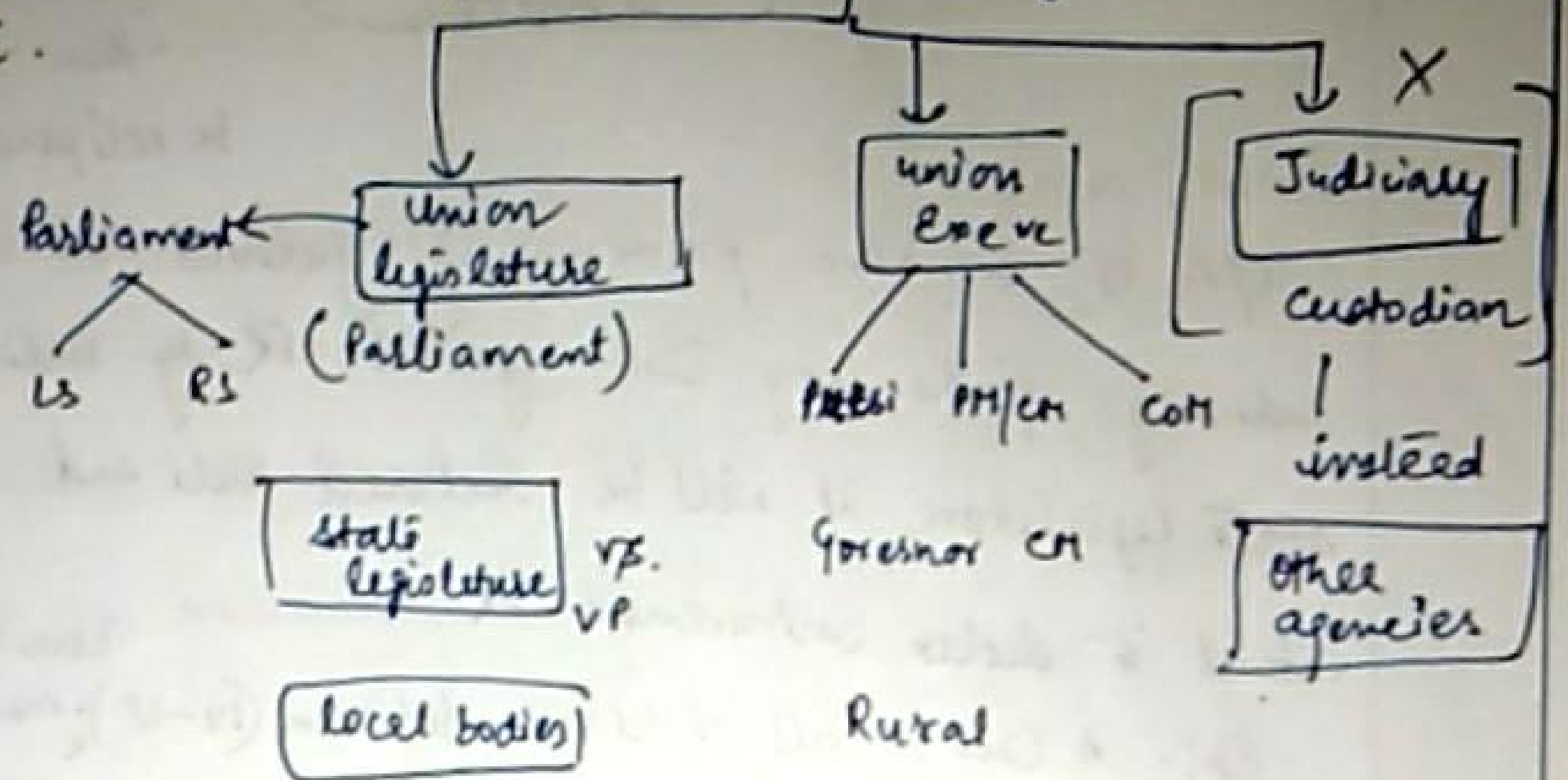


Article 12 in the constitution of India tells about the 'state'. FR are against the arbitrary action of the state.



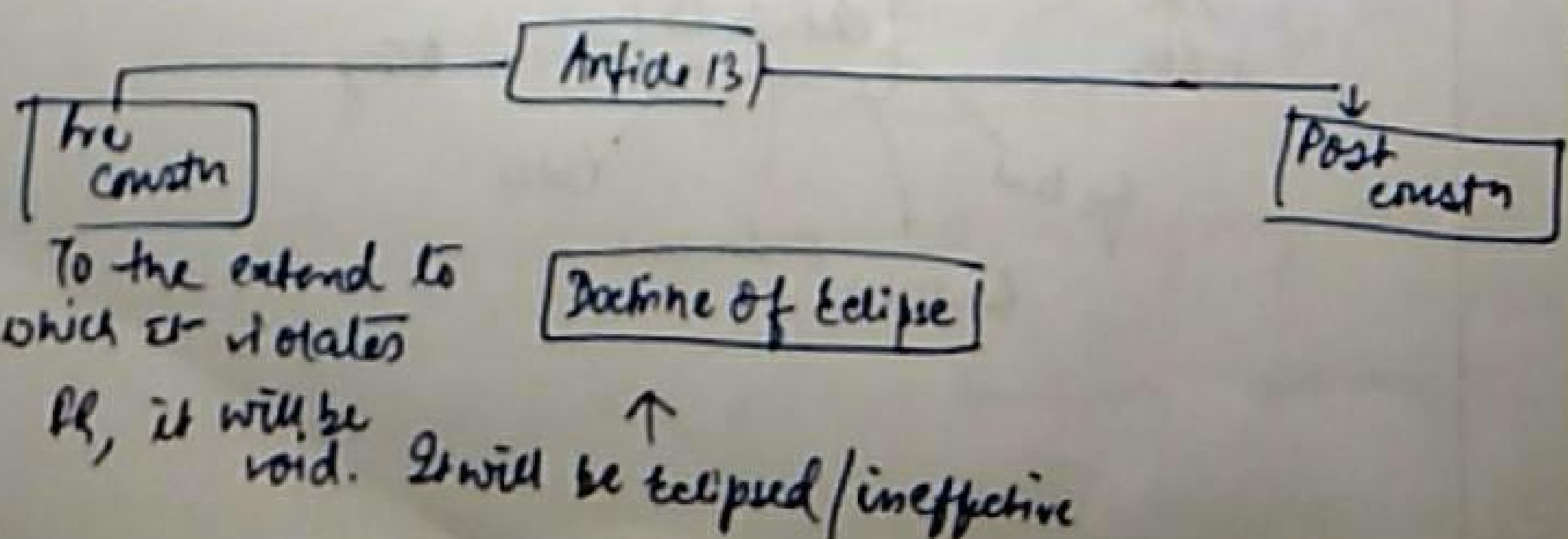
Other agencies are institutions or organization in which state has substantial role or stake = **Other agencies**

→ None of them can deprive people of their fundamental rights.

Article 13 = It talks about the laws made in India that were made before the constitution (IPC); and laws after constitution commenced.

These rights are justiciable under

There can be no law that violates or contravenes our FR.



Pre

Before constn

girls cannot go
to school

Post

after constn

FR-21A, against

thus the law will
be eclipsed

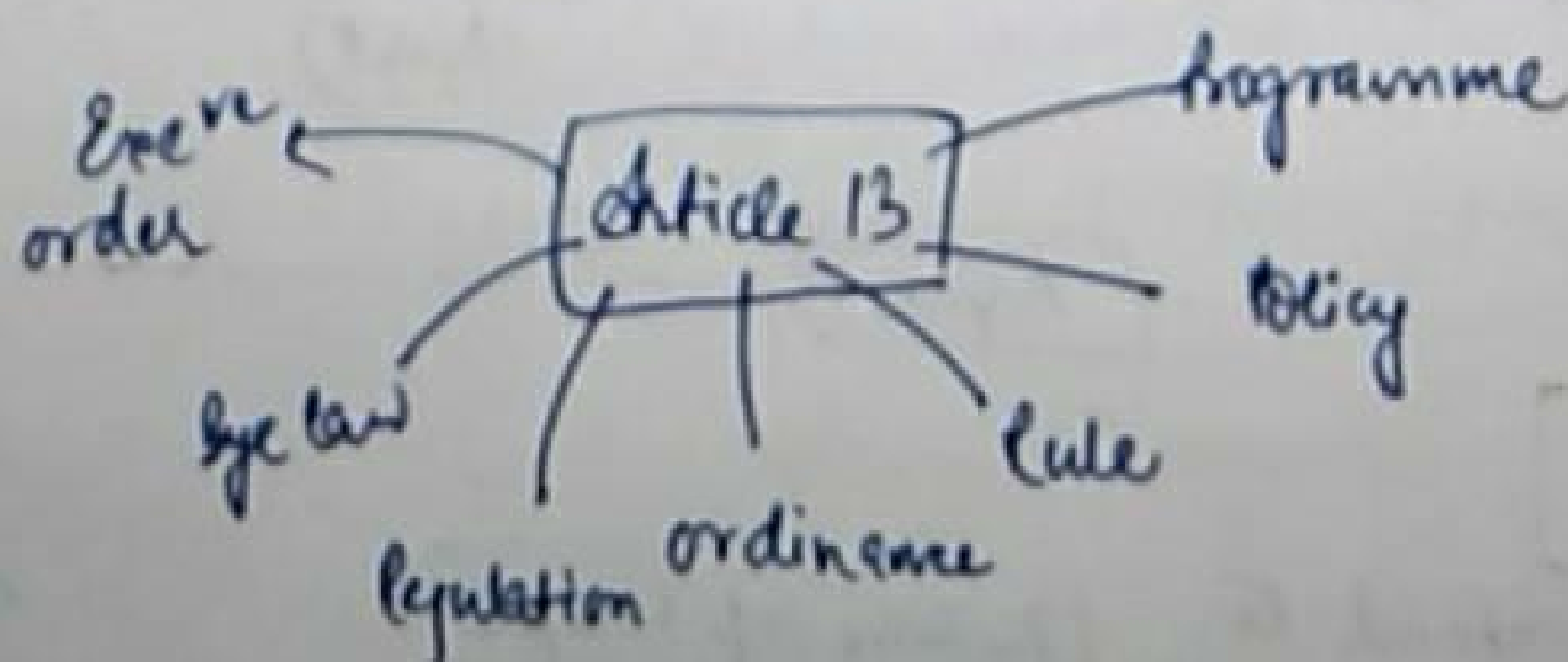
u/A 13, we have provision of judicial review, if the judiciary finds any law against FR by parliament / state legislature, it will be declared null and void to the extent it ~~declares~~ contravenes FR.

Ex:- A law, all children between (14-18) ^{have compulsory education} must go to convent schools or colleges, so, 1st part is valid, but 2nd part violates the FR, as it forces the children to convent school.

Doctrine of separability or severability

According to it, if a provision is inconsistent with fundamental right, the entire law will not be void only the inconsistent provision become void.

Doctrine of Eclipse:- Any law inconsistent with FR, will become inoperative to the extent of it being overshadowed by fundamental rights.



The idea of colourable legislation:-

(2)

What you cannot do directly, you cannot do indirectly too.

When legislature (U/S) is in recess, and it appears utmost essential to make a new law, so

President u/A 123, A governor in 213, can pass an ordinance

Such an ordinance will have the same power

Once ordinance passed,

↓
(Parliament / state legislature)

starts

the ordinance needs to be approved in 6 weeks, and if it is not passed, or approved, the ordinance will expire.

Judiciary says, utmost essential / Recess of Parliament

↓
Ordinance, → Parliament does not approve it.

↓
Re-promulgation → Same ordinance cannot be passed twice. It is a bluff with constitution.

FR can be curtailed under some circumstances:-

Article 33 = Parliament restrict FR to armed forces

A-34 = when martial law is enforced, FR is suspended or restricted

A-358 = during National Emergency, FR ~~compulsory~~ automatically suspended.

A-359 = during National Emergency, FR can be suspended

1/1

A-368 = Parliament can restrict FR, but cannot change basic structure of the constitution.

Judicial Review :-

Emerged in USA, as an implied power of judiciary in Marbury vs Madison case, 1803.

1. SC in Shankari Prasad case (1952) vs Sajjan Singh vs State of Rajasthan (1965), held a view that, Parliament can amend FR.

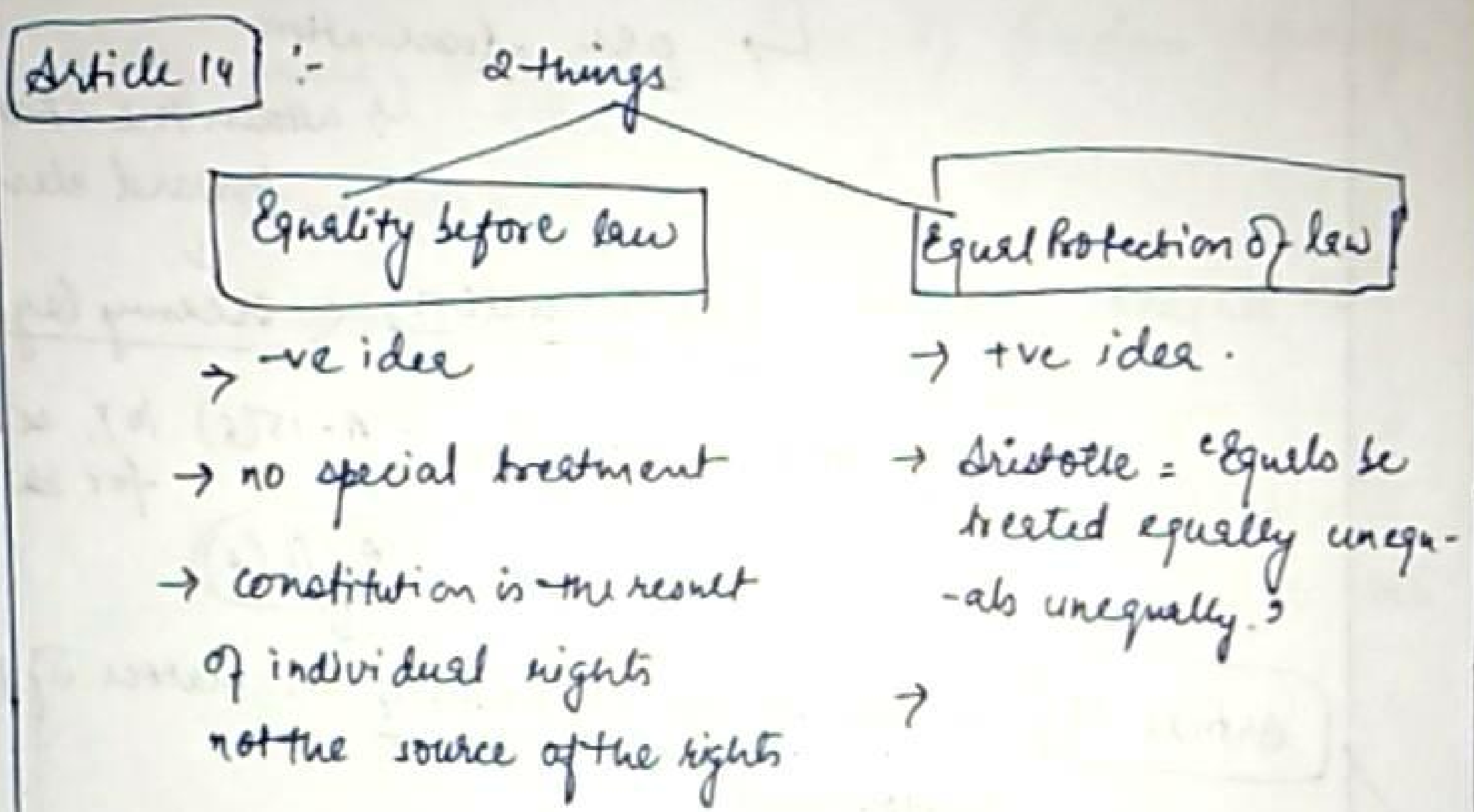
2. However in Golak Nath case 1967, SC held that, Parliament cannot ~~not~~ amend FR,

3. Parliament reaction → Parliament amended, by 24th C.A. Act 1971, Article 13, A-368, it declared that it is authorised to amend part III of the constitution & denied judicial review for amendments.

4. Then, Parliament passed 25th C.A. Act 1971 & amended and added A-31(6), stating that the DPSP under 39 b & c can be given preference over FR given under A-14 & 19, to establish welfare state.

5. Parliament's reaction to the Golak Nath judgement was challenged in the SC, in the Keshavnanda Bharti case 1973, [24th Amendment particularly]. SC held that, even though Parliament is authorised, it cannot amend basic structure. From there, basic structure emerged from judicial review.

In *Kinawa Mills* case 1980, SC held that, DPSP cannot get blanket preference over FR. In this way, the idea that FR are supplementary and complementary to each other started taking shape or the idea of harmonious construct between ~~Article~~ FR and DPSP started taking shape.



Exceptions :-

- ① President / Governor not answerable to any court for any of their performance of power and duties
- ② 361A, Parliament no person liable to any civil or criminal proceedings in any court, in proceedings of either of their house of parliament or either house of state legislature.
- ③ A-31(c) :-
 - A-14 Equal
 - A-19 = freedom to choose occupation / Professional Trade / business
 - 395bc = no concentration of wealth in few hands.

→ Equitable distribution of wealth.

∴ 39 b2c, gets preference over d.u, 419.

Article 15 :- no discrimination ^{only} on grounds of religion
caste

• Champakam dorairajan case
(1951)

sex
Place of birth
Race

• creamy layer

↳ OBC = reservation

↳ attain the status of
forward classes

No reservation ← creamy layer

• 103rd C.A. Act 2019, A-15(6) 10% seats
for EWS

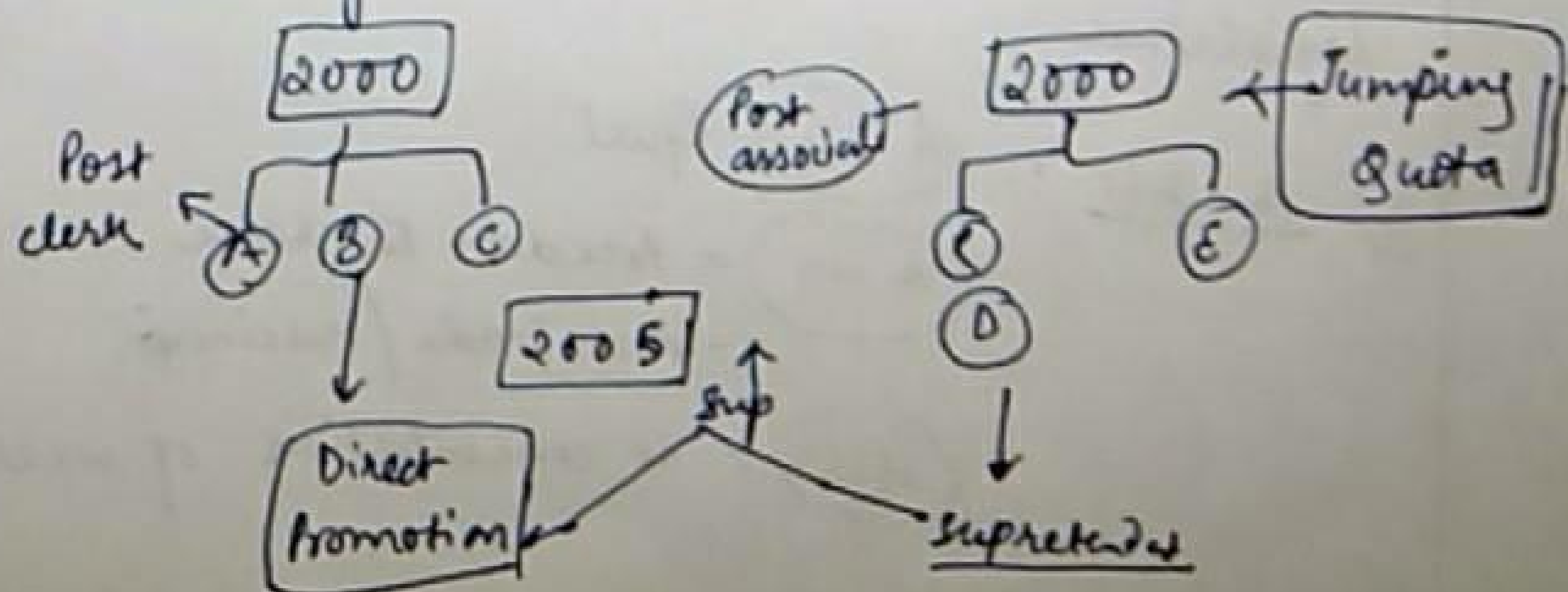
A-16(6)

Article 16 = Equality of opportunity in matters of public
employment.

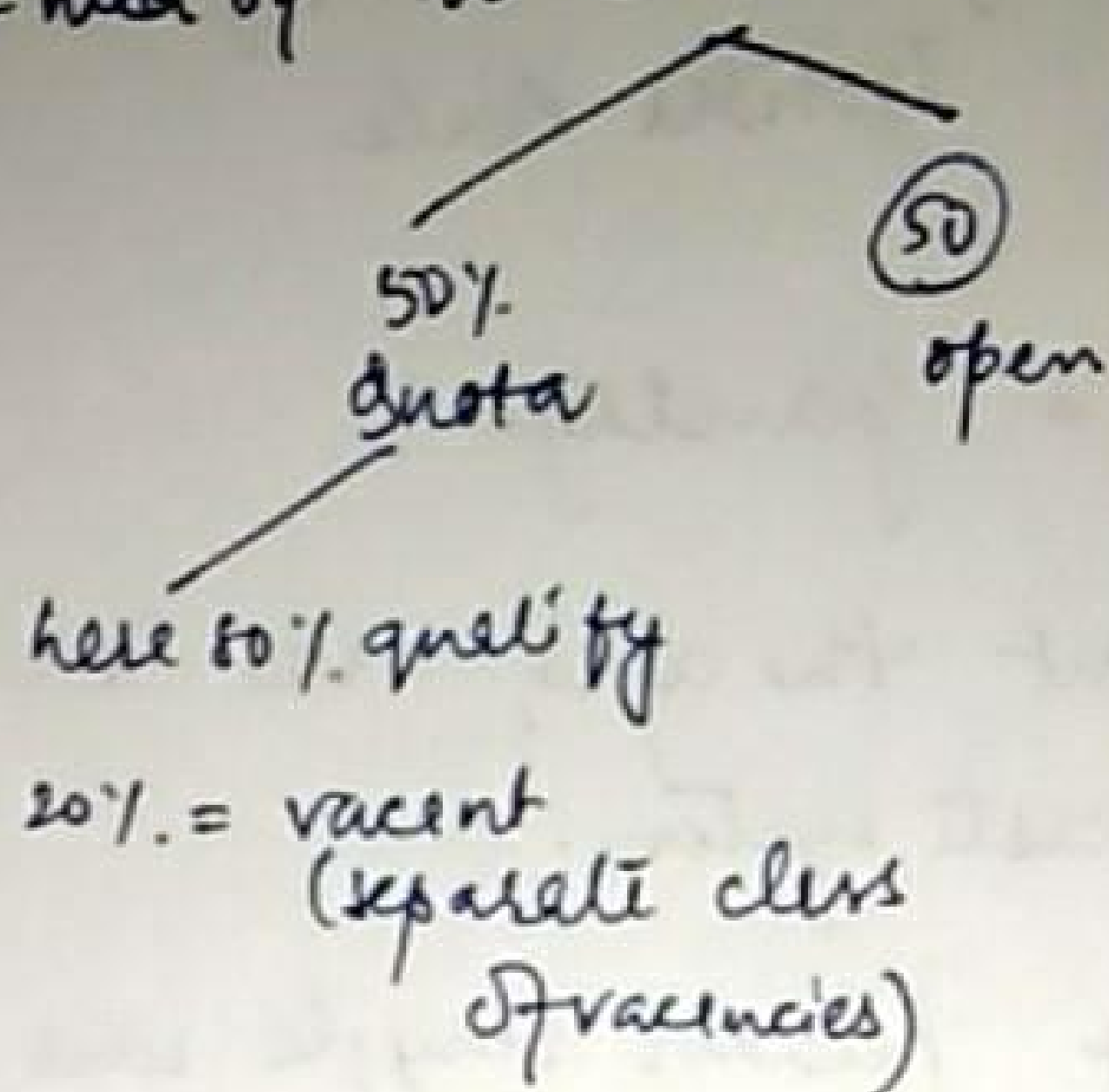
⇒ The idea of domicile at a particular place is not
always authentic or required.

⇒ Reservation will be justified if any caste
does not get adequate representation.

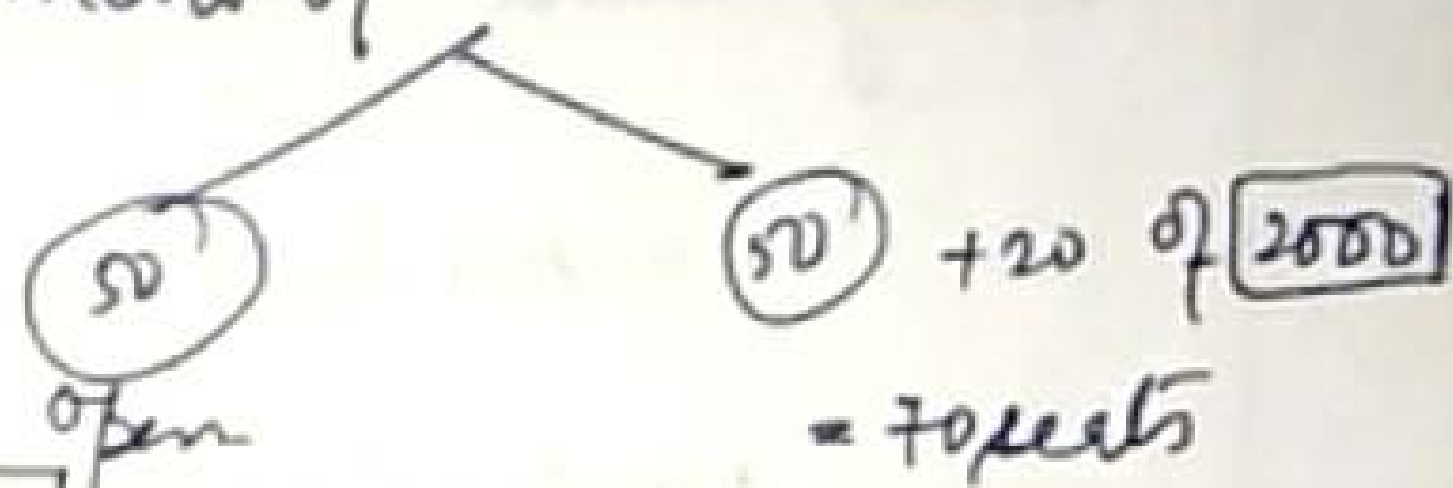
⇒ ~~Res~~ Reservation in promotion, in consequential
seniority.



→ **2020** = need of 100 constables



in **2022**, again recruitment of 100 constables



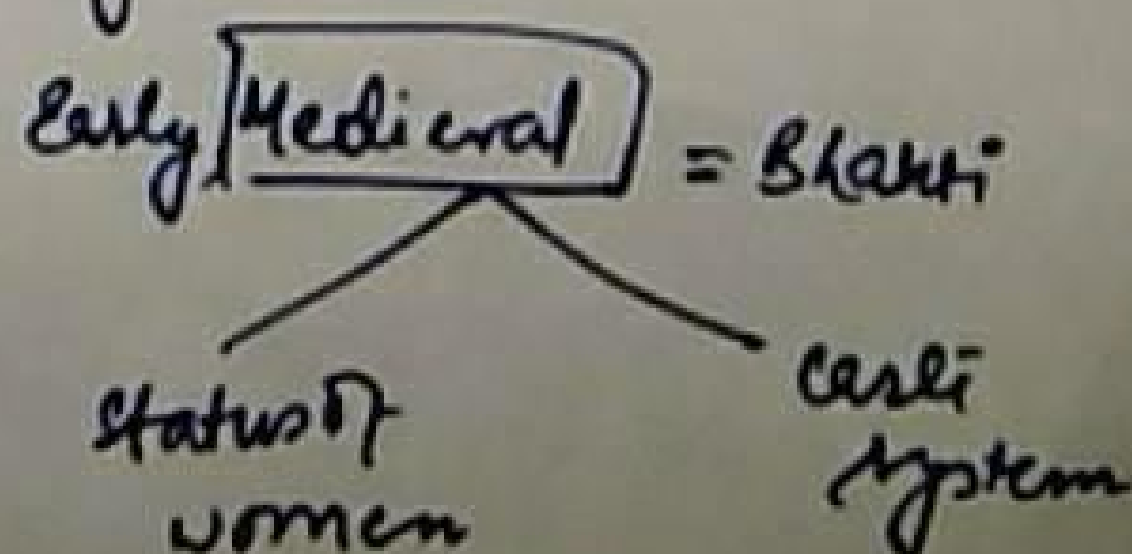
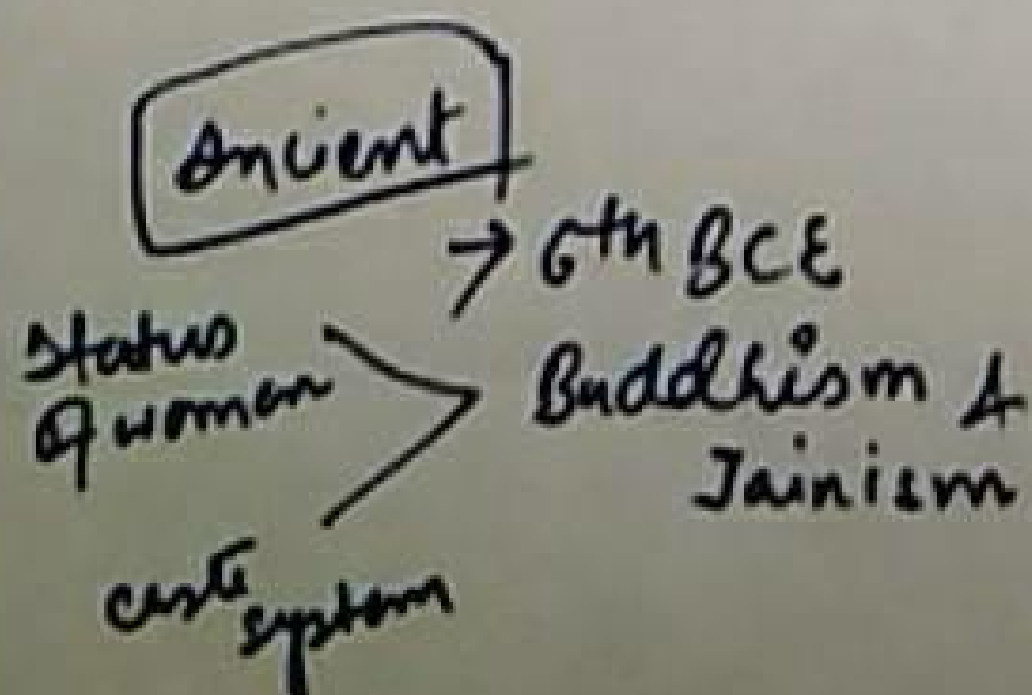
→ **Mandal Commission 1979** (Morarji Desai)

- identified 52% as backward
- Indira Sawney vs UOI, SC upheld government policy of reservation of backward classes, = Mandal case.
- Reservation not more than 50%.
- 77th C.A. Act - 1995, Reservation to SC & ST, in promotion.
- 85th C.A. Act 2001 (issue of consequential seniority)
- Nagaraj case

Article 17 :-

untouchability = roots in caste system.

→ Age old social evil.



Modern = Raja Ram Mohan Roy,
Jyotirba Phule

Freedom Struggle = Gandhiji

so, throughout the ages, we have been fighting against the caste system.

Even, idea of freedom struggle was, all section of society must enjoy the fruits of freedom equally.

- untouchability is abolished
- untouchability (offense) Act 1955, changed to civil rights (protection) Act 1976.
- SC, ST Protection Act, 1989, amended in 2015, again 2018, Shubhash Kashinath Mahajan vs State of Maharashtra