

## Right to Equality

The Constitution of India guarantees the Right to Equality through Articles 14 to 18. Justice Thommen has observed it in Indira Sawhney Case- "Equality is one of the magnificent corner-stones of Indian democracy."-

The doctrine of equality before law is a necessary corollary of Rule of Law which pervades the Indian Constitution.

In this series of constitutional provisions, Art. 14 is the most significant. It has been given a highly activist magnitude in recent years by the courts and, thus, it generates a large number of court cases. It underlines a general guiding principle for the courts and in situations not covered by Arts. 15 to 18, the general principle of equality embodied in Art. 14 is attracted whenever discrimination is alleged.

Also, we have incorporated the principles of UDHR given under Article 7 of UDHR that says, all are equal before laws and entitled without any discrimination equal protection of laws.

It may be noted that the right to equality has been declared by the Supreme Court as a basic feature of the Constitution. (M Nagaraj V UOI- 2007). This means that even a constitutional amendment offending the right to equality will be declared invalid. Neither Parliament nor any State Legislature can transgress the principle of equality.

*"Article 14 is the Genus and Article 15 and 16 are its species"- Naz Foundation V. NCT Delhi Case 2009*

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."

- This provision has been inspired from 14th Amendment of the U.S. Constitution which declares: "No State shall deny to any person within its jurisdiction the equal protection of the laws".

The use of word "person" under article 14 is a gender neutral concept. It also extends to cover transgenders who are neither biological male nor female.

Article 14 contains two important concept:

1. 'Equality before law\*' and
2. 'equal protection of laws'

The first is a negative concept which ensures that there is no special privilege in favour of any one, that all are equally subject to the ordinary law of the land and that no person, whatever be his rank or condition, is above the law. This is equivalent to the second corollary of the DICEAN (A V Dicey) concept of the Rule of Law. This concepts can be applied well in those societies which are homogeneous in natures, but not in those which have been divided on various lines and there has been discrimination of ages on several grounds.

Equality before law is a dynamic concept which means-

Firstly, No privileged class and no one shall be above the law of the land,

Secondly it also puts an obligation upon the state to bring about a much more equal society through the machinery of state, as equality before law can be predicted meaningfully only in an equal society.

Exceptions given to equality before law: foreign diplomats enjoy immunity from the country's judicial process; immunity to the President of India and the State Governors public officers and judges also enjoy some protection, and some special groups and interests, parliamentary privileges etc.

'Equal protection of laws', is positive in content. Equal Protection of the laws does not mean equal treatment of all persons without distinction. What it postulates is the application of the same laws alike and without discrimination to all persons similarly situated. It denotes equality of treatment in equal circumstances.

Article 14 mandates state not to discriminate among the similarly situated persons but that does not mean that every person shall be subject to similar treatment. The underlying fact here is that all persons are not equal by nature, attainment or circumstances and if states applies similar treatment those not so similar person that would be nothing but perpetuating injustice.

Article 14 also protects from the arbitrary actions of state both by the Executive as well as legislature. One of the test to check whether any actions is arbitrary or not is to see if there has been violation of principles of natural justice. Vesting of uncontrolled and unguided powers in the hand of executive is also considered to be the violation of article 14.

Principles of Natural Justice:

Reasonable classification is allowed: the courts have evolved the principle that if the law in question is based on rational classification it is not regarded as

discriminatory. Classification to be reasonable should fulfil the following two tests:

- (1) It should not be arbitrary, artificial or evasive.
- (2) The differentiation adopted as the basis of classification must have a rational or reasonable nexus with the object sought to be achieved by the law in question.

In Navtej Singh Johar Case: Supreme court decriminalized Homosexuality, on the basis that it violated equality.

Court said that section 377, resulted in unwanted collateral effect on LGBTQs as it also prevented consensual intercourse by some adults, while general law allows for other adults. This classification was not reasonable.

- E.g., The law on maternity benefits applies to women working on the way to maternity, not to others. Because the purpose of the law on maternity benefits is to grant privileges only to women who turn out to be mothers when they need them. Hence, the category of men and women is based totally on an intelligible differentia.

Question 6: "Equality is the basic feature of the Constitution of India and any treatment of equals unequally or unequal's as equals will be violation of basic structure of the Constitution of India." Explain. (To be Discussed in class).

the concept of equality impels that all the people are entitled to same rights and opportunities to devolve their skill and peruse their Gole how ever there may be some preexisting inequalities in the society.

natural in equality those immerge as result of different capacities choices and presences while social inequalities immerge as consequences of in equality of opportunities or exploitation of some group by other. in this context it becomes important to for socialist democratic state to bring about social order which promote equality of status and opportunities after discarding such exclusion and exploitation which has been existing in the society

the constitution of India has been bold and Forward looking in this regards. where it has gone beyond the negative concept of equality and adopt the positive one which give ample avenues for the state to take up regional classification in order to provide affirmative action to different section of citizens. father more equality upheld as part of basic structure by the judiciary it means equality amongst equals.

article 14 provides equals protection of law which essentially means who equally places in society shall be given equal treatment. here the former eliminates various kind of social discrimination on the basis of religion cast race. and place of births as well as it equipes the states to make the specials provision for women and children and SEBC(socials and educations backward classes). while later provide equality of opportunities in terms of public employment and silmultaneously provide for reservation by the basic of caste and econimical status.

the question has to what constitute equality in India has been settled by the supreme court very clear words. IN (BADAPNAVAR CASE) 2000. That "equality is the basic feature of the constitution and any treatment equals unequally or unequal equally. while be violation of basic structure of the constitutions.

Off lately Article 14 is most active provision of our constitution attracting large of mound delegation . discuss.



## Rule of Law

Given by A V Dicey (England);  
It has three principles:—

Only 1 and 2 are applicable  
in context of India. In India  
Constitution is Source of all  
rights, hence it is supreme.

Also, Supreme Court has  
ruled that "doctrine of rule  
of law" is part of basic  
structure of the  
constitution.

- Absence of Arbitrary Power:
- Equal subjection of all citizens to law
- Primacy of Individual Rights.

### Note:

- All persons in similar circumstances shall be treated alike both in privileges and liabilities imposed. But equality cannot be applied when it arises out of illegality e.g., when Art. 14 is sought to be involved in aid of compassionate appointment wrongly made earlier.
- Art. 14 strikes at arbitrary state action, both administrative and legislative and any uncontrolled and unguided power vested in executive without holding them accountable.

Question 7: 'Rule of Law' does not mean rule according to statutory law, pure and simple; it connotes some higher kind of law which is reasonable, just, and non-discriminatory. Discuss. (To be discussed in class)

Rule of law is a concept which originated in England in A.V. Dicey's theory which has 3 essential elements: equality before law, absence of arbitrary power, and primacy of individual rights. Under the scheme of Indian constitutional provisions, we have included the concept of rule of law in implied sense under Article 14.

From time to time and again the court in India has upheld this concept of the rule of law. For example, in the Kesavananda Bharati case, some of the judges, constituting the majority of opinion, held that it is an element of the basic structure of the constitution and is beyond the Parliament's power to amend.

Article 14 is most important in the context which embodies this principle and protects all persons from arbitrary action of the legislature as well as the executive. The newer ordinances of the judiciary have strongly held that this rule of law permeates the whole fabric of the constitution and excludes any kind of arbitrariness and unreasonableness.

Governmental interventions in the daily activities of the citizens cannot be denied, and also the elements of arbitrariness at the hands of the bureaucrats cannot be ignored. Therefore, the rule of law is a useful counter to this situation. Having said this, it pertinent to note that the rule of law in its true sense shall include

1) accountability of governments, 2) just laws 3) open governments 4) accessible and impartial dispute resolution hence it does not wrong to assume rule of law does not merely mean rule according to text of the law

here the values like constituently liberty of the people predecay etc. imports to enforce the rule of the law.



1992- Indira Sawhney Case-

- Restricts the Quota to 50%
- Reservation to OBCs only in Jobs not in promotion

Ram Nandan Committee was appointed to identify the creamy layer among the OBCs. It submitted its report in 1993, which was accepted.

- Who falls under creamy layer:
  - Parents hold a constitutional post.
  - Either parent on group A direct recruit
  - Both parents on Group B
  - Parents in Armed Forces: Colonel and above
  - Income more than 8 lakhs.
- There were demands to raise the bar to 12L: as per BP Sharma committee report in 2019- only 2% of families in India shall have income more than 12LPA, and consequently will cover around 98-99% of OBCs.
- In 2012- there were 102 posts of Secretaries under GOI
  - SC-0
  - ST-2
  - OBC-0
- It was revealed that there existed a glass ceiling (a term used in corporate where women were not allowed to reach to policy level post or CEOs)
- 77<sup>th</sup> Amendment 1995- Reservation in promotion to SC& ST but not given to OBCs.

Article 17: Untouchability is abolished and its practice in any form is prohibited.

- To implement this Protection of Civil Rights Act 1955 is enacted.

Abolition of Titles: Article 18

- Govt, will not confer any title.
- Citizen of India will also not accept any titles from foreign country.
- Titles include hereditary like Maharaj Dhiraj, Rai Sahab, Dewan Bahadur etc.
- It allows awards like Bharat Ratan, Padma Awards: they are achieved on merit not by birth.



article 15-3 recognized the fact the women in India have been subject to social and economic deprivation for long period of the time and hence they could not participate in social economic development of the country as compared to men. the purpose of article 15 c to element social economical backward ness women to empower them in such a manner they bring effective equality between men and women.

Article 15: No discrimination on grounds of religion etc.

No discrimination only on the basis of Religion, Race, Caste, Sex or Place of Birth.

Four exception:

- For protection of Women and children. [15(2)]
- Advancement of SEBC (Socially and Educationally Backward Classes) [15(3)]
- Advancement of OBCs. [15(4)]:-- By 93rd Amendment Act 2005
- Advancement of EWS [15(5)]:-- By 103rd Amendment Act

Article 16: Equality of Opportunity

- There shall be equality of opportunity for all citizens.
- No Citizen only on basis of Religion, Race, Sex, Place of Birth, descent, place of residence be ineligible for any public employment.
- But requirement of residence is allowed in certain cases.

A Constitution Bench of the Supreme Court in a 3:2 majority decision, upheld the validity of the 103rd Constitutional Amendment which provides 10% reservation in government jobs and educational institutions to the 'economically weaker sections of the society.

Reading out the verdict, Justice Maheshwari said that the 103rd constitutional amendment for the EWS quota was valid and did not violate the basic structure of the Constitution. Reservation, he said, is an instrument of affirmative action to ensure an all-inclusive march towards the goals of an egalitarian society.

Reservation is an affirmative action measure not only for the socially and economically backward classes, but for any disadvantaged section. Therefore, reservation solely on an economic basis does not violate the Constitution," he observed.

He also pointed out that the breach of the 50 per cent ceiling (laid down by the SC in the Indra Sawhney judgment) for reservation was applicable only for reservation concerning socially backward classes under Articles 16(4) and 16(5) of the Constitution (state can make a reservation for any backward class).

Reservation to OBC:

Article 340 provides for setting up a body to deal with SEBCs and to make report to the government.

1953- First Backward commission: Kaka Saheb Kelkar Commission

1979- Second Backward Class Commission: Mandal Commission set up Morarji Desai Government

- The commission submitted its report in 1980 and identified as many as 3743 castes as socially and educationally backward classes. They constitute nearly 52% component of the population.
- The commission recommended for reservation of 27% government jobs for the Other Backward Classes (OBCs)
- 10 Years later, VP Singh govt, decided to implement the recommendations of Mandal Commission.