

## UNIT – II

# State • Law • Equality

Article 12 | Article 13 | Article 14

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Explanatory Lecture Slides

# Topics Covered in Unit-II

01

## State under Article 12

Definition • Judicial Trends • Need for Widening

02

## Definition & Meaning of Law

Pre & Post Constitutional Laws • Severability • Eclipse • Art. 13

03

## Equality & Social Justice

Article 14 • New Concept of Equality • Judicial Interpretation

# Definition of 'State'

**Article 12** defines the term “State” for the purposes of Part III (Fundamental Rights). It is an **inclusive definition** — the State includes:

## Union

Government and Parliament of India

## States

Government and Legislature of each State

## Local Authorities

Municipalities, Panchayats, etc. within India

## Other Authorities

Under the control of the Government of India

# Scope of Fundamental Rights Enforcement

Fundamental Rights under Part III are primarily enforceable against the “State”. Therefore, the wider the definition of State, the greater the protection of citizens’ rights against abuse of power.

## Vertical Application

Fundamental Rights are traditionally enforceable only against the State (vertical application). Private individuals or bodies are generally not bound unless they fall within Article 12.

## Key Implication

If an entity is held to be “State” under Article 12, it must respect Fundamental Rights. Citizens can approach High Courts (Art. 226) or Supreme Court (Art. 32) against it.

# Expanding the Concept of State Action

## **Rajasthan SEB v. Mohan Lal (1967)**

Statutory corporations performing public functions can be 'State'.

## **R.D. Shetty v. Airport Authority (1979)**

Laid down tests: deep & pervasive State control, public function, monopoly status, etc.

## **Ajay Hasia v. Khalid Mujib (1981)**

Instrumentality or agency of the State test crystallised.

## **Pradeep Kumar Biswas (2002)**

Functional approach – nature of functions more important than form of entity.

## **Zee Telefilms v. Union of India (2005)**

BCCI held not to be 'State' despite regulating cricket (purely private body).

## **Recent Trends**

Courts still require some State nexus; purely private actors often escape Art. 12 scrutiny.

# Why the Definition Needs Expansion

## Privatisation Era

Many public functions (utilities, education, health, sports regulation) are now performed by private or hybrid entities.

## Accountability Gap

If such bodies escape Article 12, citizens lose the protection of Fundamental Rights against them.

## Public Function Test

Courts should focus more on the nature of the function performed rather than ownership or control structure.

## Comparative Approach

Many jurisdictions apply fundamental rights to private actors performing public functions (horizontal effect).

# Laws Inconsistent with Fundamental Rights

**Article 13** is the cornerstone of judicial review. It declares that all laws inconsistent with or in derogation of Fundamental Rights shall be **void to the extent of such inconsistency**.

**Art. 13(1):** Pre-Constitutional laws inconsistent with FRs → void to the extent of inconsistency

**Art. 13(2):** State shall not make any law that takes away or abridges FRs; such law is void

**Art. 13(3):** Defines “law” – includes ordinances, orders, bye-laws, rules, notifications, customs, usages

**Art. 13(4):** Nothing in this Article shall apply to any amendment of the Constitution

## Two Categories under Article 13

### Pre-Constitutional Laws

**Laws existing before 26 January 1950.**

If inconsistent with Fundamental Rights → become void to the extent of inconsistency (Art. 13(1)).

They are not obliterated completely. The inconsistent portion is eclipsed and can revive if the Fundamental Right is later amended or removed.

### Post-Constitutional Laws

**Laws made after 26 January 1950.**

State is prohibited from making any law that takes away or abridges Fundamental Rights (Art. 13(2)).

Such a law is void ab initio (from the beginning) to the extent of the violation. Doctrine of Eclipse generally does not apply to post-Constitutional laws.

# Separating the Valid from the Invalid

**Doctrine of Severability** (also called Separability) means that if only a part of a statute is inconsistent with Fundamental Rights, only that part is declared void. The remaining valid portion continues to operate if it can stand independently.

## Test

Whether the valid and invalid portions are so inextricably mixed that they cannot be separated.

## Effect

Only the offending provision is struck down; the rest of the law remains in force.

## Landmark

R.M.D. Chamarbaugwalla v. Union of India (1957) – classic application of the doctrine.

## Purpose

Preserves legislative intent as far as possible while protecting Fundamental Rights.

## Temporary Shadow over Pre-Constitutional Laws

**Doctrine of Eclipse** applies mainly to pre-Constitutional laws. An inconsistent law is not dead; it is merely eclipsed (overshadowed) by the Fundamental Right and becomes unenforceable against citizens. If the shadow is removed (by constitutional amendment), the law can revive.

### Applies to

Primarily pre-Constitutional laws (Art. 13(1))

### Effect

Law becomes dormant / unenforceable, not obliterated

### Revival

Possible if the conflicting Fundamental Right is amended or repealed

### Landmark

Bhikaji Narain Dhakras v. State of M.P. (1955)

# Power of Courts to Examine Laws



## Judicial Review

The power of the judiciary to examine the constitutionality of legislative and executive actions.

Article 13 expressly provides the basis for striking down laws that violate Fundamental Rights.

It is part of the basic structure of the Constitution (Kesavananda Bharati).

High Courts (Art. 226) and Supreme Court (Art. 32 & 136) exercise this power.

## General Equality Clause – Article 14

**Article 14** – “The State shall not deny to any person **equality before the law** or the **equal protection of the laws** within the territory of India.”

### Equality Before Law

English concept (Dicey).

Absence of any special privilege in favour of any person.

Equal subjection of all persons to the ordinary law of the land.

No person is above the law.

### Equal Protection of Laws

American concept.

Equal treatment in equal circumstances.

Allows reasonable classification.

Protects against arbitrary discrimination.

# From Formal to Substantive Equality

## Reasonable Classification

Article 14 permits classification if it is founded on intelligible differentia and has a rational nexus with the object of the law (State of West Bengal v. Anwar Ali Sarkar).

## Non-Arbitrariness

E.P. Royappa (1974) – Equality is antithetic to arbitrariness. Any arbitrary State action violates Article 14.

## Substantive Equality

Focus shifted from formal equality (treating everyone the same) to substantive equality (addressing real inequalities through affirmative action).

## Dynamic Interpretation

Courts now examine both the purpose and the effect of classification. Protective discrimination (reservations) is upheld as a means to achieve real equality.

## Key Landmark Judgments



**Anwar Ali Sarkar (1952)** – Classification must not be arbitrary.

**E.P. Royappa (1974)** – Arbitrariness = inequality.

**Maneka Gandhi (1978)** – Article 14, 19 & 21 form a golden triangle.

**Indra Sawhney (1992)** – Reservations as a tool of substantive equality.

**Navtej Johar (2018)** – Equality includes protection of LGBTQ+ rights.

**Recent Trend** – Courts emphasise dignity, non-discrimination and substantive justice.

## QUICK RECAP

# Key Takeaways from Unit-II

### Article 12 – State

Inclusive definition. Courts have expanded it through instrumentality & public function tests. Need remains to cover privatised public functions.

### Article 13 – Law & Judicial Review

Pre-Constitutional laws → Eclipse; Post-Constitutional → void ab initio. Severability saves the valid parts. Judicial review is a basic feature.

### Article 14 – Equality

Equality before law + Equal protection. Permits reasonable classification. Evolved into non-arbitrariness and substantive equality.

# Thank You

*“Equality is the essence of democracy and the basic feature of the Constitution.”*

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