

Polity Class 13

22nd June, 2023 at 9:00 AM

RIGHT TO EQUALITY: ARTICLE 14 (9:15 AM):

- The article states "The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India".
- As the article mentions "any person", the article is available to both citizens of India and non-citizens.
- The right is enforceable only against the state, and not against private entities.
- As it is a negatively worded article, it restricts the powers of the state.

Equality before the law:

- It is a **British** concept.
- According to this, no one is above the law & in front of the law, everyone shall be equal.
- It is a part of the "**Rule of Law**" concept.
- There shall be no special privileges in favor of anyone or any group of people.
- According to the concept, a person shall be treated equally by the law irrespective of his/her social, economic, or political status.

Issues with the concept:

- Equality before the law blindly applies equality and disregards any differences in the circumstances of the individuals involved.
- **For example-** Judging students of different classes/backgrounds on the same academic standard would be unfair.
- The concept of "equality before the law" is valid in the case of equals, but fails if two people are placed in different circumstances.
- Hence the application of the concept might cause inequality even if not deliberately.

EQUAL PROTECTION OF THE LAWS (9:40 AM):

- It is an American concept.
- According to this, equals should be treated equally and unequals should be treated unequally.
- All persons in similar circumstances should be treated in the same manner, but special privileges may be given to those who are placed in a disadvantaged position.

- **Article 15(1)** is an example of equality before the law, whereas **Article 15(3)** is an example of equal protection of the laws.

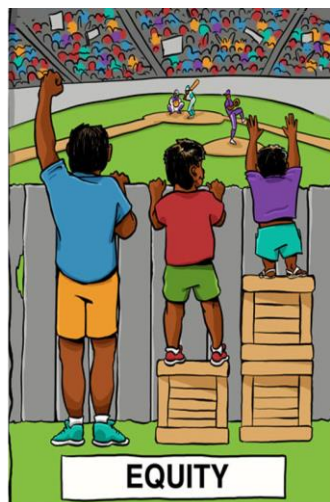
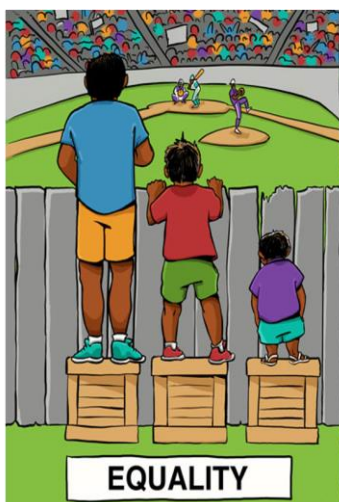
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Article 15(1):

- The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth, or any of them.

Article 15(3):

- The state may provide any particular provisions for women and children.
- For instance, giving children free education or reserving seats for women in local councils.
- Equal protection of the laws allows the state to make special provisions in favor of disadvantaged classes of people.
- It is also referred to as the principle of **equity**.



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"Illustration Initiative for Social Change" Author: Ananya Magazine based on the original work of Gisele Pezzullo

- Equity is a solution for addressing imbalanced social systems.
- Steps like reservations are very useful for addressing social inequalities that are beyond any individual's control.
- But these steps must be temporary and the permanent long-term goal must be to create a just society, where there will be no inequalities to address.
- As per the **Supreme Court**, "equality & arbitrariness are sworn enemies".

Implicit meaning under article 14:

- The Supreme Court in **E.P Royappa V/S State of Tamil Nadu 1973** held that equality and arbitrariness cannot exist together.
- Wherever equality comes in, arbitrariness goes out.
- So if any action by the state is arbitrary even to the slightest degree, it shall be considered violative of Article 14.
- **Principles of Natural Justice** are an implicit part of the right to equality.
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Principles of Natural Justice:

- Nobody shall be a judge of their own case(*Nemo Judex in causa Sua*).
- Every accused/party in the case must be given a right to a fair hearing(*Audi alteram partem*).

EXCEPTIONS TO THE RIGHT OF EQUALITY (10:15 AM):

- As per **Article 361(1)**, the President and the Governor are not answerable in any court for the exercise of their official powers and duties.
- As per **Article 361(2)**, no criminal proceedings can be initiated or continued against the President and the Governor during their term of office.
- As per **Article 361(3)**, no process for arrest or imprisonment can be made during their term of office.
- As per **Article 361(4)**, no civil proceedings or suit claiming relief can be initiated against the President or the Governor during their term of office.

- For even an act done in a personal capacity, without giving two months' notice
- **Under Articles 105(2) & 194(2)**, the actions of an MP or a legislator done in the performance of duties in the house cannot be called into question in any court.
- Diplomatic immunities and privileges are provided to foreign diplomats, Consular Representatives, and officials of international organizations.
- The embassy complexes in the host countries are considered territories of the parent countries for all practical purposes.

CRITERIA TO CLASSIFY PEOPLE FOR POSITIVE DISCRIMINATION BY THE STATE (11:00 AM):

- This refers to objective criteria on the basis of which the people shall be given positive discrimination by the state.
- Equal protection of the laws means that the state can make positive discrimination in favor of certain classes of individuals on the basis of objective criteria called **intelligible differentia**.
- The state cannot make any arbitrary decisions to classify those individuals who shall be given positive treatment.
- Additionally, the purpose of classification must have a rational nexus or a logical relationship with the intelligible differential.
- **For example-** income tax imposed on the basis of income criteria would be a valid nexus.
- On the other hand, a higher entertainment tax on the basis of the income of the movie would be an example of an irrational nexus.

Article 15:

- The article is a specific application of the right to equality.
- Originally, Article 15 had three clauses:
- **Article 15(1):** The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth, or any of them.
- The article is a special privilege available only to the citizens of India.
- The meaning of the term "only of" is that discrimination by states on other grounds can be permissible.
- These other grounds can be age, income, residence, etc., or a combination of the above grounds with other grounds not mentioned in the article.
- The wording of the article imposes limits on the state.
- The right can be claimed only against the state.

- Therefore, if individuals discriminate against a citizen on the basis of the mentioned grounds, no remedy shall be available under this article.

ARTICLE 15(2) 11:30 AM):

- - No citizen shall, on grounds only of religion, race, caste, sex, place of birth, or any of them, be subject to any disability, liability, restriction, or condition with regard to:
 - (a) Access to shops, public restaurants, hotels, and palaces of public entertainment; or
 - (b) The use of wells, tanks, bathing ghats, roads, and places of public resort maintained wholly or partly out of State funds or dedicated to the use of the general public
- It is considerably different from 15(1) as it prohibits discrimination against any citizen by both the state and other individuals.
- As per the article, no citizen shall be denied access to any public place or utility on the basis of the grounds mentioned in 15(2).
- To be classified as a public place, two conditions must be satisfied:
 - (1) It should be maintained fully or partially out of state funds.
 - (2) It should be dedicated to the use of the public in general.

Article 15(3):

- Nothing in this article shall prevent the State from making any special provision for women and children.
- It is an exception to Article 15 and it provides powers to the state to make special provisions in favor of women and children.
- It may be considered as an example of equal protection of the laws.
- Considering the marginalized position of these two(women and children), the constitution makers instituted this provision.
- **For example-** reservations have been provided to women under the 73rd and 74th constitutional amendments to panchayats and municipalities respectively.
- Similarly, special provisions have been made for children under the **Juvenile Justice Act 2015** where **different** treatment is provided to children in case of committing a crime.

Article 16:

- This is an even more specific application of the right to equality.
- **16(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.
- The article has two additional grounds that Article 15- descent and residence.
- The article only covers public employment and not private jobs on the basis of this article.

Article 16(3):

- Parliament can enact any legislation requiring residence in a state or union territory as a pre-condition for particular employment or appointments in the respective state or union territory or in local authorities or other authorities within that state or union territory.
- Article **16(3)** is hence an exception to Article 16(2).
- Such power vests only with the parliament and not with the states.

The topics for the net class are the continuation of Article 16 and Reservations in India.