

VIVEKANANDA COLLEGE  
THAKURPUKUR  
KOLKATA-700063

NAAC ACCREDITED 'A' GRADE

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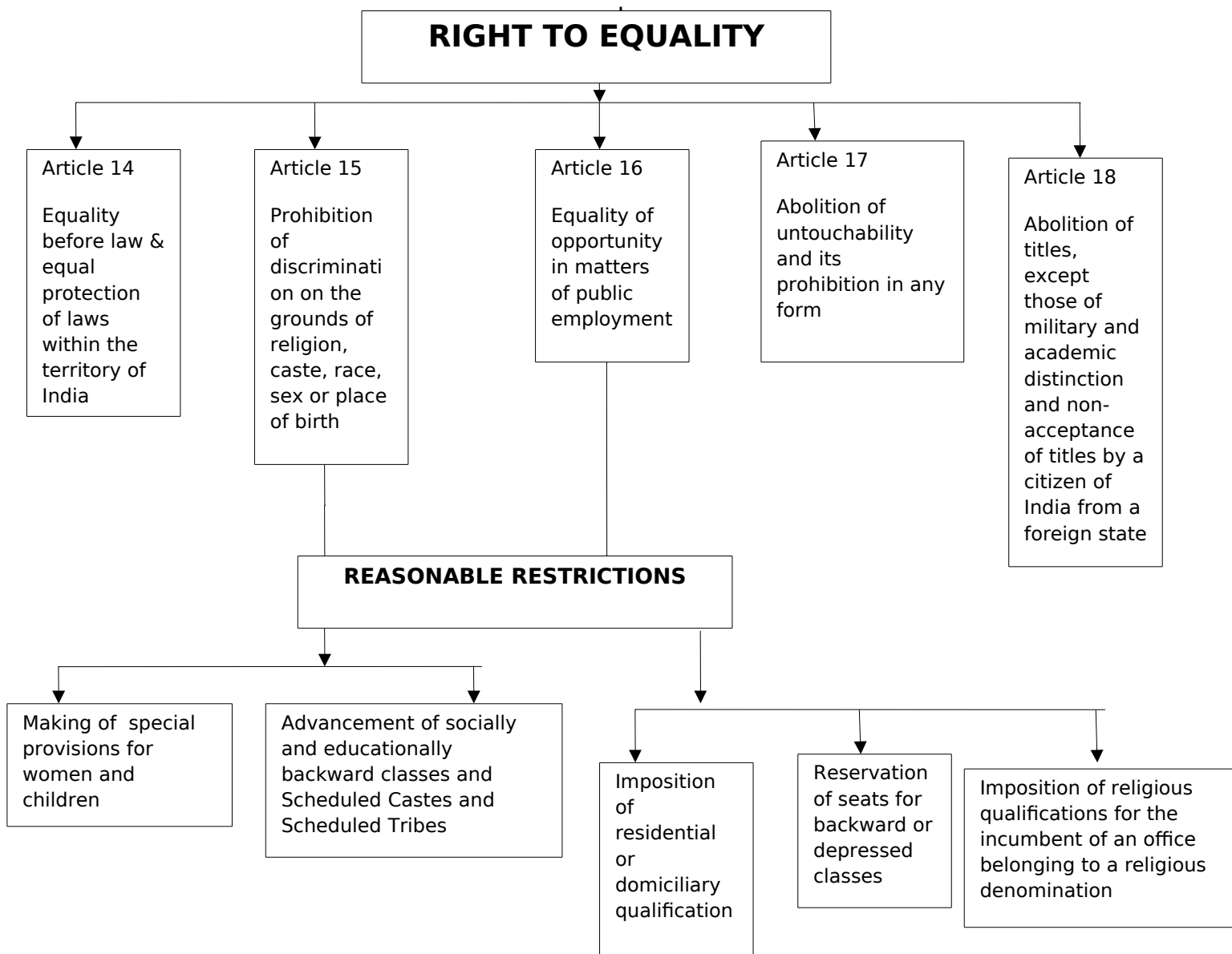
Name of the Teacher: Smt. Baisakhi Chatterjee

Name of the Department: Political Science

# FUNDAMENTAL RIGHTS

Part III of the Indian Constitution mentions six categories of Fundamental Rights along with qualifying provisions hedged around them. The rights guaranteed here have, in the main, a political character in as much as they constitute a code of political democracy. Our Fundamental Rights are not absolute; they are qualified in the sense that the state can lay reasonable restrictions in their use and enjoyment. The Parliament may make laws as per the needs of the time to limit the exercise of these rights. The Constitution of India guarantees to its citizens six fundamental rights. These are:

- **Right To Equality** (Articles 14-18)
- **Right To Freedom** (Articles 19-22)
- **Right Against Exploitation** (Articles 23 and 24)
- **Right To Freedom of Religion** (Articles 25-28)
- **Cultural and Educational Rights** (Articles 29 and 30), and
- **Right to Constitutional Remedies** (Article 32)



Articles 14-18 of Part III of the Indian Constitution have given the **Right to Equality**. This right is a very vital aspect of any democratic political system. The Supreme Court of India in the *Indra Sawhney vs Union of India* laid much importance on the Right to Equality. It said that “Equality is one of the magnificent cornerstones of Indian democracy.”

Article 14 of the Constitution says that the state shall not deny to any person *equality before law* or the *equal protection of laws* within its territories. Prima facie, ‘equality before the law’ and ‘equal protection of the laws’ may seem to be identical but, in fact, they mean different things. While equality before law is a somewhat negative concept, implying the absence of any special privilege to any individual and the equal subjection of all classes to the ordinary law of the land, equal protection of the laws is a more positive concept, implying the right to equality of treatment under identical circumstances.

*Equality before the law* is the second corollary from A.V. Dicey’s concept of the Rule of law. It means that

- I. No man is above the law of the land
- II. Every person, whatever be his rank or status, is subject to the ordinary law
- III. Every person, whatever be his rank or status, is amenable to the jurisdiction of the ordinary tribunals

However, it may be mentioned that this fundamental right, highlighting rule of law, is subject to certain exceptions. For instance, according to Article 361 of the Constitution,

- I. The President or the Governor of a state cannot be made answerable to any court for any act done in the exercise and performance of the powers and duties of his office.
- II. No criminal proceedings whatsoever can be instituted against the President or a Governor in any court during the term of his office.
- III. During his term of office, the President or the Governor cannot be arrested or imprisoned.
- IV. However, during their term of office, civil proceedings may be instituted against them in respect of any act done by them in their personal capacity. But civil cases may be brought against them only after two months’ notice in writing is delivered to them.

Besides, foreign diplomats are immune from the judicial process of the country. Further, public officers, judges and military personnel also enjoy some special provisions.

*Equal protection of the laws* on the other hand is a positive concept. It does not mean that all will receive equal treatment irrespective of circumstances they are placed in. It only means equality of treatment in similar situations - “that among

equals, the law should be equal and equally administered, that likes should be treated alike." Its implication was best clarified by the Supreme Court in Gauri Shankar vs Union of India in 1995 wherein it said: ".....equals should not be treated unlike and unlikes should not be treated alike. Likes should be treated alike." However, this classification should be rational and not discretionary or discriminatory.

Article 15 makes the equality before law as given in Article 14 more effective. Article 15 (1) prohibits discrimination on the grounds of religion, race, caste, sex or place of birth. Article 15 (2) provides that a citizen, on grounds of religion, race, caste, sex or place of birth, cannot be subjected to any restriction regarding access to shops, public restaurants, hotels and places of public entertainment or use of wells, tanks, bathing ghats, roads and places of public resort meant for use of the general public or maintained wholly or partly out of state funds.

Article 15 (3) itself provides for exceptions to Article 15 (1) and 15 (2) as it provides that the state may make special provisions for women and children. Article 15(4) also provides an exception to Article 15 (1). Under this Article, the state may make special provisions for the advancement of any socially or educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes. The 93<sup>rd</sup> Constitutional Amendment Act of 2005 has given the state the rights to make special provisions to ensure that steps are taken even by private educational institutions for the advancement of socially and educationally backward classes of citizens.

Article 16 provides for equal opportunity in public employment. The provisions embodied in this article are as follows:

- a) According to Article 16 (1), all citizens shall have equality of opportunity in matters relating to public employment
- b) Article 16 (2) provides that no citizen shall be discriminated against, on grounds of religion, caste, sex, descent, place of birth and residence in respect of any employment or office under the state.
- c) But under Article 16 (3), Parliament may by law, make residence within a state or a Union Territory a necessary condition for eligibility to be appointed as an officer under the Government or any local or other authority within the state or UT concerned.
- d) Article 16 (4) makes an exception to Article 16 (1). According to this Article if the state is of the opinion that any backward class of citizens is not adequately represented in the services under the state, it may make reservations of appointments or posts in favour of this backward class.
- e) Article 16 (5) provides for a different kind of reservation. According to this article, posts in any religious or denominational institutions shall be filled up by persons professing that particular religion or belonging to that particular denomination.

Article 17 abolishes the practice of untouchability and prohibits its practice in any form. The practice of untouchability, in vogue for long in India's traditional society, encouraged superstition on one hand and social inequality on the other. Hence, to develop a modern society free from superstitions and to establish social equality, Article 17 has been promulgated. It not only abolishes untouchability and forbids its practice but also lays down that enforcement of any disability on the ground of untouchability shall be an offence punishable by law. As held by the Supreme Court in *State of Karnataka vs Appa Balu Ingale*, 1993 the Constitutional prohibition on untouchability applies not only to individuals but also to institutions and juristic bodies of persons.

Although Article 17 prohibits untouchability, it does not give any definition of the same. In fact, no law has yet defined untouchability. However, to prevent its practice, Parliament in 1955 enacted the Untouchability (Offences) Act, prescribing punishment for practicing untouchability. In 1976, this act was renamed as Protection of Civil Rights Act 1955.

Article 18 provides that the state shall confer no title on a person save that of a military or academic distinction. During the British rule, there was a practice on the part of the Government to confer titles on some select persons very much loyal to the Government, as a result of which, those persons used to enjoy a special status in the society. In order to put an end to this practice and to ensure social equality, Article 18 was inserted in Part III of the Constitution. This Article provides that:

- I. The state cannot confer any title except those meant to honour military or academic excellence. [Art. 18 (1)]
- II. An Indian citizen is forbidden to accept any title from a foreign state. [Art 18 (2)]
- III. If someone, who is not an Indian citizen, holds any office of profit or trust under the state, he cannot accept any title from a foreign state without the consent of the President. [Art. 18 (3)]
- IV. If a person holds any office of profit or trust under the state, he cannot accept any present emolument or office of any kind from a foreign state without the consent of the President.

A controversy arose when the Government of India began conferring *Padma Awards* since 1954. Those who opposed the practice of conferring such awards contended that these awards violated Article 18 of the Constitution. The controversy was finally laid to rest in the *Balaji Raghavan vs Union of India* 1996. In this case, the Supreme Court gave the ruling that Padma Awards are not titles but only awards in recognition of merit or excellence. Hence, they do not at all violate Article 18 nor are they violative of Article 14 for "the theory of equality does not mandate that merit should not be recognized." However, the court further said that these awards cannot be used as suffixes or prefixes. The court also suggested that there should

be a definite guideline in the conferment of Padma awards. Unfortunately, this suggestion, till now goes on unheeded.