

EQUALITY BEFORE LAW

3. Objective

Everyone needs to understand equality and know their rights.

1. The knowledge and respect of rights, respect and tolerance for difference that students will gain from this e-content, can empower them to protest against discriminations, improve relationships and live with self respect.
2. The study of this e-content will create an academic space for students to explore, discuss, challenge and form their own opinions and values about tolerance and respect for differences.
3. In our ever more diverse and challenging society, it becomes more important to instill young people with the positive and open-minded attitudes about equality and human rights to strengthen the bond of fraternity and integrity.

Foremost among the fundamental rights guaranteed by the Constitution of India is the right to equality. Articles 14-18, state and elaborate the Right to Equality in India.

Art 14 states that “The state shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.”

The phrase ‘equality before the law’ is negative in content implying absence of special privilege. Equal protection of the law is positive in content. It implies equality of treatment in equal circumstances. Again “equality before the law” implies that all, from the highest to the humblest are equal in the eyes of law and, all will be tried by the same law and will be given the same punishment for same crime.

Article 15 declares that no citizen shall be denied

- a. “access to shops, public restaurants, hotels or places of public entertainment or
- b. the use of wells, tanks, bathing ghats, roads and places of public resorts maintained wholly or partly out of state funds.”

This article however does not forbid the state from making special provisions for women and children or for socially and educationally backward classes and for the scheduled castes and tribes.

Art. 16 guarantees equality of opportunity in matters of public employment. The article states that:

- (1) There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the state.
- (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.
- (3) Thus the article also forbids discrimination on grounds only of religion, race, caste, sex, descent, and place of birth or any of them in matters of public employment.

Art. 17 of the constitution says, “Untouchability is abolished and its practice in any form is forbidden.”

Art. 18 forbid titles except military or academic distinctions. Title from foreign governments such as knighthood is forbidden. However honors conferred by the government of India such as Bharat Ratna or Padma Shri etc. are not titles but are only recognition of meritorious services.

Glossary

1. Class legislation - Class legislation is that which makes an improper discrimination by conferring particular privileges upon a class of persons arbitrarily selected from a large number of persons.
2. English Common Law - The system of law that has developed in England from approximately 1066 to the present. The body of English law includes legislation, Common Law, and a host of other legal norms established by Parliament, the Crown, and the judiciary. It is the fountain from which flowed nearly every facet of U.S. law during the eighteenth and nineteenth centuries.
3. Universal Declaration of Human Rights- The Universal Declaration was adopted by the General Assembly of the United Nations on 10 December 1948. Motivated by the experiences of the preceding world wars, the Universal Declaration was the first time that countries agreed on a comprehensive statement of inalienable human rights.
4. Rajpramukh- **Rajpramukh** was an administrative title in India which existed from India's independence in 1947 until 1956. Rajpramukhs were the appointed governors of certain of India's provinces and states.

5. **The Charter of the United Nations** - The **Charter of the United Nations** is the foundational treaty of the international organization called the United Nations. It was signed at the San Francisco War Memorial and Performing Arts Center in San Francisco, United States, on 26 June 1945, by 50 of the 51 original member countries. (Poland, the other original member, which was not represented at the conference, signed it two months later.) It entered into force on 24 October 1945, after being ratified by the five permanent members of the Security Council—the Republic of China under Chapter II of the United Nations Charter (and *currently* by the People's Republic of China), France, the Union of Soviet Socialist Republics (later replaced by the Russian Federation), the United Kingdom, and the United States—and a majority of the other signatories.

6. A **diplomat** is a person appointed by a state to conduct diplomacy with another state or international organization. The main functions of diplomats revolve around the representation and protection of the interests and nationals of the sending state, as well as the promotion of information and friendly relations.

Diplomats are the oldest form of any of the foreign policy institutions of the state, predating by centuries foreign ministers and ministerial offices.

7. **Criminal prosecution** - the institution and conduct of legal proceedings against a defendant for criminal behavior

8. **Civil suits** - law suits involve property disputes, breach of contract, family matters, such as divorce, personal injury.

9. **Untouchability** is a product of the caste system. It is not merely the inability to touch a human being of a certain caste or sub-caste. It is an attitude on the part of a whole group of people that relates to a deeper psychological process of thought and belief, invisible to the naked eye, translated into various physical acts and behaviours, norms and practices. Untouchability is prompted by the spirit of social aggression and the belief in purity and pollution that characterises casteism. It is generally taken for granted that Dalits are considered polluted people at the lowest end of the caste order. The jobs considered polluting and impure are reserved for Dalits, and in many cases Dalits are prevented from engaging in any other work. These jobs include removing human waste (known as “manual scavenging”), dragging away and skinning animal carcasses, tanning leather, making and fixing shoes, and washing clothes.

10. legal aid - Legal Aid implies giving free legal services to the poor and needy who cannot afford the services of a lawyer for the conduct of a case or a legal proceeding in any court, tribunal or before an authority. Legal Aid is the method adopted to ensure that no one is deprived of professional advice and help because of lack of funds. Therefore, the main object is to provide equal justice is to be made available to the poor, down trodden and weaker section of society.

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LINKS

1. www.constitution.org
2. lawmin.nic.in
3. www.legalservicesindia.com

1. Wherefrom the phrase “equal protection of the laws” is being borrowed?

The phrase “**equal protection of the laws**” is borrowed from the 14th amendment of the U. S. constitution. It means that like should be treated alike, that none should be favored and none should be discriminated, against. . The phrase “**equal protection of the laws**” is borrowed from the 14th amendment of the U. S. constitution. It means that like

should be treated alike, that none should be favored and none should be discriminated, against.

2. What does the word 'any person' mean?

The word "**any person**" in Article 14 of Constitution denotes that the guarantee of the equal protection of laws is available to any person whether a citizen or an alien, which includes any company or association or body of individuals. The equality before the law is guaranteed to all without any arbitrary discrimination on the ground of race, colour or national.

3. What does class legislation mean?

Article 14 permits classification but prohibits class legislation: The equal protection of laws guaranteed by Article 14 does not mean that all laws must be general in character. In fact, identical treatment in unequal circumstances would amount to inequality. But if a special law is enacted for a particular class of people, then it is called class legislation, which is prohibited, unless it is meant to protect or uplift the status of minority or backward.

4. What is meant by identical treatment in unequal circumstances?

The varying needs of different classes of persons often require separate treatment and different laws in different places. Identical treatment in unequal circumstances would amount to inequality, creating obstacle for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes.

5. How protection of President and Governors and Rajpramukhs has been guaranteed in Indian constitution?

Article 361(Protection of President and Governors and Rajpramukhs) provides that the President or the Governor of a State or Rajpramukh of a State, shall not be answerable to any Court for exercise and performance of the powers and duties of his office or any act done or purporting to be done by him/her in the exercise and performance of those powers and duties. No criminal proceeding shall be instituted or continued against the President or the Governor of a State in any Court during his/her terms of office. No process for the arrest or imprisonment of the President or the Governor of State shall be issued from any Court during his/her term of office.

6. What do you understand by 'Untouchability'?

Untouchability is the social-religious practice of ostracizing a minority group by segregating them from the mainstream by social custom or legal mandate. A member of the excluded group is known as an Untouchable. The term is commonly associated with treatment of the Dalit communities, who are considered "polluting" among the people of South Asia, but the term has been used for other groups as well, such as the Burakumin of Japan, Cagots in Europe, or the Al-Akhdam in Yemen. Untouchability has been made illegal in post-independence India.

7. When was Abolition of the Untouchability Act enacted?

Parliament originally enacted the Untouchability (offences) Act 1955. This Act prescribes punishment for the practice of untouchability. This Act has been amended by the Untouchability (Offences) Amendment Act, 1976, in order to make laws more stringent to remove untouchability from the society. It has also been renamed as The Protection of Civil Rights Act, 1955.

8. In which book Dicey introduced his theory of law?

Introduction to the Study of Law and Constitution 1885

9. Which types of titles cannot be conferred under the Constitution of India?

No title, not being a military or academic distinction, shall be conferred by the State.

No citizen of India shall accept any title from any foreign State.

No person who is not a citizen of India shall, while he holds any office of profit or trust under the State, accept without the consent of the President any title from any foreign State.

No person holding any office of profit or trust under the State shall, without the consent of the President, accept any present, emolument, or office of any kind from or under any foreign State.

The British government had created an aristocratic class known as *Rai Bahadurs* and *Khan Bahadurs* in India; these titles were also abolished. However, Military and academic distinctions can be conferred on the citizens of India. The awards of *Bharat Ratna* and *Padma Vibhushan* cannot be used by the recipient as a title and do not, accordingly, come within the constitutional prohibition". The Supreme Court, on 15 December 1995, upheld the validity of such awards.

10. When was *Citizenship (Amendment) Bill* enacted?

ASSIGNMENT

1. Explain the concept of right to equality, as has been guaranteed by the Indian constitution.
2. 'Rule of equality is, however, not an absolute rule' – Explain.
3. Examine the position of Indian constitution as regards 'Prohibition of discrimination'.
4. 'There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State' – critically examine.
5. How the Constitution of India has tried to rule out parochialism and nepotism in the matters of appointment in Government Services.