

Fundamental Rights (II)

(मौलिक अधिकार)



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Article 12 — Definition of 'State'

Category	Includes
Union Government	- Government of India (Executive) - Parliament of India (Legislature)
State Government	- State Executive - State Legislature
Local Bodies	- Municipality, Panchayat - District Board, Improvement Trust, etc.
Other Authorities	- Municipality, Panchayat - District Board, Improvement Trust, etc.

BCCI and NCERT are not considered 'State' (because there is no deep state control/funding over them).

- ❖ Somprakash Rekhi v. Union of India, 1981 → Main criteria for placing in the category of 'State': -
 - Deep and pervasive government control.
 - State Funding.

Administrative Functions



In Administrative Functions, it is 'State'

Judicial Functions



While Giving Judicial Decisions, Not 'State'

Article 13 – Inconsistency or Abridgement

1) Article 13 : Core Essence

- The State shall not make any law which
 - ◆ Takes away Fundamental Rights
 - ◆ Abridges / diminishes Fundamental Rights
- Implicitly forms the basis of "Judicial Review"



- Definition of "Law" → Article 13(3)
- Related to Constitutional Amendment [13(4)] → Most Controversial

2) 13(1) → Pre-Constitutional Laws

3) 13(2) → Laws made after Constitution came into force

Inconsistent with Fundamental Rights



- If the entire law is inconsistent, the entire law is void
- If only a 'part' is inconsistent, only that part is void

4) 13(3) → Definition of "Law" ⇒ Extremely wide

1. Permanent Laws — Acts passed by Parliament or State Legislature.
2. Temporary Laws — Ordinances issued by the President / Governor.
3. Delegated Legislation — Orders, Rules, Bye-laws, Regulations, Notifications.
4. Non-legislative sources of law — Customs or usages having the force of law.

5) 13(4) Constitutional Amendment (Art. 368) shall not be considered "law" in context of Part III

- 24th Constitutional Amendment Act, 1971
- Current Position (Kesavananda Bharati Case - 1973) → Parliament can amend Fundamental Rights, but if it violates the 'Basic Structure', the Supreme Court can strike it down under Judicial Review.

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1. Doctrine of Eclipse



Pre-Constitution laws that are inconsistent with Fundamental Rights are not completely dead; they remain overshadowed and become inoperative only to the extent of inconsistency. If the inconsistency is removed, they may become operative again.

➤ **Key Point:** This doctrine mainly applies to pre-constitutional laws.



Leading Case: Bhikaji Narain Dhakras v. State of Madhya Pradesh (1955)

3.

3. Doctrine of Waiver



In India, a person cannot voluntarily waive Fundamental Rights, because these rights are not merely personal rights; they also serve a public purpose.

➤ **Key Point:** Fundamental Rights cannot be waived.



Leading Case: Bhasheshwar Nath v. Commissioner of Income Tax (1959)

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2. Doctrine of Severability



If only one part of a law violates Fundamental Rights, only that offending part becomes void. The rest of the valid law remains effective, provided it can be separated.

➤ **Key Point:** Not the entire law, only the unconstitutional part becomes void.



Leading Case: State of Bombay v. F. N. Balsara (1951)

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4. Doctrine of Prospective Overruling



A court may apply a new constitutional interpretation only to the future, so that past actions and decisions remain unaffected.

➤ **Key Point:** The decision operates prospectively, not retrospectively.



Leading Case: I.C. Golaknath v. State of Punjab (1967)

★ Exam Special ★

- **Eclipse** = pre-constitutional law remains temporarily inoperative

- **Severability** = invalid part is separated, valid part survives

- **Waiver** = Fundamental Rights cannot be waived

- **Prospective Overruling** = new rule applies only for the future

1) Background: Significance of 24 April 1973

Both the Waman Rao and I.R. Coelho cases are based on the Kesavananda Bharati vs. State of Kerala (1973) judgment. This landmark judgment was delivered on 24 April 1973, in which the Supreme Court stated for the first time that Parliament can amend the Constitution, but it cannot destroy or alter its 'Basic Structure'.



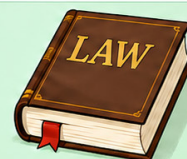
2) Waman Rao vs. Union of India (1981)

- ❑ Fixing the cut-off date: The Supreme Court fixed the date of the Kesavananda Bharati judgment (24 April 1973) as a 'Lakshman Rekha' (a line not to be crossed).
- ❑ Judgment: The Court clarified that Acts and Regulations included in the Ninth Schedule before 24 April 1973 cannot be challenged. However, any law included after this date can be challenged on the ground that it damages the Basic Structure of the Constitution.



3) I.R. Coelho vs. State of Tamil Nadu (2007)

This is commonly known as the 'Ninth Schedule Case'. A 9-judge Constitution Bench unanimously upheld the judgment in the Waman Rao case and provided further clarity to it.



★ Fundamental Rights: Ideas, Principles and the Golden Triangle



① Jawaharlal Nehru

“A fundamental right should be viewed not from the standpoint of some particular difficulty of the present moment, but as something that you would like to make permanent in the Constitution.”

- ➔ Nehru believed that Fundamental Rights were essential for the development of citizens, but he also supported a balance between rights and social responsibility.

② Liberal Democracy and the Protection of Liberty

In a Liberal Democracy, the best protection of citizens' liberty is ensured through the Separation of Powers.

- ➔ This principle was originally propounded by the French philosopher Montesquieu.



③ Dr. S. Radhakrishnan

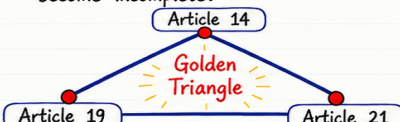
“These rights are not merely a few legal rules; rather, they are a promise to the citizens of this country and an agreement made with the international community and the civilized world.”

④ Maneka Gandhi v. Union of India (1978)

In the Indian Constitution, the group of Article 14, Article 19 and Article 21 is called the 'Golden Triangle' or the 'Trinity'.

⑤ Importance of the Golden Triangle

- ➔ All three are completely interconnected — without any one of them, the other two become incomplete.



Right to Equality

Articles 14 to 18

Article 14 →
Equality before law

Article 15 →
No discrimination on grounds of religion, race, caste, sex or place of birth

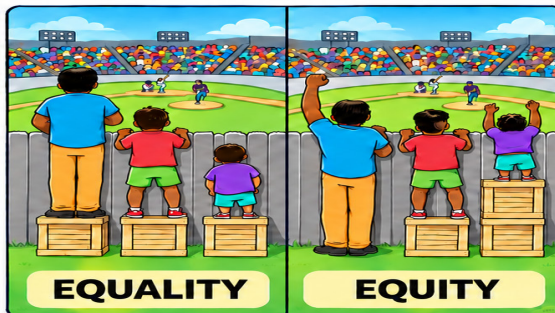
Article 16 →
Equality of opportunity in public employment

Article 17 →
Abolition of untouchability

Article 18 →
Abolition of titles

Article 14 → Equality before law**Equality Before Law**

- British Concept (A. V. Dicey)
- Law applies equally to all
- Negative concept

**Equal Protection of Laws**

- American Concept
- Equal treatment / law in equal circumstances
- Positive concept — permits reasonable classification

Exceptions to Article 14**1. President and Governor (Article 361) :**

- Not answerable to any court for any act done during their term of office
- During term → No criminal proceedings can be initiated or continued
- No order for arrest or imprisonment can be issued during the term
- Even for personal acts, 2 months' prior notice mandatory before initiating civil proceedings while in office

2. Article 361-A : Publishing true proceedings of Parliament or State Legislature → No civil or criminal proceedings**3. Article 105 : No court proceedings against an MP for any speech or vote in Parliament or its committees****4. Article 194 : MLAs/MLCs (same protection at state level)****5. Article 31-C : A law made to implement Article 39(b) or (c) cannot be challenged on grounds of violation of Article 14**

- Supreme Court → "Where Article 31-C enters, Article 14 exits."

Article 15 → Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth**15 (1) → State only**

- Religion
- Race
- Caste
- Sex
- Place of Birth
- The State shall not discriminate on the following grounds only
 - Discrimination can be made on other grounds.

15 (2)

- Access to public places for all
 - Caste
 - Religion
 - Sex
 - Race
 - Place of Birth
- not discriminate on the following grounds only

- Applicable to both the State and private individuals
 - Horizontal right = Not only the State, but even private citizens cannot discriminate → 15 (2) + 17 + 23 + 24

15 (3)

- State → women and children special provisions
- Example
 - Women's reservation in local bodies (Articles 243D + 243T)
 - Free and compulsory education for children
 - Maternity Benefit Act 1961

15 (4)

- 1st Constitutional Amendment 1951 ⇒ After Champakam Dorairajan Case
- State special provisions for
 - Socially & Education Backward Classes (SEBC)
 - Scheduled Castes (SC)
 - Scheduled Tribes (ST)

15 (5)

- 93rd Constitutional Amendment 2005
- Reservation in Educational Institutions (Socially & Educationally Backward Classes)
 - Socially and Educationally Backward Classes (SEBC)
 - Scheduled Castes (SC)
 - Scheduled Tribes (ST)
- Ashok Kumar Thakur Case 2008
 - OBC = 27% Reservation
 - Validity of Creamy Layer concept

15 (6)

- 103rd Constitutional Amendment 2019
- Educational reservation for economically backward classes ⇒ Except minority institution
- EWS ⇒ 10% Reservation