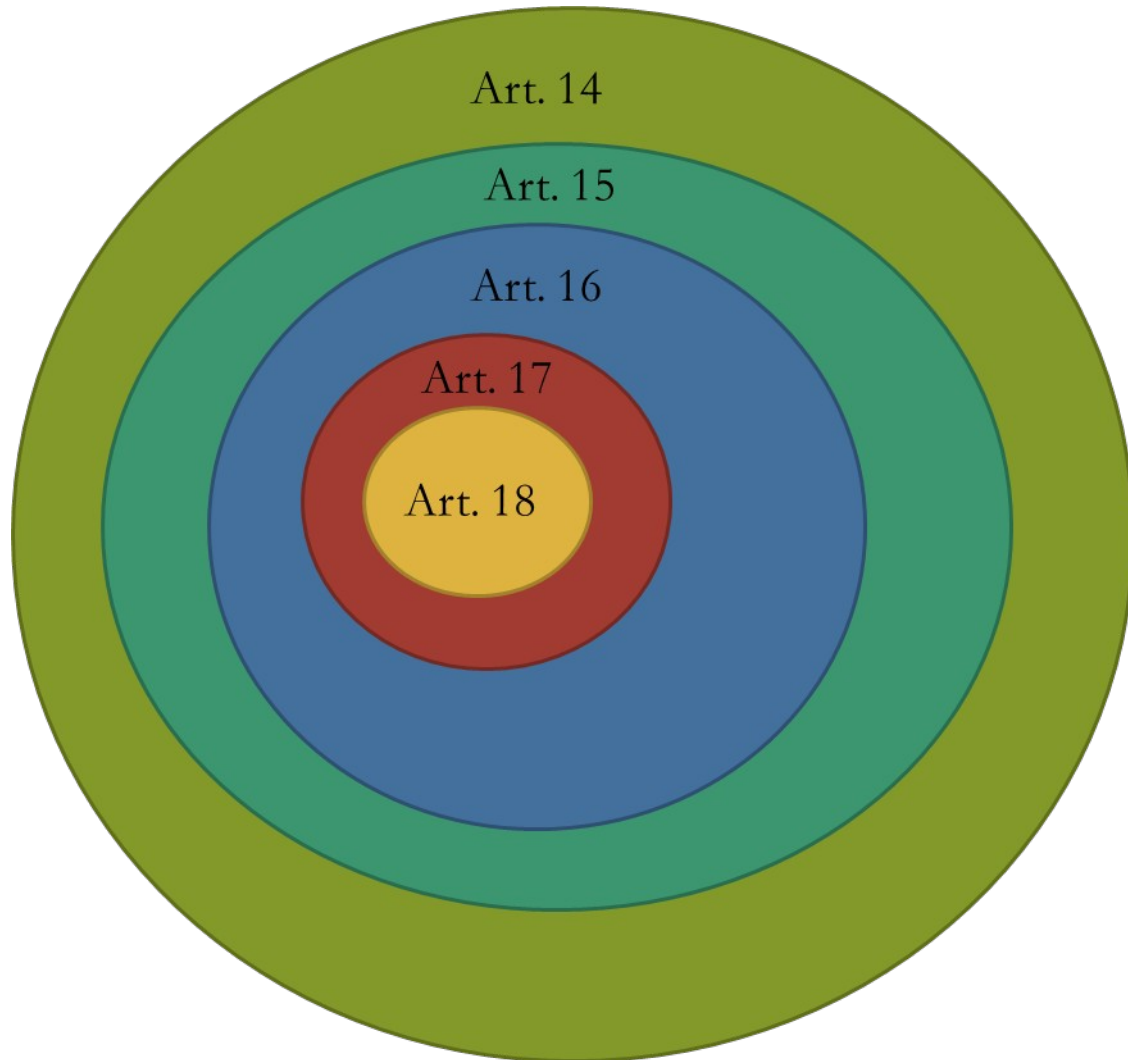
- **13(4) Nothing in this article shall apply to any amendment of this Constitution made under Article 368.**
- Shankari Prasad V. Union of India
  - An amendment is not a law within the meaning of Article 13(2)
- Sajjan singh V. State of Rajasthan
  - Followed the previous decision
- I.C Golaknath V. State of Punjab
  - Overruled its decision in Shankari Prasad and Sajjan Singh
    - **24th Amendment Act, 1971**
- Kesavananda Bharti V. State Of Kerela
  - Basic Structure

- Right to Equality
  - Article 14 to 18
  - One of the essential aspect of Indian Constitution
  - Specific mention in the Preamble

# CONSTITUTIONAL LAW-I

## Doctrine of Equality: Article 14

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- Right to Equality

- Article 14

Equality before law

The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India

- Any person

- Article 14 embodies two principles
  - Equality before law
    - British Concept
    - Negative concept – not to be discriminated- forbids
    - Rule of Law
  - Equal Protection of Law
    - US Concept
    - Positive concept – Provide something
    - Not absolute equality
    - Equals to be treated equally and unequals should not be treated equally



- Equal Protection of Laws
  - Article 14 forbids class legislation, it does not forbid reasonable classification for the purpose of legislation.
  - Reasonable Classification

- Test for Reasonable Classification
- **Intelligible Differentia**
  - Shall not be arbitrary, artificial or evasive
  - Real and substantial distinction
- **Reasonable Nexus** between Intelligible Differentia and objective sought to be achieved by the Act.
  - Eg: Sec 11 of Indian Contract Act
- **Object should be lawful**

# CONSTITUTIONAL LAW-I

## Article 15-16 and the finer dimensions of equality

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- Article 15 & 16 provides for finer dimension of equality
- Article 15 prohibits discrimination
- Article 16 prohibits discrimination in public employment
- Article 15 and 16 applicable only to citizens

# CONSTITUTIONAL LAW-I

## Article 15-16 and the finer dimensions of equality

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- Art. 15(1) The State shall not discriminate against any citizen on grounds **only** of religion, race, caste, sex, place of birth or any of them.

- Art. 15 (2) No citizen shall, on grounds **only of** religion, race, caste, sex, place of birth or any of them, be subject to any **disability, liability, restriction or condition** with regard to—
  - a. access to shops, public restaurants, hotels and places of public entertainment; or
  - b. the use of wells, tanks, bathing ghats, roads and places of public resort maintained **wholly or partly out of State funds or** dedicated to the use of the general public.

- Art. 15 (3)
- Nothing in this article shall prevent the State from making any special provision for women and children.
  - Reservation of jobs for women in state employment is permissible even in the absence of special provision under Art. 16

- Art. 16  
(1) There shall be **equality of opportunity** for all **citizens** in **matters** relating to **employment or appointment** to any office **under the State**.
- Equality of opportunity- right to be considered for employment or appointment
- No right to be employed or appointed
  - Selection test?
  - Rules of selection test
- Citizens

- Matters relating to Employment or appointment
- **Employment**
  - Prior and subsequent
- **Appointment**
  - Termination, removal
- Under the State.



- Art. 16
- (2) No citizen shall, on grounds only of religion, race, caste, sex, **descent**, place of birth, **residence** or any of them, be ineligible for, or discriminated against in respect of, any employment or office **under the State**.
  - 16 (1) is wider
  - No restriction on private persons
- Gazula Dasaratha Rama Rao V. State of A P
  - Madras Hereditary Village Officers Act, 1895
- Compassionate Appointments?

- Art. 16  
(3) Nothing in this article shall prevent Parliament from making any law prescribing, in regard to a class or classes of employment or appointment to an office under the Government of, or any local or other authority within, a State or Union territory, any requirement as to residence within that State or Union territory prior to such employment or appointment.

- Article 15 and 16 together provides for reservation and special provisions for backward class, SC and ST communities.
- Nothing in this article or in clause ( 2 ) of Article 29 shall prevent the State from making any special provision for the advancement of any **socially and educationally backward classes of citizens** **Or** for the **Scheduled Castes and the Scheduled Tribes**

- Art. 15 (5)- Nothing in this article or in sub-clause (g) of clause (1) of article 19 shall prevent the State from making any special provision, by law, for the advancement of any **socially and educationally backward classes** of citizens **or** for the **Scheduled Castes or the Scheduled Tribes** in so far as **such special provisions relate to their admission to educational institutions including private educational institutions**, whether aided or unaided by the State, **other than** the minority educational institutions referred to in clause (1) of article 30.

- **Article 17 : Abolition of Untouchability:** Untouchability is abolished and its practice is **forbidden** in any form. It is an offence which is **punishable** in accordance with law. Protection of Civil Rights, 1955 has been implemented in India.
- **Article 18: Abolition of Titles (Rajabahudur, Diwan etc)**