CHAPTER XXI

FUNDAMENTAL RIGHTS (2)
RIGHT TO EQUALITY (i)

SYNOPSIS

A. INTRODUCTORY

The Constitution of India guarantees the Right to Equality through Articles 14 to 18. "Equality is one of the magnificent corner-stones of Indian democracy."[1]

The doctrine of equality before law is a necessary corollary of Rule of Law which pervades the Indian Constitution.[2]

Article 14 outlaws discrimination in a general way and guarantees equality before law to all persons. In view of a certain amount of indefiniteness attached to the general principle of equality enunciated in Article 14, separate provisions to cover specific discriminatory situations have been made by subsequent Articles. Thus, Art. 15 prohibits discrimination against citizens on such specific grounds as religion, race, caste, sex or place of birth. Art. 16 guarantees to the citizens of India equality of opportunity in matters of public employment. Art. 17 abolishes untouchability, and Art. 18 abolishes titles, other than a military or academic distinction. Thus, the Supreme Court has said that the Constitution lays down provisions both for protective discrimination as also affirmative action.[3]

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. In recent days, Art. 16 has also assumed great significance because of the problems of reservation in public services. Art. 14 is the genus while Arts. 15 and 16 are the species. Arts. 14, 15 and 16 are constituents of a single code of constitutional guarantees supplementing each other.

Article 14 of the Constitution embodies the principle of "non-discrimination". However, it is not a free standing provision. It has to be read in conjunction with rights conferred by other articles like Art. 21 of the Constitution. Article 21 refers to "right to life" and embodies several aspects of life. It includes "opportunity", Articles 21 and 14 are the heart of the chapter on Fundamental Rights. They cover myriad features of life.[4]

In situations not covered by Arts. 15 to 18, the general principle of equality embodied in Art. 14 is attracted whenever discrimination is alleged. The goal set out in the Preamble to the Constitution regarding status and opportunity is embodied and concretised in Arts. 14 to 18.[5]

It may be worthwhile to note that Art. 7 of the Universal Declaration of Human Rights, 1948, declares that all are equal before the law and are entitled with-

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1. THOMMEN, J., in *Indra Sawhney v. Union of India*, AIR 1993 SC 477 : 1992 Supp (3) SCC 212.
For full discussion on this case, see, *infra.*

2. *Ashutosh Gupta v. State of Rajasthan*, (2002) 4 SCC 34 : AIR 2002 SC 1533.

3. *Andhra Pradesh Public Service Commission v. Baloji Badhavath*, (2009) 5 SCC 1 : (2009) 5 JT 563.

4. *Reliance Energy Ltd. v. Maharashtra State Road Development Corpn. Ltd.*, (2007) 8 SCC 1 : (2007) 11 JT 1.

5. For Preamble to the Constitution see, Ch. I, *supra*, and Ch. XXXIV, *infra.*

out any discrimination to the equal protection of laws. By and large the same concept of equality inheres in Art. 14 of the Indian Constitution.

It may be noted that the right to equality has been declared by the Supreme Court as a basic feature of the Constitution. The Constitution is wedded to the concept of equality. The Preamble to the Constitution emphasizes upon the principle of equality as basic to the Constitution. This means that even a constitutional amendment offending the right to equality will be declared invalid.[6] Neither Parliament nor any State Legislature can transgress the principle of equality.[7] This principle has been recently reiterated by the Supreme Court in *Badappanavar*[8] in the following words:

> "Equality is a basic feature of the Constitution of India and any treatment of equals unequally or unequals as equals will be violation of basic structure of the Constitution of India."

B. EQUALITY BEFORE LAW : ART. 14

A constitution bench of the Supreme Court has declared in no uncertain terms that equality is a basic feature of the constitution and although the emphasis in the earlier decisions evolved around discrimination and classification, the content of Article 14 got expanded conceptually and has recognized the principles to comprehend the doctrine of promissory estoppel non arbitrariness, compliance with rules of natural justice eschewing irrationality etc.[9]

If there is no affectation of a vested right, the question of applicability of Art. 14 would not arise.[10] Such an absolute proposition is inconsistent with the recognition by the Supreme Court in or in many of its earlier judgments in relation to promissory estoppel and legitimate expectation which are not only much short of indefeasible right but were evolved to protect a person from unfair or arbitrary exercise of power.[11] Moreover Article 14 itself confers a 'vested' Fundamental Right and it is difficult to appreciate the logic behind the enunciation.

Article 14 bars discrimination and prohibits discriminatory laws. Art. 14 is now proving as a bulwark against any arbitrary or discriminatory state action. The horizons of equality as embodied in Art. 14 have been expanding as a result of the judicial pronouncements and Art. 14 has now come to have a "highly activist magnitude".

Articles 14 and 15 read in the light of the preamble to the Constitution reflect the thinking of our Constitution makers and prevent any discrimination based on religion or origin in the matter of equal treatment or employment and to apply the same even in respect of a cooperative society.[12]

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6. For discussion on the "Basic Features of the Constitution", see, Ch. XLI, *infra.*

7. *Kesavananda Bharati v. State of Kerala,* AIR 1973 SC 1461 : (1973) 4 SCC 225; *Indra Sawhney v. Union of India (II),* AIR 2000 SC 498 : (2000) 1 SCC 168; see, *infra.*

8. *M.G. Badappanavar v. State of Karnataka,* AIR 2001 SC 260, at 264 : (2001) 2 SCC 666.

9. *M. Nagaraj v. Union of India,* (2006) 8 SCC 212 : AIR 2007 SC 71.

10. *State of Kerala v. Peoples Union for Civil Liberties, Kerala State Unit,* (2009) 8 SCC 46 at page 90 : (2009) 9 JT 579.

11. *Food Corporation of India v. Kamdhenu Cattle Feed Industries,* AIR 1993 SC 1601 : (1993) 1 SCC 71.

12. *Zoroastrian Coop. Housing Society Ltd. v. District Registrar, Coop. Societies (Urban),* (2005) 5 SCC 632 : AIR 2005 SC 2306.

All persons in similar circumstances shall be treated alike both in privileges and liabilities imposed.[13]

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.[14]

It has been held that non application of mind is a facet of arbitrary exercise of power.[15]

It is now firmly established that Art. 14 strikes at arbitrary state action, both administrative and legislative. There has been a significant shift towards equating arbitrary or unreasonableness as the yardstick by which administrative as well as legislative actions are to be judged. A basic and obvious test to be applied in cases where administrative action is attacked as arbitrary is to see whether there is any discernible principle emerging from the impugned action and if so, does it really satisfy the test of reasonableness.[16] It is now considered that non-compliance with the rules of natural justice amounts to arbitrariness violating Art. 14.[17]

The Supreme Court has quoted with approval the following observations of Bharucha J sitting in the Bombay High Court.[18]

> "….the government company or corporation must act reasonably not only when terminating the authority of an occupant of public premises …… to occupy the same but also when, thereafter, it seeks his eviction therefrom". This approval, therefore means that the landlord State's act in initiating proceedings must be not only substantively but also procedurally reasonable.[19]

For propagating this reasonable and fairness principle the court relied upon its earlier judgments in relation to Rent Acts.[20]

There is no discrimination merely because a state policy had not been introduced simultaneously at different levels.[21] The Court explained that when policies are made which have far reaching implications and are dynamic in nature, their implementation in a phased manner is welcome because it receives gradual willing acceptance and invites lesser resistance.[22]

Art. 14 runs as follows : "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 corresponds to the equal protection clause of the 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."

Two concepts are involved in Art. 14, *viz.*, 'equality before law' and 'equal protection of laws'.

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13. *John Vallamattom v. Union of India,* (2003) 6 SCC 611 : AIR 2003 SC 2902.
14. *General Manager, Uttaranchal Jal Sansthan v. Laxmi Devi,* (2009) 7 SCC 205 : AIR 2005 SC 3121.
15. *Onkar Lal Bajaj v. Union of India,* (2003) 2 SCC 673 : AIR 2003 SC 2562.
16. *Union of India v. International Trading Co.,* (2003) 5 SCC 437 : AIR 2003 SC 3983.
17. *Rajasthan State Road Transport Corpn. v. Bal Mukund Bairwa (2),* (2009) 4 SCC 299, 317 : (2009) 2 JT 423.
18. *Minoo Framroze Balsara v. Union of India,* AIR 1992 Bom 375.
19. *New India Assurance Co. Ltd. v. Nusli Neville Wadia,* (2008) 3 SCC 279.
20. *Dwarkadas Marfatia and Sons v. Board of Trustees of the Port of Bombay,* (1989) 3 SCC 293; *Ashoka Marketing Ltd. v. Punjab National Bank,* (1990) 4 SCC 406.
21. *Javed v. State of Haryana,* (2003) 8 SCC 369 : AIR 2003 SC 3057.
22. *Ibid.*

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 concept of the Rule of Law in Britain.[23] This, however, is not an absolute rule and there are a number of exceptions to it, *e.g.*, foreign diplomats enjoy immunity from the country's judicial process; Art. 361 extends immunity to the President of India and the State Governors;[24] public officers and judges also enjoy some protection, and some special groups and interests, like the trade unions, have been accorded special privileges by law.

The second concept, 'equal protection of laws', is positive in content. It does not mean that identically the same law should apply to all persons, or that every law must have a universal application within the country irrespective of differences of circumstances. Equal Protection of the laws does not postulate 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. It implies that among equals the law should be equal and equally administered, that the like should be treated alike without distinction of race, religion, wealth, social status or political influence.[25]

Where a particular mode is prescribed for doing an act and there is no impediment in adopting the procedure, the deviation to act in different manner which does not disclose any discernible principle which is reasonable in itself shall be labelled as arbitrary. Every State action must be informed by reason and it follows that an act uninformed by reason is per se arbitrary.[26]

The Supreme Court has explained in *Sri Srinivasa Theatre v. Govt. of Tamil Nadu*,[27] that the two expressions 'equality before law' and 'equal protection of law' do not mean the same thing even if there may be much in common between them. "Equality before law" is a dynamic concept having many facets. One facet is that there shall be no privileged person or class and that none shall be above law. Another facet is "the obligation upon the State to bring about, through the machinery of law, a more equal society…..For, equality before law can be predicated meaningfully only in an equal society…."

Article 14 provides positive and not negative equality. Hence any action or order contrary to law does not confer any right upon any person for similar treatment. Thus unauthorized additional construction and change of user of land cannot be claimed on the basis that the same had been granted in other cases in contravention of law.[28]

Article 14 prescribes equality before law. But the fact remains that all persons are not equal by nature, attainment or circumstances, and, therefore, a mechanical equality before the law may result in injustice. Thus, the guarantee against the denial of equal protection of the law does not mean that identically the same rules of law should be made applicable to all persons in spite of difference in circum-

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23. WADE & PHILLIPS, *CONST. & ADM. LAW*, 87 (1977).
24. *Supra*, Chs. III and VII.
25. *Jagannath Prasad v. State of Uttar Pradesh*, AIR 1961 SC 1245 : (1962) 1 SCR 151; *Mohd. Shaheb Mahboob v. Dy. Custodian*, AIR 1961 SC 1657 : (1962) 2 SCR 371.
26. *Bannari Amman Sugars Ltd. v. CTO*, (2005) 1 SCC 625 : 2004 JT 500.
27. AIR 1992 SC, at 1004.
28. *Vishal Properties (P) Ltd. v. State of Uttar Pradesh*, (2007) 11 SCC 172 : AIR 2007 SC 2924. See also *State of Uttaranchal v. Alok Sharma*, (2009) 7 SCC 647 : (2009) 6 JT 463.

stances or conditions.[29] The varying needs of different classes or sections of people require differential and separate treatment. The Legislature is required to deal with diverse problems arising out of an infinite variety of human relations. It must, therefore, necessarily have the power of making laws to attain particular objects and, for that purpose, of distinguishing, selecting and classifying persons and things upon which its laws are to operate.

The principle of equality of law thus means not that the same law should apply to everyone but that a law should deal alike with all in one class; that there should be an equality of treatment under equal circumstances. It means "that equals should not be treated unlike and unlikes should not be treated alike. Likes should be treated alike".[30]

But when charge of discrimination was made for treating diploma holders and degree holders in the same category, the Supreme Court suddenly said that Art.14 cannot be stretched too far as it will paralyse the administration and repelled the challenge.[31]

Art. 14 thus means that 'equals should be treated alike'; it does not mean that 'unequals ought to be treated equally'. Persons who are in the like circumstances should be treated equally. On the other hand, where persons or groups of persons are not situated equally, to treat them as equals would itself be violative of Art. 14 as this would itself result in inequality. As all persons are not equal by nature or circumstances, the varying needs of different classes or sections of people require differential treatment. This leads to classification among different groups of persons and differentiation between such classes. Accordingly, to apply the principle of equality in a practical manner, the courts have evolved the principle that if the law in question is based on rational classification it is not regarded as discriminatory.[32] The clubbing of those dealers against whom there was no allegation with the handful of those against whom there were allegations of political connection and patronage, results in treating unequals as equals.[33]

Equality of opportunity embraces two different and distinct concepts. There is a conceptual distinction between a non discrimination principle and affirmative action under which the State is obliged to provide a level playing field to the oppressed classes. Affirmative action in the above sense seeks to move beyond the concept of non discrimination towards equalising results with respect to various groups. Both the conceptions constitute 'equality of opportunity'.[34]

A Legislature is entitled to make reasonable classification for purposes of legislation and treat all in one class on an equal footing. The Supreme Court has underlined this principle thus: "Art. 14 of the Constitution ensures equality among equals: its aim is to protect persons similarly placed against discriminatory treatment. It does not however operate against rational classification. A person setting up a grievance of denial of equal treatment by law must establish that between persons similarly circumstanced, some were treated to their prejudice and the differential treatment had no reasonable relation to the object sought to

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29. *Chiranjeet Lal v. Union of India,* AIR 1951 SC 41 : 1950 SCR 869.
30. *Gauri Shankar v. Union of India,* AIR 1995 SC 55, at 58 : (1994) 6 SCC 349.
31. *Dilip Kumar Garg v. State of Uttar Pradesh,* (2009) 4 SCC 753 : (2009) 3 JT 202.
32. *Ashutosh Gupta v. State of Rajasthan,* (2002) 4 SCC 34.
33. *Onkar Lal Bajaj v. Union of India,* (2003) 2 SCC 673 : AIR 2003 SC 2562.
34. *M. Nagaraj v. Union of India,* (2006) 8 SCC 212 : AIR 2007 SC 71.

be achieved by the law."[35] In the context of Karnataka Industrial Areas Development Act, 1966 and the Regulations framed thereunder it has been held that fixation of price at a higher rate for small and fully developed plots and at a lower rate for a large plot not entirely developed and provided with peripheral infrastructural facilities only, was not arbitrary.[36]

Appointment on compassionate ground is never considered a right of a person. In fact, such appointment is violative of rule of equality enshrined and guaranteed under Article 14 of the Constitution. When any appointment is to be made in Government or semi government or in public office, cases of all eligible candidates must be considered alike. This is the mandate of Article 14. Normally, therefore, the State or its instrumentality making any appointment to public office, cannot ignore such mandate. At the same time, however, in certain circumstances, appointment on compassionate ground of dependants of the deceased employee is considered inevitable so that the family of the deceased employee may not starve. The primary object of such scheme is to save the bereaved family from sudden financial crisis occurring due to death of the sole bread earner. It is thus an exception to the general rule of equality and not another independent and parallel source of employment.[37] The court has distinguished employment based on descent and compassionate appointment as the latter is based on an additional factor, namely, death or medical invalidation of a serving employee leaving the family in distress and such a factor may constitute a valid basis of classification.[38]

Article 14 forbids class legislation; it does not forbid reasonable classification of persons, objects and transactions by the Legislature for the purpose of achieving specific ends. Classification to be reasonable should fulfil the following two tests:

(1) It should not be arbitrary, artificial or evasive. It should be based on an intelligible differentia, some real and substantial distinction, which distinguishes persons or things grouped together in the class from others left out of it.

(2) The differentia adopted as the basis of classification must have a rational or reasonable *nexus* with the object sought to be achieved by the statute in question.[39]

Hostile discrimination is obvious where some allottees despite having complied with all conditions, including payment of full amount due, were not given possession, whereas others were granted possession even before payment or after depositing a small proportion of the total dues.[40]

What is however necessary is that there must be a substantial basis for making the classification and that there should be a *nexus* between the basis of classification and the object of the statute under consideration. In other words, there must be some rational *nexus* between the basis of classification and the object intended

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35. *Western U.P. Electric Power and Supply Co. Ltd. v. State of Uttar Pradesh*, AIR 1970 SC 21, 24 : (1969) 1 SCC 817. Also see, *R.K. Garg v. Union of India*, AIR 1981 SC 2138 : (1981) 4 SCC 676; Re: *Special Courts Bill*, AIR 1979 SC 478 : (1979) 1 SCC 380; *State of Uttar Pradesh v. Kamla Palace*, AIR 2000 SC 617 : (2000) 1 SCC 557.

36. *Chairman & MD, BPL Ltd. v. S.P. Gururaja*, (2003) 8 SCC 567 : AIR 2003 SC 4536.

37. *General Manager, State Bank of India v. Anju Jain* (2008) 8 SCC 475.

38. *V. Sivamurthy v. State of A.P.*, (2008) 13 SCC 730 : (2008) 11 SCALE 294.

39. *Laxmi Khandsari v. State of Uttar Pradesh*, AIR 1981 SC 873, 891 : (1981) 2 SCC 600. Test for valid classification restated. *State of Haryana v. Jai Singh*, (2003) 9 SCC 114 : AIR 2003 SC 1696; *Welfare Asson. ARP v. Ranjit P. Gohil*, (2003) 9 SCC 358; See also (2004) 1 SCC 369 : AIR 2003 SC 3057; See also *Javed v. State of Haryana*, (2003) 8 SCC 369 : AIR 2003 SC 3057.

40. *Government of A.P. v. Maharshi Publishers Pvt. Ltd.*, (2003) 1 SCC 95 : AIR 2003 SC 296.

to be achieved. Therefore, mere differentiation or inequality of treatment does not *per se* amount to discrimination within the inhibition of the equal protection clause. To attract Art. 14, it is necessary to show that the selection or differentiation is unreasonable or arbitrary; that it does not rest on any rational basis having regard to the object which the Legislature has in view in making the law in question.[41] As the Supreme Court has explained: "The differentia which is the basis of the classification and the Act are distinct things and what is necessary is that there must be a *nexus* between them."[42] As the Supreme Court has observed recently in *Thimmappa*:[43]

> "When a law is challenged to be discriminatory essentially on the ground that it denies equal treatment or protection, the question for determination by the Court is not whether it has resulted in inequality but whether there is some difference which bears a just and reasonable relation to the object of legislation. Mere differentiation does not *per se* amount to discrimination within the inhibition of the equal protection clause. To attract the operation of the clause it is necessary to show that the selection or differentiation is unreasonable or arbitrary, that it does not rest on any rational basis having regard to the object which the legislature has in view".

Again, the Supreme Court has observed:[44]

> "It is settled law that differentiation is not always discriminatory. If there is a rational nexus on the basis of which differentiation has been made with the object sought to be achieved by particular provision, then such differentiation is not discriminatory and does not violate the principles of Article 14 of the Constitution".

The Supreme Court has however warned against over-emphasis on classification. The Court has explained that 'the doctrine of classification is only a subsidiary rule evolved by the courts to give practical content to the doctrine of equality, over-emphasis on the doctrine of classification or anxious or sustained attempt to discover some basis for classification may gradually and imperceptibly erode the profound potency of the glorious content of equity enshrined in Art. 14 of the Constitution. The over-emphasis on classification would inevitably result in substitution of the doctrine of classification for the doctrine of equality… Lest, the classification would deny equality to the larger segments of the society'.[45]

Marginal over inclusiveness or under inclusiveness, will not vitiative the classification.[46]

Whether a classification adopted by a law is reasonable or not is a matter for the courts to decide. *Caterpillar*[47] is another example of under classification and

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41. *Jaila Singh v. State of Rajasthan*, AIR 1975 SC 1436 : (1976) 1 SCC 682. But when charge of discrimination was made for treating diploma holders and degree holders in the same category, the Supreme Court held that Art. 14 cannot be stretched too far as it will paralyze the administration and repelled in challenge. *Dilip Kumar Garg v. State of Uttar Pradesh*, (2009) 4 SCC 753 : (2009) 3 JT 202.

42. *In re Special Courts Bill, 1978*, AIR 1979 SC 478 : (1979) 1 SCC 380.

43. *K. Thimmappa v. Chairman, Central Board of Directors*, AIR 2001 SC 467 : (2001) 2 SCC 259.

44. *Union of India v. M.V. Valliappan*, (1999) 6 SCC 259, 269 : AIR 1999 SC 2526.

45. *L.I.C. of India v. Consumer Education and Research Centre*, AIR 1995 SC 1811, 1822 : (1995) 5 SCC 482, Also see, *infra*. Instance of over classification *E. V. Chinnaiah v. State of A.P.*, (2005) 1 SCC 394 : AIR 2005 SC 162, true character of the statute to be examined and not merely the preamble.

46. *Basheer alias N. P. Basheer v. State of Kerala*, (2004) 3 SCC 609 : AIR 2004 SC 2757.

47. *Caterpillar India (P) Ltd. v. Western Coalfields Ltd.*, (2007) 11 SCC 32 : AIR 2007 SC 2971.

Article 14. Here a preference policy was adopted by which the Government granted price preference to Public Sector Enterprises (PSEs) to the effect that the price quoted by them which was less than 10% of the lowest price would be reckoned while taking a decision on finalizing the tender. The Supreme Court found that the policy suffered from under classification and since an uniform policy of protection without considering whether such protection was necessary or not was arbitrary. The question of reasonableness of classification has arisen in innumerable cases. The twin tests applied for the purpose are, however, quite flexible. The courts, however, show a good deal of deference to legislative judgment and do not lightly hold a classification unreasonable. A study of the cases will show that many different classifications have been upheld as constitutional.[48] There is no closed category of classification; the extent, range and kind of classification depend on the subject-matter of the legislation, the conditions of the country, the economic, social and political factors at work at a particular time. The differential treatment must have a rational relation to the object sought to be achieved. Constitutional interpretation being a difficult task, its concept varies from statute to statute, fact to fact, situation to situation and subject matter to subject matter.[49] There is no discrimination when a financial benefit is made available for those who had been invalidated out of service because of their tenure of service was reduced due to invalidment on account of disability or war injury and those who retired in the normal course.[50] And merely because in the past two categories of employees had been treated differently does not mean that they cannot be equated subsequently.[51]

It is not necessary that for a classification to be valid, its basis must always appear on the face of the law. To find out the reasons and the justification for the classification, the court may refer to relevant material, *e.g.* objects and reasons appended to a Bill, parliamentary debates, affidavits of the parties, matters of common knowledge, the background circumstances leading to the passage of the Act, etc.[52]

The concept of equality allows differential treatment but it prevents distinctions that are not properly justified. Justification needs each case to be decided on a case to case basis.[53] For example, there is no discrimination by reason of non-alteration of allotment price for a plot of land in 1993 paid by a person for a larger plot exchanged in 1996 whereas another person whose allotment was made in 1996 at 1996 price since the price paid by the former for the exchanged land had been held constant only for the acreage allotted in 1993 and for the excess acreage allotted in 1996, the former had also been charged at the 1996 price.[54]

When a person seeks to impeach the validity of a law on the ground that it offends Art. 14, the onus is on him to plead and prove the infirmity. If a person complains of unequal treatment, the burden lies on him to place before the court sufficient material from which it can be inferred that there is unequal treatment.

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48. *Swaroop Vegetables Products Industries v. State of Uttar Pradesh*, AIR 1984 SC 20 : (1983) 4 SCC 24.

49. *Chhattisgarh Rural Agriculture Extension Officers Assn. v. State of M.P.*, (2004) 4 SCC 646 : AIR 2004 SC 2020.

50. *P. K. Kapur v. Union of India*, (2007) 9 SCC 425, 430 : (2007) 3 JT 98.

51. *Dilip Kumar Garg v. State of Uttar Pradesh*, (2009) 4 SCC 753 : (2009) 3 JT 202.

52. *Jagdish Pandey v. Chancellor, Bihar University*, AIR 1968 SC 353 : (1968) 1 SCR 231; *State of Jammu & Kashmir v. T.N. Khosa*, AIR 1974 SC 1 : (1974) 1 SCC 19.

53. *M. Nagaraj v. Union of India* , (2006) 8 SCC 212 : AIR 2007 SC 71.

54. *NOIDA v. Arvind Sonekar*, (2008) 11 SCC 31 : AIR 2008 SC 1983.

A mere plea that he has been treated differentially is not enough. He must produce necessary facts and figures to establish, that he has not only been treated differently from others, but that he has been so treated from persons similarly situated and circumstanced without any reasonable basis and that such differential treatment has been made unjustifiably. The initial presumption is in favour of the validity of the law, and if the person fails to adduce sufficient evidence in support of his challenge to the law in question, his plea of the provision in question being violative of Art. 14 cannot be entertained. The state can lean on the initial presumption of validity of the law.[55] The Supreme Court has recently explained the principle of initial presumption of validity as follows in *Ashutosh Gupta v. State of Rajasthan :*[56]

> "There is always a presumption in favour of the constitutionality of enactment and the burden is upon him who attacks it to show that there has been a clear transgression of the constitutional principles. The presumption of constitutionality stems from the wide power of classification which the legislature must, of necessity possess in making laws operating differently as regards different groups of persons in order to give effect to policies. It must be presumed that the legislature understands and correctly appreciates the need of its own people."

The Supreme Court has explained the rationale underlying this rule as follows: many a time, the challenge is based on the allegation that the impugned provision is discriminatory as it singles out the petitioner for hostile treatment, from amongst persons who, being situated similarly, belong to the same class as the petitioner. Whether there are other persons who are situated similarly as the petitioner is a question of fact. And whether the petitioner is subjected to hostile discrimination is also a question of fact. That is why the burden to establish the existence of these facts rests on the petitioner. "To cast the burden of proof in such cases on the state is really to ask it to prove the negative that no other persons are situated similarly as the petitioner and that the treatment meted out to the petitioner is not hostile."[57] Hostile discrimination can only arise as between persons who are similarly situated. Hence, it was not possible for the candidate for Deputy Manager's post to claim that he had been discriminated against because a Joint Manager had been appointed since there was nothing common between the two posts. It was perfectly valid for the employer to fill up one category of posts and decline to do so for other categories of posts for business reasons.[58]

Thus, in *Nachane*,[59] when the employees of the Life Insurance Corporation were exempted from the provisions of the Industrial Disputes Act (IDA) by a law of Parliament, and these employees challenged the law as discriminatory, the Supreme Court stated that the burden of establishing hostile discrimination was on the petitioners (L.I.C. employees); it was for them to show that they and the employees of other establishments to whom the provisions of the IDA applied were similarly circumstanced to justify the contention that by excluding the LIC employees from the purview of the IDA they had been discriminated against. No materials had been produced before the Court for the purpose. There cannot be

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55. *G.K. Krishnan v. State of Tamil Nadu,* AIR 1975 SC 583 : (1975) 1 SCC 375.
Also see *Ashutosh Gupta v. State of Rajasthan,* (2002) 4 SCC 34 at 41 : AIR 2002 SC 1533.
56. (2002) 4 SCC 34 at 41 : AIR 2002 SC 1533.
57. *Deena v. Union of India,* AIR 1983 SC 1154, 1167 : (1984) 1 SCC 29.
58. *Food Corporation of India v. Bhanu Lodh,* (2005) 3 SCC 618 : AIR 2005 SC 2775.
59. *A.V. Nachane v. Union of India,* AIR 1982 SC 1126, 1132 : (1982) 1 SCC 205.

perfect equality in any matter on an absolute scientific basis and certain inequities here and there would not offend Art. 14.[60] Again exclusion of prisoners convicted of crimes against women from scheme of remission to prevent crimes against women cannot be said to violate any reasonable principle or concept of law.[61] It has been held that IMNS is a distinct and separate class by itself, even though it is a part of the Indian Army.[62] In other words permissible classification would include a class even though it is a part of a larger class.

A statute carries with it a presumption of Constitutionality. Such a presumption extends also in relation to a law which has been enacted for imposing reasonable restrictions on the Fundamental Rights. A further presumption may also be drawn that the statutory authority would not exercise the power arbitrarily.[63]

On the other hand, if discrimination is writ large on the face of the legislation, the onus may shift to the state to sustain the validity of the legislation in question.[64]

In *Deepak Sibal v. Punjab University,*[65] the Supreme Court has pointed out that a classification need not be made with "mathematical precision". But, if there is little or no difference between the persons or things which have been grouped together and those left out of the group, then classification cannot be regarded as reasonable. The Court has also pointed out that to consider reasonableness of classification it is necessary to take into account the objective for such classification. "If the objective be illogical, unfair and unjust, necessarily the classification will have to be held as unreasonable." Also, surrounding circumstances may be taken into consideration in support of the constitutionality of a law which may otherwise be hostile or discriminatory in nature. "But the circumstances must be such as to justify the discriminatory treatment or the classification subserving the object sought to be achieved."

At times, even administrative necessity or convenience has been upheld as a basis of classification.[66] This is especially so in matters of taxation and economic regulation, because of the complexities involved in these areas, *e.g.*, a bewildering conflict of expert opinion exists on economic matters.[67]

Considering the totality of circumstances and the financial climate world over, if it was thought as a matter of policy to have speedier legal method to recover dues over and above statutes already in existence providing for speedy recovery, such a policy decision cannot be faulted nor is it a matter to be gone into by the Courts, to test the legitimacy of such a measure relating to financial policy.[68]

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60. *H. P. Gupta v. Union of India,* (2002) 10 SCC 658 : (2001) 9 JT 78.
61. *Sanaboina Satyamarayana v. Govt. of AP.,* (2003) 10 SCC 78 : AIR 2003 SC 3074.
62. *Jasbir Kaur v. Union of India,* (2003) 8 SCC 720 : AIR 2004 SC 293.
63. *People's Union for Civil Liberties v. Union of India,* (2004) 2 SCC 476 : AIR 2004 SC 1442.
64. *Dalmia v. Tendolkar,* AIR 1958 SC 538 : 1959 SCR 279; *Jagdish Pandey v. Chancellor, Bihar University, supra,* footnote 52; *State of Jammu & Kashmir v. T.N. Khosa, supra,* footnote 52; also, *infra*.
65. AIR 1989 SC 903 : (1989) 2 SCC 145; Need not be scientifically perfect or logically complete *Dharam Dutt v. Union of India,* (2004) 1 SCC 712 *:* AIR 2004 SC 1295.
66. *Supdt. & Remembrancer of Legal Affairs v. State of West Bengal,* AIR 1975 SC 1030 : (1975) 4 SCC 754.
67. *State of Gujarat v. Ambica Mills,* AIR 1974 SC 1300 : (1974) 4 SCC 656; *San Antonio School District v. Rodrigues,* (1973) 411 U.S. 1; *infra*.
68. *Mardia Chemicals Ltd. v. Union of India,* (2004) 4 SCC 311 : (2004) 4 JT 308.

The effect of these various principles is to enable the courts to uphold legislation in most of the cases and give the benefit of doubt as to the purpose of classification to the legislature. On the whole, the courts show reluctance to void legislation on the ground of its incompatibility with Art. 14. This judicial self-limitation has been taken to such length that, at times, voices of protest have been raised from the bench itself against too much judicial anxiety "to discover some basis for classification". A warning has been sounded that such an approach would substitute the doctrine of classification for the doctrine of equality and deprive it of much of its content. The Supreme Court has stated: "Over emphasis on the doctrine of classification or an anxious and sustained attempt to discover some basis for classification may gradually and imperceptibly deprive the guarantee of equality of its spacious content."[69] But the fact remains that many a time the Supreme Court itself has ignored this warning and upheld legislation, as stated above, by finding some policy within the law.

Article 14 will apply even if the laws emanate from the Parliament and a State legislature. As such since the compensation payable under the Land Acquisition Act, 1894 to the landowner would be more than what is payable under the Land Acquisition and Requisition, U.P. Avas Evam Vikas Parishad Adhiniyam, 1965 (1 of 1966), Sections 29 and 32 of the Adhiniyam were violative of Article 14 and the provisions of the Land Acquisition Act are to be read into the provisions of the Adhiniyam.[70]

Article 14 does not mandate that a person should be granted illegal and unjustified relief similar to those granted to others earlier.[71]

The Supreme Court has reiterated that the Courts cannot act as an Appellate Authority and examine the correctness, suitability and appropriateness of a policy nor are courts advisors to the executive on matters of policy which the executive is entitled to formulate. Judicial review in this area is confined to the examination as to whether any Fundamental Rights have been violated or it is opposed to the provisions of the Constitution or any statutory provision or is manifestly arbitrary. It is through this "manifestly arbitrary door" that challenges are likely to be made to formulation of policies and in such a case the Court must necessarily examine the provisions of the policy to come to the conclusion as to whether it is manifestly arbitrary or not. In effect the Court to a certain extent will act as an appellate authority although the court says that the courts cannot act as such an appellate authority.[72] The Court rejected the challenge to the granting of national film awards by saying that the object was to select the best of Indian films made for public exhibition in various categories and give them national awards. The precise question which arose was as to whether the Government could impose a condition that the entry of films for the awards will be restricted to only those

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69. *Mohd. Shujat Ali v. Union of India*, AIR 1974 SC 1631, 1653 : (1975) 3 SCC 76.
Also, SUBBA RAO, J., in *Lachhman Dass v. State of Punjab*, AIR 1963 SC 222 : (1963) 2 SCR 190; see also *Commissioner of Police v. Acharya Jagadishwarananda Avadhuta,* (2004) 12 SCC 770 : AIR 2004 SC 2984 – different basis of classification.

70. *Savitri Cairae v. U. P. Avas Evam Vikas Parishad,* (2003) 6 SCC 255 : AIR 2003 SC 2725, the contrary view expressed in the earlier editions of the book has to this extent must be considered to be not tenable. However the question of laws emanating from two state legislature being tested by comparison may not apply because of limits of territorial operation.

71. *Anand Buttons Ltd. v. State of Haryana,* (2005) 9 SCC 164 : AIR 2005 SC 565.

72. *Directorate of Film Festivals v. Gaurav Ashwin Jain,* (2007) 4 SCC 737 : AIR 2007 SC 1640.

which posses a certificate issued by the Censor Board under Section 5A of the Act. These matters were considered by the Court to be matters of policy and judicial review is concerned with the legality of the policy and not the wisdom or soundness of the policy. It emphasizes that there was nothing illogical or unreasonable or arbitrary about a policy to select only the best from among films certified for public exhibition.

Arbitrariness on the possibility that a power may be abused, despite the guidelines, in the provisions providing for such power cannot be held to be arbitrary and unreasonable.[73]

When a statute is impugned under Art. 14, it is the function of the court to decide whether the statute is so arbitrary or unreasonable that it has to be struck down. At best, a statute upon a similar subject deriving its authority from another source can be referred to, if its provisions have been held to be unreasonable, or have stood the test of time, only for the purpose of indicating what may be said to be reasonable in the context,[74] and the extent to which it is not unconstitutional.[75]

Perpetuation of hostile discrimination is not contemplated within Art. 14.[76]

But the court has held that even if a law cannot be declared *ultra vires* on the ground of hardship, it can be so declared on the ground of total unreasonableness applying the Wednesbury "unreasonableness".[77]

The benefit of "equality before law" and "equal protection of law" accrues to every person in India whether a citizen or not. As the Supreme Court has observed on this point:

> "We are a country governed by the Rule of Law. Our Constitution confers certain rights on every human-being and certain other rights on citizens. Every person is entitled to equality before the law and the equal protection of the laws."[78]

C. ILLUSTRATIONS

The question of reasonableness of classification *vis-a-vis* Art. 14 in the light of the principles stated above has arisen before the courts in a large number of cases. Some of these cases are noted below.

(a) MISCELLANEOUS SITUATIONS

Heirs of landowners sought restoration of their acquired lands in terms of Standing Order 28 framed by State Government read with para 493 of Land Ad-

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73. *Commissioner of Central Excise Jamshedpur v. Dabur (India) Ltd.,* (2005) 3 SCC 646 : (2005) 5 JT 582.

74. *State of Madhya Pradesh v. Mandavar,* AIR 1955 SC 493 : (1955) 2 SCR 186; *Bar Council, Uttar Pradesh v. State of Uttar Pradesh,* AIR 1973 SC 231 : (1973) 1 SCC 261; *Sant Lal Bharti v. State of Punjab,* AIR 1988 SC 485 : (1988) 1 SCC 366; *State of Tamil Nadu v. Ananthi Ammal,* AIR 1995 SC 2114 : (1955) 1 SCC 519.

75. *Javed v. State of Haryana,* (2003) 8 SCC 369 : AIR 2003 SC 3057.

76. See also *State of Kerala v. K. Prasad,* (2007) 7 SCC 140 : AIR 2007 SC 2701.

77. *Grand Kakatiya Sheraton Hotel and Towers Employees & Workers Union v. Srinivasa Resorts Ltd.,* (2009) 5 SCC 342 : AIR 2009 SC 2337.

78. *Faridabad CT. Scan Centre v. D.G. Health Services,* AIR 1997 SC 3801 : (1997) 7 SCC 752.

Also, *Chairman, Railway Board v. Chandrima Das,* AIR 2000 SC 988, 997 : (2000) 2 SCC 465.

ministration Manual providing for return of the agricultural lands to landowners or their heirs when the lands were no longer required for the purposes for which those were acquired. While acting on the said policy decision, the government released lands in favour of some other persons, but respondents' claim for restoration of their lands was denied without showing why the policy could not be applied in favour of respondents also. Though Standing Order 28 and para 493 did not create any right in favour of any person to get back possession of the land, but while acting under such standing order or manual the government cannot discriminate between persons similarly situated.[79]

It is valid to exempt military and naval messes and canteens from restrictions on use or consumption of liquor, for military has its own traditions and mode of life and, therefore, there is an understandable basis for classification. The differentiation made by the prohibition law between Indians and foreigners staying in India for a short time is also valid.[80] For admission to a medical college of a State non-residents were required to pay capitation fee but residents in the State were exempt from the same. This classification, based on residence within the State, is valid.[81]

In relation to S.18 of the Atomic Energy Act, 1962 which confers power on the Central Government to make orders restricting the disclosure of certain specified information, has been held to be valid. The Supreme Court noted the sensitivity of the subject matter of the Act and pointed out that it could not be said the section employed words which provided for no criteria nor could it be said that no standard had been laid down by Parliament the exercise of the power. It is furthermore not a case where principles on which the power of the Central Government is to be exercised have not been disclosed or essential legislative functions have been delegated.[82]

A State law passed with a view to preserve and improve livestock permitted the killing of buffaloes, sheep and goats, but totally banned the killing of cows, bulls and calves. Cows and their calves, bulls and bullocks are important for the agricultural economy of the country; female buffaloes are milch cattle; bullocks are more useful as draught animals than male buffaloes; sheep and goat have not much utility as draught or milch animals. The different categories of animals being thus susceptible of classification into separate groups on the basis of their usefulness to society, the butchers killing each category may also be placed in distinct classes according to the effect their occupations produce on society, and, accordingly, the Act was held valid.[83]

Difference between Indian and European prisoners in the matter of treatment and diet violates Art. 14.[84]

Where some allottees despite having complied with all conditions, including payment of full amount due, were not given possession, whereas others were even before making payment or after depositing a small proportion of the total

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79. *State of Haryana v. Gurcharan Singh* (2004) 12 SCC 540.
80. *State of Bombay v. Balsara,* AIR 1951 SC 318 : 1951 SCR 682.
81. *Joshi v. Madhya Bharat,* AIR 1955 SC 334 : (1955) 1 SCR 1215.
82. *People's Union for Civil Liberties v. Union of India,* (2004) 2 SCC 476 : AIR 2004 SC 1442.
83. *Quareshi v. State of Bihar,* AIR 1958 SC 731 : 1959 SCR 333.
84. *Madhu Limaye v. Supdt., Tihar Jail, Delhi,* AIR 1975 SC 1505 : (1975) 1 SCC 525.
Also see, *Pannalal Binjraj, infra*.

due, it was indicative of hostile discrimination against the allottees who have paid up and that undue favour had been shown to the others.[85]

In *Ram Sarup v. Munshi*[86], the Supreme Court has held that the right of pre-emption based on consanguinity did not infringe Art. 19(1)(f). But, later, in *Ram Prakash v. State of Haryana,*[87] the Court ruled that such a right is inconsistent with Art. 14 characterising it as "a relic of the feudal past" and "inconsistent with modern ideas". Right of pre-emption in favour of co-sharers or tenants has however been held to be valid.

Failure to implement a scheme within a reasonable time may amount to unreasonableness infringing Art.14.[88]

The Bihar Hindu Religious Trusts Act excludes the Sikhs from its purview and provides for separate trust boards for Hindus and Jains. This is valid because there are some differences between Hindus, Sikhs and Jains in essential details of their faiths, religious practices and organisation of their trusts; it cannot be said that Sikhs, Hindus and Jains are situated alike in the matter of religious trusts in Bihar.[89]

Under the Land Acquisition Act, the government can acquire land for a government company or a public company but not for a private company or an individual. This is a valid classification. The intention of the legislature clearly is that private companies should not have the advantage of acquiring land inasmuch as the profit of their venture goes to a few hands.[90]

In-service employees and retirees form different classes and, as such, there was no violation of Article 14 if they are treated differently, namely, where full and free medical facilities is provided to in-service defence personnel but not to retired defence employees.[91]

A legal provision providing for compulsory transfer of land by a landowner to the municipal committee for a public purpose without payment of compensation has been held to be violative of Art. 14.[92]

The imposition of the condition of prohibition on transfer of land granted to a backward class for a particular period does not constitute any unreasonable restriction.[93]

Special provisions can be made by a Legislature to protect and preserve the economic interests of persons belonging to the Scheduled Castes and Scheduled Tribes and to prevent their exploitation.[94]

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85. *Govt. of A. P. v. Maharshi Publishers (P) Ltd.* (2003) 1 SCC 95 : AIR 2003 SC 296.
86. See, *infra*, Ch. XXXI, Sec. B, under Art. 19(1)(*f*).
Also see, *Bhau Ram v. Baijnath Singh, infra; Sant Ram v. Labh Singh*, AIR 1965 SC 314 : (1964) 7 SCR 756.
87. AIR 1986 SC 859 : (1986) 2 SCC 249.
88. *Pramila Suman Singh v. State of Maharashtra*, (2009) 2 SCC 729 : (2009) 1 JT 665.
89. *Moti Das v. Sahi*, AIR 1959 SC 942 : 1959 Supp (2) SCR 563.
90. *R.L. Arora v. State of Uttar Pradesh*, AIR 1964 SC 1230 : (1964) 6 SCR 784.
91. *Confederation of Ex-servicemen Association v. Union of India*, (2006) 8 SCC 399 : AIR 2006 SC 2945.
92. *Yogendra Pal v. Municipality, Bhatinda*, AIR 1994 SC 2550 : (1994) 5 SCC 709.
93. *Bhadrappa v. Tolacha Naik*, (2008) 2 SCC 104 : AIR 2008 SC 1080.
94. *Manchegowda v. State of Karnataka*, AIR 1984 SC 1151 : (1984) 3 SCC 301. Also see, Ch. XXII, *infra.*

When a statute provides for consultation but procedure for holding such consultation, the competent authority can evolve its own procedure and such a provision cannot be held to be arbitrary.[95]

The Kerala Agrarian Relations Act, 1961, fixing the maximum land-ceiling in the State was declared to be discriminatory under Art. 14 on three grounds: (i) it fixed a ceiling on tea, coffee and rubber plantations but not on those of areca and pepper and there appeared to be no reason for making such a distinction; (ii) by giving an artificial definition to the term 'family' which did not conform to any type of families in the State, discrimination arose in the matter of land-holding; (iii) for land in excess of the ceiling, different cuts were made if the amount of compensation was over Rs. 15,000 and this was discriminatory as there was no reason why two persons should be paid at different rates when they were deprived of property of the same kind but only different in extent.[96]

The provisions of the Public Premises Eviction Acts and the Rules are required to be construed in the light of the tests as envisaged under Article 14 of the Constitution and with a view to give effect thereto, the doctrine of purposive construction may have to be taken recourse to.[97]

Whenever an Act is amended, there is bound to be some difference in treatment between transactions completed before the amendment and those which are to take place in future, but this is not discriminatory under Art. 14.[98]

Mere absence of provision for representation/appeal, would not render a discretionary power arbitrary or discriminatory when such power was exercised by the highest authority and for specified reason.[99]

A rule of the Rajasthan High Court required that for appointment to the Rajasthan Higher Judicial Service, an advocate must have practised for 7 years in the High Court of Rajasthan, or the courts subordinate thereto. In *Moolchandani*,[99a] the Supreme Court declared the rule as being inconsistent with Art. 14 as the classification made by the rule was not founded on any intelligible differentia having a reasonable *nexus* with the object sought to be achieved.

(b) UNGUIDED DISCRETION

Discretion exercisable according to a policy or for a purpose clearly stated in the statute, is not unrestricted discretion.[99b] and, as such, the statute cannot be considered as conferring arbitrary power.

(c) CUT-OFF DATES

The Government issued an office memorandum announcing a liberalised pension scheme for retired government servants but made it applicable to those who

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95. *Chairman & MD BPL Ltd. v. S. P. Gururaja,* (2003) 8 SCC 567 : AIR 2003 SC 4536.
96. *K. Kunhikonam v. State of Kerala,* AIR 1962 SC 723 : 1962 Supp (1) SCR 829.
Also, *Krishnaswami v. State of Madras,* AIR 1964 SC 1515 : (1964) 7 SCR 82.
97. *New India Assurance Co. Ltd. v. Nusli Neville Wadia,* (2008) 3 SCC 279 : AIR 2008 SC 876.
98. *Udai Ram v. Union of India,* AIR 1968 SC 1138; *Jain Bros. v. Union of India,* AIR 1970 SC 778 : (1969) 3 SCC 311.
99. *Indian Airlines Ltd. v. Prabha D. Kanan,* (2006) 11 SCC 67 : AIR 2007 SC 548.
99a. *Ganga Ram Moolchandani v. State of Rajasthan,* AIR 2001 SC 2616 : (2001) 6 SCC 89.
99b. *Federation of Rly. Officers Assn. v. Union of India,* (2003) 4 SCC 289 : AIR 2003 SC 1344.

had retired after March 31, 1979. The Supreme Court in *Nakara*[1] held the fixing of the cut-off date to be discriminatory as violating Art. 14. The Court argued that all pensioners retiring either before the cut-off date or thereafter formed one class. The division of pensioners into two classes on the basis of the date of retirement was not based on any rational principle because a difference of two days in the matter of retirement could have a traumatic effect on the pensioner. Such a classification was held to be arbitrary and unprincipled as there was no acceptable or persuasive reason in its favour. The said classification had no rational nexus with the object sought to be achieved. But the Court has recognised that whenever a cut off date is fixed, a question may arise as to why a person would suffer only because he comes within the wrong side of the cut-off date. But the fact that some persons or a section of society would face hardship, by itself, cannot be a ground for holding that the cut-off date so fixed is *ultra vires* Article 14.[2]

The *Nakara* ruling was considered by the Supreme Court in *Krishna Kumar v. Union of India*.[3] The Supreme Court ruled in this case that the option given to the employees covered by the Provident Fund Scheme to switch over to the pension scheme with effect from the specified cut-off date would not be violative of Art. 14. The Court argued that *Nakara* never required that all retirees formed a class and that no further classification could be possible. Pension-retirees and provident-fund-retirees do not form one homogeneous class and different rules apply to the two groups. It would not therefore be reasonable to argue that whatever applies to the pension-retirees must also be equally applicable to the provident-fund-retirees. The rights of each provident fund retirees crystallise on his retirement and no continuing obligation remains thereafter. But in case of a pension retiree, the obligation continues till his death.

Financial constraint is a valid ground for fixation of cut-off date for grant of benefit of increased quantum of death-cum-retirement gratuity. The action of Government in limiting the said benefit to government employees who died or retired on or after 1-4-1995 *i.e.* the cut-off date was not arbitrary, irrational or violative of Art. 14.[4]

When the army personnel claimed on the basis of *Nakara* the same pension rights irrespective of their date of retirement, the Supreme Court negatived the contention in *Indian Ex-Service League v. Union of India*"[5]

According to an office memorandum issued in 1979, a portion of the dearness allowance was to be treated as pay for the purpose of retirement benefits in respect of government servants who retired on or after the 30th September, 1977. The government servants who had retired before 30th September, 1977, claimed citing *Nakara* that the benefit ought to have been extended to all retired govern-

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1. *D.S. Nakara v. Union of India,* AIR 1983 SC 130 : (1983) 1 SCC 305.
Also see, *M.C. Dhingra v. Union of India,* (1996) 7 SCC 564 : AIR 1996 SC 2963.

2. *Ramrao v. All India Backward Class Bank Employees Welfare Assn.,* (2004) 2 SCC 76 : AIR 2004 SC 1459.

3. AIR 1990 SC 1782 : (1990) 4 SCC 207.
Also see, *All India Reserve Bank Retired Officers Ass. v. Union of India,* (1992) Suppl. (1) SCC 664 : AIR 1952 SC 767. Further see *R. P. Bhardwaj v. Union of India,* (2005) 10 SCC 244, relating to cut off dates; See also *Achhaibar Maurya v. State of Uttar Pradesh,* (2008) 2 SCC 639 : (2007) 14 Scale 425.

4. *State of Punjab v. Amar Nath Goyal,* (2005) 6 SCC 754 : AIR 2006 SC 171.

5. (1991) 2 SCC 104 : AIR 1991 SC 1182.

ment servants irrespective of their date of retirement. The Supreme Court rejected this contention and upheld the validity of the memorandum in *Union of India v. B.P.N. Menon*,[6] thus, adopting a stance at variance with *Nakara*.

The Court now took the position that any revised scheme in respect of post-retirement benefits can be implemented from a cut-off date which can be regarded as reasonable and rational in the light of Art. 14. The Court now maintained that whenever a revision takes place, a cut-off date becomes imperative because the benefit has to be allowed within the financial resources available with the government. Due to many constraints, it is not always possible to confer the same benefits to one and all irrespective of the dates of their retirements. The memorandum in the instant case was the result of an agreement between the government and the staff union. It was based on the recommendation of the Third Pay Commission. The date fixed as the cut-off date was held to be as not arbitrary as the price index level on this date had reached 272. The Court observed: "Not only in matters of revising the pensionary benefits but even in respect of revision of scales of pay, a cut-off date on some rational or reasonable basis has to be fixed for extending the benefits."

The respondent, a commissioned officer retired on May 18, 1982. According to the rules prevailing at the time, he was held not entitled to any pension. On January 1, 1986, the rules were amended and persons in his position now became entitled to pensionary benefits. He now laid a claim for grant of pension pleading the *Nakara* ruling in his support. But the Court rejected his claim holding that the ratio of *Nakara* had no application to the factual situation in the instant case.[7] *Nakara* prohibited discrimination between pensioners forming a single class and bound by the same rules. The cut-off date chosen in that case was held to be arbitrary. In the instant case the respondent was not eligible for pension under the rules prevalent then. The new rules were not given any retrospective effect and, therefore, the respondent cannot claim any pension because of the new rule "This is not a case where a discrimination is being made among pensioners who were similarly situated".

The Supreme Court has observed in the case noted below:[8]

> "It is open to the State or to the Centre, as the case may be, to change the conditions of service unilaterally. Terminal benefits as well as pensionary benefits constitute conditions of service. The employer has the undoubted power to revise the salaries and/or the pay scales as also terminal benefits/pensionary benefits. The power to specify a date from which the revisions of pay scales or terminal benefits/pensionary benefits, as the case may be, shall take effect is a concomitant of the said power. So long as such date is specified in a reasonable manner, i.e., without bringing about a discrimination between similarly situated persons, no interference is called for by the court in that behalf… The only question is whether the prescription of the date is unreasonable or discriminatory…"[9]

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6. AIR 1994 SC 2221 (1994) 4 SCC 68.
7. *Commander Head Quarter, Calcutta v. Biplabendra Chanda*, AIR 1997 SC 2607 : (1997) 1 SCC 208.
8. *State of West Bengal v. Rattan Behari Dey*, (1993) 4 SCC 62 : 1993 (2) LLJ 741.
9. Also see, *Union of India v. Lieut. (Mrs.) E. Iacats*, (1997) 7 SCC 334 : 1997 (2) LLJ 830.

In *Hari Ram Gupta v. State of Uttar Pradesh*,[10] the State Government refused to give the benefit of pension to those who had retired prior to the coming into force of the new rules. Refusing to apply the *Nakara* ruling to the instant factual situation, the Court pointed out that in *Nakara* all pensioners formed a class as a whole and the Court refused to micro-classify them by an arbitrary, unprincipled and unreasonable eligibility criteria.

In the case noted below,[11] the employees were governed by the contributory Provident Fund Scheme. With effect from 1-7-1986, a scheme was introduced. The question which arose was whether the pension scheme ought to be applied to those who had already retired before the introduction of the pension scheme, i.e. 1-7-1986. The Supreme Court rejected the claim. As per the rules prevalent at the time, the retirees had received all their retiral benefits. If the pension scheme were made applicable to all past retirees, the resulting financial burden would amount to Rs. 200 crores which would be beyond the capacity of the employer. The reasons given for introducing the scheme from 1-7-1986 *inter alia* was financial constraint—a valid ground. The Court ruled that the "retired" employees and those who were in employment on 1-7-1986, "cannot be treated alike as they do not belong to one class. The workmen, who had retired after receiving all the benefits available under the Contributory Provident Fund Scheme, cease to be employees of the appellant Board w.e.f. the date of their retirement. They form a separate class." Thus, there was no illegality in introducing the pension scheme prospectively from 1-7-1986, and not making it applicable retrospectively to those who had retired before that date.

A regulation providing for termination of service of an air hostess in Air India International on her first pregnancy has been held to be arbitrary and abhorrent to the notions of a civilized society.[12] Exclusion from the Minimum Wages Act of the workmen employed by government on famine relief work, and payment to them of wages lower than the minimum wages, violates Art. 14, "The rights of all the workers will be the same whether they are drawn from an area affected by drought and scarcity conditions or come from elsewhere."[13]

Stipends payable by the State Government to the post-graduate students of Agricultural university as well as of medical colleges, were enhanced but from different dates. The Court declared it to be discriminatory as the State Government failed to show that there was any reasonable basis or intelligible differential for fixing different dates for paying increased stipends to the two streams of students, especially when the Government had been maintaining parity all along among these students.[14]

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10. AIR 1998 SC 2483 : (1998) 6 SCC 328.
Also see, *All India Reserve Bank Retired Officers Assn. v. Union of India*, AIR 1992 SC 767 : (1992) 2 SCC 55; *All India PNB Retired Officers Assn. v. Union of India*, dated 17-11-1998.

11. *Tamil Nadu Electricity Board v. R. Veerasamy*, AIR 1999 SC 1768 : (1999) 3 SCC 414; see also cut-off date/ point, *State Bank of India v. L. Kannaiah*, (2003) 10 SCC 499 : AIR 2003 SC 3860.

12. *Air India v. Nergesh Meerza*, AIR 1981 SC 1829, 1853 : (1981) 4 SCC 335.

13. *Sanjit Roy. v. State of Rajasthan*, AIR 1983 SC 328 : (1983) 1 SCC 525.

14. *State of Andhra Pradesh v. G. Ramakishan*, AIR 2001 SC 324 : (2001) 1 SCC 323. See also *State of Himachal Pradesh v. Anjana Devi*, (2009) 5 SCC 108 : AIR 2009 SC 2229. See also *State of Bihar v. Upendra Narayan Singh*, (2009) 5 SCC 65 : (2009) 4 JT 577. See also *State of Himachal Pradesh v. Anjana Devi*, (2009) 5 SCC 108 : AIR 2009 SC 2229.

(d) LANDLORD-TENANT RELATIONSHIP

The position of law is settled that the State and its authorities including instrumentalities of States have to be just, fair and reasonable in all their activities including those in the field of contracts. Thus even while playing the role of a landlord or a tenant, the State and its authorities remain so and cannot be heard or seen causing displeasure or discomfort to Article 14. The State and its instrumentalities, as landlords have the liberty of revising the rates of rent so as to compensate themselves against loss caused by inflationary tendencies. They can and rather must also save themselves from negative balances caused by the cost of maintenance, payment of taxes and costs of administration. The State, as the landlord, need not necessarily be a benevolent and good charitable Samaritan. However, the State cannot be seen to be indulging in rack renting, profiteering and indulging in whimsical or unreasonable evictions or bargains. Having been exempted from the operation of rent control legislation, the courts cannot hold them tied to the same shackles from which the State and its instrumentalities have been freed by the legislature in its wisdom and thereby requiring them to be ruled indirectly or by analogy by the same law from which they are exempt.

At the same time the liberty given to the State and its instrumentalities by the statute enacted under the Constitution does not exempt them from honouring the Constitution itself. They continue to be ruled by Article 14. The validity of their actions in the field of landlord tenant relationship is available to be tested not only under the rent control legislation but under the Constitution.[15]

The Supreme Court has struck down as discriminatory and unconstitutional a provision in the Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960, exempting all buildings constructed on or after August 26, 1957, from the operation of the Act. The Court said that the impugned provision was violative of Art. 14 of the Constitution (equality before law) as the "continuance of this provision in the statute book will imply the creation of a privileged class of landlords without any rational basis." The Court said that "the incentive to build which provided a reasonable classification for such class of landlords (when the Act was made in 1960) no longer exists by lapse of time in the case of the majority of such landlords." "There is no reason why after all these years they (landlords who built their houses on or after August 26, 1957) should not be brought at par with other landlords who are subject to the restrictions imposed by the Act in the matter of eviction of tenants and control of rents."

Exemption can however be granted to "newly constructed buildings" for a limited period of time. In this connection, the Court has said:…. "what was once a non-discriminatory piece of legislation may in course of time become discriminatory."

The incentive to build provides a rational basis for classification of landlords under Art. 14 of the Constitution and "it is necessary in the national interest that there should be freedom from restrictions for a limited period of time." Hence the State legislature may provide incentive to persons who want to build new houses as it serves a definite social purpose and to mitigate rigours to landlords who may have recently built houses for a limited period.[16] In *Mohinder Kumar v. State of*

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15. *Jamshed Hormusji Wadia v. Board of Trustees, Port of Mumbai,* (2004) 3 SCC 214 : AIR 2004 SC 1815.

16. *Motor General Traders v. State of Andhra Pradesh,* AIR 1984 SC 121 : (1984) 1 SCC 222.
Also, *Punjab Tin Supply Co., Chandigarh v. Central Government,* AIR 1984 SC 87 : (1984) 1 SCC 206.

Haryana,[17] the Supreme Court has held valid exemption of new buildings from rent control for ten years.

The Tamil Nadu Rent Control Act was made inapplicable to tenants of residential buildings paying more than Rs. 400 per months as rent. Holding the provision bad under Art. 14, the Supreme Court has held that while tenants in non-residential buildings paying rent of more than Rs. 400 were protected, similar tenants in residential buildings were not. The Court saw no justification for such a classification.[18]

But, on the other hand, in several cases, the Supreme Court has justified greater protection being given to the tenants of commercial premises than those of residential premises.[19] The reason is that commercial tenancy is much more valuable than a residential tenancy. A commercial tenancy has got distinct features and characteristics of its own different from that of a residential tenancy. Accordingly, all the grounds of eviction of a tenant of a residential premises may not be available for eviction of a tenant of commercial premises.[20] For example, while *bona fide* necessity of the landlord may be a good ground to evict a tenant of a residential premises, the same ground may not be available under the relevant law for the eviction of a tenant from commercial premises. Similarly, the heirs of the statutory tenants of commercial premises may be better protected than those of residential premises.

On the other hand, in *Harbilas Rai Bansal v. State of Punjab,*[21] the Supreme Court has expressed a different view. The Punjab Rent Act provided, to begin with, that a landlord could evict a tenant from commercial/residential property on the ground of his own *bona fide* personal need. But, then, the law was amended so that while a landlord could evict a tenant in residential property on the ground of his own *bona fide* need but not if the property was non-residential. The Supreme Court ruled that this differentiation between tenants of residential and non-residential properties was violative of Art.14. A tenant in a non-residential property could continue in possession for life and after his death his heirs could continue the tenancy. The Court ruled that any classification between tenants of residential and non-residential properties had no nexus with the object sought to be achieved by the Act in question. "Tenants of both kinds of buildings need equal and same protection of the beneficial provisions of the Act. Neither from the objects and reasons of the Act nor from the provisions of the Act it is possible to discern any basis for the classification created by the Amendment."

(e) FOREIGNERS

The power of the Government of India to expel foreigners is absolute and unlimited and there is no provision in the Constitution fettering its discretion and the executive government has unrestricted right to expel a foreigner. So far as right to be heard is concerned, there cannot be any hard and fast rule about the manner in which a person concerned has to be given an opportunity to place his

17. AIR 1986 SC 244 : (1985) 4 SCC 221.
18. *Rattan Arya v. State of Tamil Nadu,* AIR 1986 SC 1444 : (1986) 3 SCC 385.
19. *Gauri Shankar v. Union of India,* AIR 1995 SC 55 : (1994) 6 SCC 349.
20. *Gian Devi Anand v. Jeevan Kumar,* AIR 1985 SC 796 : (1985) 2 SCC 683.
21. AIR 1996 SC 857 : (1996) 1 SCC 1.

case. The deportation proceedings are not proceedings for prosecution where a man may be convicted or sentenced. The procedure under the foreigners Act and the Foreigners (Tribunals) Order 1964 is just, fair and reasonable and does not offend any Constitutional provision.[22]

It is open to the state to make a classification for conferring benefit on a specified class of employees e.g. pension Rules not being made applicable to casual employees.[23]

(f) CIVIL SERVICES

In *Mohan Kumar Singhania v. Union of India*,[24] the Supreme Court has ruled that each of the various civil services, namely, I.A.S., I.F.S., I.P.S., Group A Services and Group B Services, is a 'separate and determinate' service forming a distinct cadre and that each of the Services is founded on intelligible differentia which on rational grounds distinguishes persons grouped together from those left out and that the differences are "real and substantial" having a "rational and reasonable nexus" to the "objects sought to be achieved".

(g) LIFE INSURANCE

The Life Insurance Corporation, a statutory body, introduced a scheme of life insurance, which was open only to persons in government or semi-government service or of reputed commercial firms. This scheme was declared unconstitutional as being violative of Art. 14. LIC argued that this salaried group of lives formed a class with a view to identify health conditions. But the Supreme Court rejected the argument observing, "The classification based on employment in government, semi-government and reputed commercial firms has the insidious and inevitable effect of excluding lives in vast rural and urban areas engaged in unorganised or self-employed sectors to have life insurance offending Art. 14 of the Constitution and socio-economic justice."[25]

(h) MISTAKE NOT TO BE REPEATED

The Supreme Court has stated in *Gursharan Singh*[26] that the guarantee of 'equality before law' is a positive concept. It cannot be enforced by a person in a negative manner. Therefore, if an illegality or irregularity is committed by the state in favour of a person or a group of persons, others cannot claim that the same irregularity or illegality be also committed in their favour on the principle of equality before law.

Benefits extended to some persons in an irregular or illegal manner cannot be claimed by a citizen on the plea of equality as enshrined in Art. 14. If such claims are enforced, it will amount to continuance and perpetuation of an illegal proce-

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22. *Sarbananda Sonowal v. Union of India*, (2005) 5 SCC 665 : AIR 2005 SC 2920.
23. *General Manager, North West Railway v. Chanda Devi*, (2008) 2 SCC 108.
24. AIR 1992 SC 1 : 1992 Supp (1) SCC 594.
25. *LIC of India v. Consumer Education & Research Centre*, AIR 1995 SC 1811, 1822 : (1995) 5 SCC 482.
26. *Gursharan Singh v. New Delhi Municipal Commissioner*, AIR 1996 SC 1174, 1179 : (1996) 2 SCC 459.
Also see, *Secretary, Jaipur Development Authority, Jaipur v. Daulat Nal Jain*, (1997) 1 SCC 35; *State of Haryana v. Ram Kumar Mann*, (1997) 3 SCC 321; *Jalandhar Improvement Trust v. Sampuran Singh*, AIR 1999 SC 1347 : (1999) 3 SCC 494; *C.S.I.R. v. Ajay Kumar Jain (Dr.)*, AIR 2000 SC 2710 : (2000) 4 SCC 186.

dure or order for extending similar benefits to others. To base a claim on the concept of equality, the petitioner has to establish that his claim being just and legal, has been denied to him, while it has been extended to others and in this process there has been a discrimination.

In the following case,[27] the Supreme Court has observed:

> "We fail to see how Art. 14 can be attracted in cases where wrong orders are issued in favour of others. Wrong orders cannot be perpetuated with the help of Art. 14 on the basis that such wrong orders were earlier passed in favour of some other persons and, therefore, there will be discrimination against others if correct orders are passed against them."

The principle of equality enshrined in Art. 14 does not apply when the order relied upon is unsustainable in law and is illegal.[28]

In *Chandigarh Administration v. Jagjit Singh*,[29] the Supreme Court has stated:

> "Generally speaking, the mere fact that the respondent authority has passed a particular order in the case of another person similarly situated can never be the ground for issuing a writ in favour of the petitioner on the plea of discrimination. The order in favour of the other person might be legal and valid or it might not be. That has to be investigated first before it can be directed to be followed in the case of the petitioner. If the order in favour of the other person is found to be contrary to law or not warranted in the facts and circumstances of his case, it is obvious that such illegal or unwarranted order cannot be made the basis of issuing a writ compelling the respondent authority to respect the illegality or to pass another unwarranted order."

Merely because the concerned authority has passed one illegal/unwarranted order in favour of one person, it does not entitle the High Court to issue a writ compelling the authority to repeat that illegality over and over again. By refusing to direct the authority to repeat the illegality, the court is not condoning the earlier illegal act/order nor can such illegal order constitute the basis for a legitimate complaint of discrimination.[30] Art. 14 does not countenance repetition of a wrong action to bring both wrongs at a par.[31]

A wrong judgment passed by a High Court under Art. 226 in favour of one person does not entitle another person to claim a similar benefit by invoking the doctrine of equality in his favour. Two wrongs do not make a right.[32]

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27. *Faridabad CT Scan Centre v. D.G. Health Services,* AIR 1997 SC 3801 : (1997) 5 SCC 752; See also *Vice Chancellor, M. D. University Rohtak v. Jahan Singh,* (2007) 5 SCC 77 : (2007) 4 SCALE 226.

28. *Union of India (Railway Board) v. J.V. Subhaiah,* (1996) 2 SCC 258.

29. (1995) 1 SCC 745 : AIR 1995 SC 705.

30. Also see, *Style (Dress Land) v. Union Territory, Chandigarh,* (1999) 7 SCC 89, 103 : AIR 1999 SC 3678; *Union of India v. Rakesh Kumar,* AIR 2001 SC 1877 : (2001) 4 SCC 309.

31. *Union of India v. International Trading Co.,* (2003) 5 SCC 437 : AIR 2003 SC 3983. See also *State of Bihar v. Upendra Narayan Singh,* (2009) 5 SCC 65 : (2009) 4 JT 577. See also *State of Uttaranchal v. Alok Sharma,* (2009) 7 SCC 647 : (2009) 6 JT 463.

32. *State of Bihar v. Kameshwar Prasad Singh,* AIR 2000 SC 2306 : (2000) 9 SCC 94.

(i) HARDSHIP

Mere hardship is no ground to strike down a valid legislation.[33] But the court has held that even if a law cannot be declared *ultra vires* on the ground of hardship, it can be so declared on the ground of total unreasonableness applying the Wednesbury "unreasonableness".[34]

(j) RECOVERY OF LOANS

A special machinery can be established for expeditious recovery of the loans advanced by the State or the State Financial Corporation. These loans are advanced to assist people financially to set up industries in the State so as to advance the well being of the people. If these loans are recovered expeditiously, fresh loans may be advanced to other persons for a similar purpose. These loans thus differ from the ordinary loans which are advanced for earning interest.[35]

(k) PERPETUATION OF ILLEGALITY

It would be constitutionally immoral to perpetuate inequality among majority people of the country in the guise of protecting the Constitutional Rights of minorities and the backward and downtrodden.[36]

(l) PUBLIC SECTOR UNDERTAKING

Favourable treatment shown to a public sector undertaking is not discriminatory. These undertakings stand in a different class altogether and the classification made between these enterprises and others is a valid one.[37] As the Supreme Court has observed: "….. preference shown to …….. public sector undertakings being in public interest, will not be construed as arbitrary so as to give rise to a contention of violation of Article 14 of the Constitution."[38]

Similarly it has been held that preference shown by the State to cooperative societies does not violate Art. 14 as these societies play a positive and progressive role in the economy of our country.[39]

(m) DISCRIMINATION BY THE STATE IN ITS OWN FAVOUR

Art. 14 does not outlaw discrimination between the state and a private individual because the two are not placed on the same footing. Thus, creation of a monopoly by the state in its favour will not be bad under Art. 14.[40]

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33. *Prafulla Kumar Das v. State of Orissa*, (2003) 11 SCC 614 : AIR 2003 SC 4506.

34. *Grand Kakatiya Sheraton Hotel and Towers Employees & Workers Union v. Srinivasa Resorts Ltd.*, (2009) 5 SCC 342 : AIR 2009 SC 2337.

35. *State of Kerala v. V.R. Kalyanikutty*, AIR 1999 SC 1305 : (1999) 3 SCC 657.

36. *Islamic Academy of Education v. State of Karnataka,* (2003) 6 SCC 697 : AIR 2003 SC 3724.

37. *Hindusthan Paper Corporation Ltd. v. Govt. of Kerala*, AIR 1986 SC 1541 : (1986) 3 SCC 398.

38. *Indian Drugs & Pharmaceutical Ltd. v. Punjab Drugs Manufacturers Association,* AIR 1999 SC 1626 : (1999) 6 SCC 247.

Also, *Oil & Natural Gas Commission v. Association of Natural Gas Consuming Industries of Gujarat*, AIR 1990 SC 1851.

39. *Sarkari Sasta Anaj Vikreta Sangh, Tahsil Bemetra v. Madhya Pradesh,* AIR 1981 SC 2030 : (1981) 4 SCC 471; *Krishna Kakkanath v. Govt. of Kerala,* (1997) 9 SCC 495.

40. *Saghir Ahmad v. State of Uttar Pradesh*, AIR 1954 SC 728 : (1955) 1 SCR 707; *Kondal Rao v. A.P.S.R.T. Corpn*, AIR 1961 SC 82; *Orissa Minor Oil (P) Ltd. v. State of Orissa*, AIR 1983 Ori. 265.

Exemption granted to lands and buildings of the government, or a local authority, or a government sponsored housing board, from the Rent Control Act has been held valid as none of these has a profit motive and would not evict its tenants merely to unduly raise rents as private landlords usually do and thus their tenants are not similarly situated as those of the private individuals.[41]

Under the Limitation Act, government claims are barred after 60 years, whereas private claims are barred in a much shorter period. This distinction has been held valid because in the former case the loss falls on the community at large and also because government machinery works much slower than a private individual.[42] Money due to the state in respect of its trading activities can be made recoverable as a public demand. It is not against Art. 14 to distinguish between the government as a banker and other bankers for purposes of recovery of money, for government dues are the dues of the entire community and, therefore, a law providing special facility to recover the same cannot be said to offend Art. 14.[43]

Government debts can be given priority over individual debts;[44] special procedures can be laid down for eviction of unauthorised occupants of government premises as government property forms a class by itself;[45] special provisions can be made for recovering debts due to the government or to a bank established with public funds as disinguished from private banks.[46] Exemption granted to the State from payment of court-fees has been held valid because, in any case, the State has to bear the expense of the administration of civil justice.[47]

(n) TAXING STATUTES

Art. 14 covers tax legislation as well. Tax laws do not fall outside the scope of Art. 14, and such laws must also pass the test of Art. 14. However, taxing statutes enjoy more judicial indulgence because picking and choosing within limits is inevitable in taxation. The principle of classification is applied somewhat liberally in case of a taxing statute. The legislature enjoys a great deal of latitude in the matter of classification of objects and purposes of taxation. The courts adopt a more tolerant attitude towards a tax law.

The courts assert that in view of the intrinsic complexity of fiscal adjustments of diverse elements, a legislature ought to be permitted a larger discretion and latitude in the matter of classification for taxing purposes.[48] The rate of tax and objects to be taxed are to be determined by the Legislature and unless it is found

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41. *Baburao Shantaram v. Bombay Housing Board*, AIR 1954 SC 153 : 1954 SCR 572.
42. *Nav Rattan Mal v. State*, AIR 1961 SC 1704 : (1962) 2 SCR 324.
43. *Manna Lal v. Collector of Jhalawar*, AIR 1961 SC 828 : (1961) 2 SCR 962.
44. *Builders Supply Corpn. v. Union of India*, AIR 1965 SC 1061 : (1965) 2 SCR 289.
45. *M. Chhagan Lal v. Greater Bombay Municipality*, AIR 1974 SC 2009; *State of Gujarat v. Patel Bava Karsan*, AIR 1980 SC 1144 : 1980 Supp SCC 7.
46. *Lachman Das v. State of Punjab*, AIR 1963 SC 222. Also, *Director of Industries, State of U.P. v. Deep Chand*, AIR 1980 SC 801; *G.S . Agarwal v. State of Uttar Pradesh*, AIR 1983 SC 1224 : 1984 Supp SCC 607.
47. *P.C. Sukhani v. State of Sikkim*, AIR 1982 Sikkim 1.
48. *State of Maharashtra v. M.B. Badiya*, AIR 1988 SC 2062 : (1988) 4 SCC 290; *State of Karnataka v. D.P. Sharma*, AIR 1975 SC 594; *Anant Mills v. State of Gujarat*, AIR 1975 SC 1234; I.T.O., *Shillong v. N.T.R. Rymbai*, AIR 1976 SC 670; *Ganga Sugar Corp. v. State of Uttar Pradesh*, AIR 1980 SC 286; *State of Karnataka v. Hansa Corp.*, AIR 1981 SC 463 : (1980) 4 SCC 697; *Laxmi Narain v. State of Orissa*, AIR 1983 Ori. 229; *State of Bihar v. S.K. Sinha*, AIR 1995 SC 885: (1995) 3 SCC 86.

to be so unreasonable, the court does not interfere with the latitude enjoyed by the Legislature in this behalf.[49] On this point, the Supreme Court has observed in *Khandige*:[50]

> "…. The courts, in view of the inherent complexity of fiscal adjustment of diverse elements, permit a larger discretion to the Legislature in the matter of classification, so long it adheres to the fundamental principles underlying the said doctrine. The power of the Legislature to classify is of "wide range and flexibility" so that it can adjust its system of taxation in all proper and reasonable ways."

Again the Court has observed in *Hoechst*:[51]

> "When the power to tax exists, the extent of the burden is a matter for discretion of the law-makers. It is not the function of the court to consider the propriety or justness of the tax, or enter upon the realm of legislative policy. If the evident intent and general operation of the tax legislation is to adjust the burden with a fair and reasonable degree of equality, the constitutional requirements is satisfied."

The reason for greater judicial tolerance shown towards a tax law is that taxation is not merely a source of raising money to defray government expenses but it is also a tool to reduce inequalities in society. Accordingly, while applying the doctrine of classification, the legislature is allowed much more freedom of choice in the matter of taxation *vis-à-vis* other types of laws. As no scheme of taxation is free of all discriminatory impact, a tax measure is struck down on the ground of discrimination under Art. 14 only on the ground of palpable arbitrariness applied in the context of the felt needs of the times and societal exigencies informed by experience. The tests of the vice of discrimination in a tax law are thus less rigorous.[52]

Parliament imposed expenditure tax on hotels where room charges were Rs. 400 or over per day for a unit of residential accommodation. Holding the Act valid against a challenge under Art. 14, the Supreme Court emphasized that having regard to the wide variety of diverse economic criteria that go into the formulation of a fiscal policy, the legislature enjoys a wide latitude in the matter of selection of persons, subject-matter, events, etc. for purposes of taxation.[53]

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49. *Meenakshi v. State of Karnataka,* AIR 1983 SC 1283, 1289.

50. *Khandige Sham Bhai v. Agri. Income-tax Officer,* AIR 1963 SC 591 at 594-95 : (1963) 3 SCR 809. Also see, *Khyerbari Tea Co. v. State of Assam,* AIR 1964 SC 925, 941 : (1964) 5 SCR 975.

51. *Hoechst Pharmaceuticals Ltd. v. State of Bihar,* AIR 1983 SC 1019 : (1983) 4 SCC 45.
Also see, *State of Kerala v. Aravind Ramakant Modawadakar,* (1999) 7 SCC 400, at 406 : AIR 1999 SC 2970.

52. *Kerala Hotel and Restaurant Association v. State of Kerala,* AIR 1990 SC 913 : (1990) 2 SCC 502, *Khadi & Village Soap Industries Association v. State of Haryana,* AIR 1994 SC 2479 : 1994 Supp (3) SCC 218; *Spences Hotels Pvt. Ltd. v. State of West Bengal,* (1991) 2 SCC 154; *Gannon Dunkerley & Co. v. State of Rajasthan,* (1993) 1 SCC 364 at 397; *I.T.O. v. N. Takim Roy Rymbai,* AIR 1976 SC 670; *G.K. Krishna v. State of Tamil Nadu,* AIR 1975 SC 583; *State of Gujarat v. Sri Ambica Mills,* AIR 1974 SC 1300; *Hiralal v. State of Uttar Pradesh,* AIR 1973 SC 1034; *Jaipur Hosiery Mills v. State of Rajasthan,* AIR 1971 SC 1330 : (1970) 2 SCC 26.

53. *Elel Hotels and Investments Ltd. v. Union of India,* AIR 1990 SC 1664 : (1989) 3 SCC 698; see also *R. C. Tobacco (P) Ltd. v. Union of India,* (2005) 7 SCC 725 : AIR 2005 SC 4203. Wide discretion conferred on legislature in tax and economic matters; See also *Gujarat Ambuja Cements Ltd. v. Union of India,* (2005) 4 SCC 214 : AIR 2005 SC 3020.

In the field of taxation, the Supreme Court has permitted the legislature to exercise an extremely wide discretion in classifying items for tax purposes, so long as it refrains from clear and hostile discrimination against particular persons or classes. A tax on purchasers of hides and skins only, and not on purchasers of other commodities, was held valid as there was 'no material on the record' to suggest that the purchasers of other commodities were similarly situated as those of hides and skins.[54]

A sales tax imposed on sales of virginia tobacco but not of country tobacco is not bad under Art. 14, for the former has certain features which distinguish it from the latter.[55] A higher show tax on cinema houses with large seating accommodation and situated in fashionable, busy or rich localities than on small cinema houses containing less accommodation and situated in poor localities, is valid.[56] Classification for purposes of income-tax with reference to the sources of income is valid.[57] Differential rates of tax can be imposed on stage carriages and goods vehicles as the two belong to distinct categories.[58] Levy of a higher grazing rate for animals belonging to the outsiders than on those belonging to the residents of the State is discriminatory as there is no rational basis for making such a distinction.[59]

Parliament enacted a law imposing expenditure tax at 10% ad valorem on 'chargeable expenses' incurred in hotels wherein room charges were Rs. 400 or over per day for a unit of residential accommodation. The Act was challenged under Art. 14. The argument was that there was no basis or intelligible differentia for discriminating between the levy of the tax on expenditure over food or drink provided by a hotel and the food and drink provided by a restaurant or eating house not situated in a hotel even though the cost of food or beverage could be higher than that on similar items in a taxed hotel. The Court held the tax valid arguing that "the bases of classification cannot be said to be arbitrary or unintelligible nor as without a rational nexus with the object of the law." People with economic superiority would enjoy the services of a hotel having accommodation priced at Rs. 400/- or more per day. This basis of classification could not be condemned as irrational. The Court emphasized the point that having regard to the wide variety of diverse economic criteria that go into the formulation of a fiscal policy legislature enjoys a wide latitude in the matter of selection of persons, subject-matter, events, etc. for purposes of taxation. The tests of the vice of discrimination in a taxing law are, accordingly, less rigorous.[60]

An entertainment tax was levied by the Tamil Nadu Government on admission to cinema theatres. Different rates were prescribed depending on the locality where the cinema was situated and also on the amenities provided therein. The

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54. *V.M. Syed v. State of Andhra Pradesh*, AIR 1954 SC 314 : 1954 SCr 1117.
55. *East India Tobacco Co. v. State of Andhra Pradesh*, AIR 1962 SC 1733 : (1963) 1 SCR 404.
56. *Western India Theatres v. Cantonment Board*, AIR 1959 SC 582 : 1959 Supp (2) SCR 63.
57. *I.T.O., Shillong v. N.T.R. Rymbai*, AIR 1976 SC 670 : (1976) 1 SCC 916.
58. *Ambala Bus Syndicate (Pvt.) Ltd. v. State of Punjab*, AIR 1983 P&H. 213.
59. *Lakshman v. State of Madhya Pradesh*, AIR 1983 SC 656 : (1983) 3 SCC 275.
60. *Federation of Hotel and Restaurant v. Union of India*, AIR 1990 SC 1637 : (1989) 3 SCC 634.

tax was levied at a particular percentage of the rate of admission. This percentage varied from locality to locality. The tax was challenged under Art. 14, but the Supreme Court ruled that the classification made between the theatres was not an unreasonable one. The Court emphasized that the concept of "Equality before law" contained in Art. 14 envisages an "obligation upon the State to bring about, through the machinery of law, a more equal society envisaged by the Preamble and Part IV of our Constitution.[61] For, equality before law can be predicated meaningfully only in an equal society."[62]

In Andhra Pradesh, for levying a similar tax, the Legislature prescribed different rates of tax by classifying theatres into different classes, namely, air conditioned, air-cooled, ordinary, permanent, semi permanent, touring and temporary. The theatres were further categorised on the basis of the type of the local area in which they were situated. The levy was held valid as the legislature had sought to classify the cinema theatres taking into consideration the differentiating circumstances for the purpose of imposing the tax. The Court rejected the argument of the theatre owners that the classification was not perfect and that there should have been further classification amongst the theatres falling in the same class on the basis of the location of the theatre in each local area.[63]

To find out discrimination, what is decisive is not the phraseology of a statute but the impact and effect of the law. A law *ex facie* non-discriminatory may in effect operate unevenly on persons or property not similarly situated and thus offend the equality clause. Conversely, a law appearing to be discriminatory may not be so in actual operation.[64] Just as a difference in the treatment of persons similarly situate leads to discrimination so also discrimination can arise if persons who are unequals, *i.e.,* differently placed, are treated similarly. A law providing for equal treatment of unequal objects, transactions or persons would be condemned as discriminatory if there is absence of rational relation to the object intended to be achieved by the law.

This proposition is illustrated by *K.T. Moopil Nair v. State of Kerala*,[65] A land tax at a flat rate of Rs. 2 per acre was declared discriminatory as it made no reference to income, either actual or potential, from the land taxed. A flat rate of tax was imposed whether or not there was any income from the property. The Act in question did not have any regard to the quality of the land or its productive capacity and so levy of the tax at a flat rate was invalid. Lack of classification by the Act therefore created inequality. This was evident from the facts of the instant case, where the petitioner was required to pay a tax of Rs. 54,000 per year while the income from the land taxed came to Rs. 3,100 only. The tax was therefore characterised as discriminatory and confiscatory and hence bad under Art. 14.

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61. Part IV of the Constitution pertains to "Directive Principles of State Policy"; see, *infra*, Ch. XXXIV.
62. *Sri Srinivasa Theatre v. Govt. of Tamil Nadu*, AIR 1992 SC 999, 1004 : (1992) 2 SCC 643.
63. *Venkateshwara Theatre v. State of Andhra Pradesh*, AIR 1993 SC 1947 : (1993) 3 SCC 677.
64. *Khandige Sham Bhat v. Agricultural, I.T.O.*, AIR 1963 SC 591 : (1963) 3 SCR 809.
65. AIR 1961 SC 552 : (1961) 3 SCR 77.

Following the *Moopil Nair* case, the Supreme Court in *State of Andhra Pradesh v. Raja Reddy*,[66] declared void land revenue imposed at a flat rate on land without taking into account the quality or productivity of the soil. Moreover, the Act laid down no procedure to assess land revenue, and however, grievous the mistake made in the assessment, there was no way for the aggrieved party to get it corrected. No notice was prescribed and no opportunity was given to the assessee to question the assessment on his land. The Court emphasized that Art. 14 can be offenderd both when a statutory provision finds differences where there are none, or makes no difference where there is one. Even a tax law cannot introduce unreasonable discrimination between persons or property either by classification or lack of it.

A tax on buildings on the 'floorage' basis (the rate of tax being determined by the floor area) on a sliding scale, whether the building be situated in a large industrial town or in an insignificant village, was held discriminatory under Art. 14 as the rate of tax did not depend upon the purpose for which the building was used, the nature of the structure, the town and locality in which the building was situated, the economic rent obtainable from the building, its cost and other related circumstances which might appropriately be taken into consideration in any rational system of taxation of buildings. No attempt was made at any rational classification in imposing the tax in question. Imposing a uniform tax on objects, persons or transactions essentially dissimilar may result in discrimination.[67]

A tax on urban land was held invalid because of lack of classification which resulted in inequality and hostile discrimination.[68]

Kerala levied a tax at the rate of Rs. 50 per hectare on seven types of plantations. The tax was challenged on the ground of lack of classification. By a majority of 3 : 2, the Supreme Court upheld the tax. The majority found that the law sought to equalise the different plantations for purposes of taxability. HIDAYATULLAH, C.J., speaking for the majority observed: "….. the burden of proving discrimination is always heavy and heavier still when a taxing statute is under attack….The burden is on a person complaining of discrimination. The burden is proving *not* possible 'inequality' but hostile 'unequal' treatment. This is more so when uniform taxes are levied."

On the other hand, the minority held that tax was discriminatory as it was not related to productivity of land. For example, the average yields of the lands varied from 350 kgs to 1850 kgs of tea and so a uniform tax must result in inequality among tea-growers who formed one class.[69] The minority view appears to be more rational in this case.

Whenever power is delegated by the legislature for the purpose of levying taxes on a particular commodity or exempting some other commodity from taxation, a sort of classification is to be made. Such classification cannot be a product

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66. AIR 1967 SC 1458 : (1967) 3 SCR 28.
Also see, *Samarendra Nath v. State of West Bengal*, AIR 1981 Cal. 58.
67. *State of Kerala v. Haji Kutty*, AIR 1969 SC 378 : (1969) 1 SCR 645.
68. *Parshava Properties Ltd. v. State of West Bengal*, AIR 1982 Cal 202.
69. *Twyford Tea Co. v. State of Kerala*, AIR 1970 SC 1133 : (1970) 1 SCC 189.

of blind approach by the administrative authorities on which the responsibility of delegated legislations is vested by the Constitution. A notification issued by a Taxing Department of a State which lacks a sense of reasonability because it is not able to strike a rational balance of classification between the items of the same category would be *ultra vires* Art. 14.[70]

The reasonableness of classification must be examined on the basis, that when the object of the taxing provision is not to tax the sale of certain chemical fertilizers included in the list which clearly points out that all the fertilizers with similar compositions must be included without excluding any other chemical fertilizer which has the same elements and, as such, there is no basis for differential treatment amongst the same class. The Court referred to Ayurveda Pharmacy case[71] which had held that two vital items of the same category could not be discriminated against and where such a distinction is made between the items falling in the same category it should be done on a reasonable basis, in order to save such a classification being in contravention of Art. 14 of the Constitution.[72]

A classification on the basis of capacity to pay for purposes of taxation is valid. It is therefore permissible to levy a higher tax on those who are economically stronger than those who are weaker. "The object of a tax is not only to raise revenue but also to regulate the economic life of the society."[73]

A flat rate tax may not be bad always. It is only in marginal cases when the impact of such a tax is glaringly discriminatory or expropriatory that it may be hit by Art. 14. Therefore, a tax of Re. 1 per bottle of foreign liquor (produced in India) is valid as it is levied at a conveniently flat rate with minimal effect on overall price and it is easy to collect.[74]

A classification made to prevent evasion of tax and fraud on taxation may be held valid under Art. 14.[75] The Central Government classified match manufacturing units into mechanised and non-mechanised units and levied a lower excise duty on the latter than on the former. It was argued that the non-mechanised category did not distinguish between stronger and weaker units and thus treated unequals as equals. Rejecting the contention, the courts held that a pertinent principle of differentiation linked to productive processes had already been adopted and further sub-classi-fication between strong and weak units in the same class could not be insisted upon with reference to Art. 14.[76]

Several State Legislatures enacted statutory provisions levying cesses/taxes on minerals. These provisions were invalidated by the Supreme Court on the ground that the power to impose these levies vested with Parliament and not the States.

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70. *State of Uttar Pradesh v. Deepak Fertilizers & Petrochemical Corpn. Ltd.,* (2007) 10 SCC 342 : (2007) 8 JT 148.
71. (1989) 2 SCC 285 : AIR 1989 SC 1230.
72. *State of Uttar Pradesh v. Deepak Fertilizers & Petrochemical Corpn. Ltd.,* (2007) 10 SCC 342 : (2007) 8 JT 148.
73. *Kodar v. State of Kerala,* AIR 1974 SC 2272 : (1974) 4 SCC 422.
Also, *Hoechst Pharmaceuticals, supra,* footnote 51 on 1240.
74. *Balaji v. I.T.O.*, AIR 1962 SC 123 : (1962) 2 SCR 983.
75. *Avinder Singh v. State of Punjab,* AIR 1979 SC 321 : (1979) 1 SCC 137.
76. *M. Match Works v. Asstt. Collector,* AIR 1974 SC 497 : (1974) 4 SCC 428.

The State levies were at different rates. To protect the States from refunding the revenue collected from these levies, Parliament enacted an Act validating the State levies with retrospective effect.

This Act was challenged *inter alia* under Art. 14 on the ground that it imposed levies in different States at different rates. The Court held that there was no violation of Art. 14 by Parliament as there was historic justification for the law in question. Different States were imposing levies at different rates and to validate the State levies, Parliament had to adopt the very rates prevailing in the various States. "It is really not a case where the Parliamentary enactment is creating the distinction or different treatment. Distinction and different treatment was already there over several decades; each State was prescribing its own rate on the same material… The Parliament has intervened and by enacting the impugned law in exercise of its undoubted power, validated the levy and all that flows from it. In such circumstances, there was no other way except to do what has actually been done". When Parliament was re-enacting the very provisions prevalent in the States, it could not but adopt those very rates.[77]

Differentiation in taxation levied on intra-state and inter-State contract carriages was upheld by the Supreme Court in the following case,[78] on the ground that "in many factual ways the vehicles covered by two different permits do form a separate and distinct class". The courts would not interfere with classification, "which is the prerogative of the legislature", so long as it was not arbitrary or unreasonable. The *nexus* of the classification with the object of taxation in the instant case lay in *pubic interest*—"which is again within the realm of legislative wisdom unless tainted by perversity or absurdity". The Supreme Court reiterated the proposition as regards the power of the State to tax that "the State has a wide discretion in selecting the persons or objects it will tax and thus a statute is not open to attack on the ground that it taxes some persons or objects and not others." A very wide latitude is available to the legislature in the matter of classification of objects, persons and things for the purpose of taxation.

(o) ECONOMIC AFFAIRS

There is no such law that a particular commodity cannot have a dual fixation of price. Dual fixation of price based on reasonable classification of different types of customers has met with approval from the courts, e.g. Respondent coal company charging lower prices for supply of coal from core/linked sector industries while charging higher prices from appellants who did not belong to the core sector. The Court held that primary consideration for placing industries concerned in the core sector being their intrinsic importance to the economy of country and role which they play in nation building activities. Requirement of coal in the core sector is on the higher side either for captive power generation or for other uses for manufacturing operations. Any substantial increase in price of coal would have a substantial effect on cost of finished products of vital importance, and cost of services to the public. These factors legitimately call for a special treatment as far as these industries are concerned. For charging lesser prices or evolving a dual price policy it cannot be said that in such a case that equals are being treated unequally or that the classification

77. *P. Kannadasan v. State of Tamil Nadu,* AIR 1996 SC 2560 : (1996) 5 SCC 670.
78. *State of Kerala v. Aravind Ramakant Modawdakar,* (1999) 7 SCC 400 : AIR 1999 SC 2970.

does not rest on a rational basis. Moreover, respondent coal company is facing a heavy financial deficit having an accumulated loss of more than Rs.1000 crores. Decontrol of price was done with predominant object of enabling respondent and other coal companies which were in the red, to become solvent and profitable. An industrial company completely held by the Govt. (like respondent) cannot be denied right to keep in view the consideration of commercial expediency while formulating its policies in discharge of its functions. Though absolute and unfettered freedom cannot be granted to State owned companies, but a wide latitude and flexible approach should be conceded especially when price fixation has been taken out of the realm of statutory control.[79] In judicial review, the court is neither concerned with the (economic) policy nor with the rates. But in appropriate proceedings it may enquire into the question, whether relevant considerations have gone in and extraneous/irrelevant considerations been kept out while determining the price. In case the legislature has laid down the pricing policy and prescribed the factors which should guide the determination of the price, then the Court will, if necessary, enquire into the question whether the policy and factors were present to the mind of the authorities specifying the price. The Court does not substitute its judgment for that of the legislature or its agent as to the matters within the province of either. The judicial enquiry is confined to the question whether the findings of facts are reasonably based on evidence and whether such findings are consistent with the laws of the land.[80]

Sugar dealers in Calcutta were permitted to keep a maximum stock of 3500 quintals of sugar whereas those in towns with population up to one lakh, only 250 quintals and in towns with less than one lakh population, only 100 quintals. Such a classification of dealers was held to be not arbitrary but based on reasonable classification and so not bad under Art. 14.[81]

The agricultural debtors form a separate category because of their poverty, economic backwardness and miserable conditions. Therefore, a law enacted to give relief to agricultural indebtedness is not invalid.[82] A law imposing a minimum sentence of six months' rigorous imprisonment on offenders guilty of selling adulterated food is not hit by Art. 14.[83] When unequally placed persons are treated equally, Art. 14 is violated.[84]

By a Central law, the undertakings of 14 banks were acquired by the Central Government and these banks were prohibited from doing any banking business. This was held to be discriminatory as other banks could carry on banking business and new banks could be floated and there was thus no rational explanation for the prohibition on the 14 banks in question.[85]

The Special Bearer Bonds (Immunities and Exemptions) Act, 1981, providing for investment in bearer bonds was held valid *vis-a-vis* Art. 14 in *R.K. Garg v.*

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79. *Pallavi Refractories v. Singareni collieries Co. Ltd.*, (2005) 2 SCC 227 : AIR 2005 SC 744.
80. *Pallavi Refractories v. Singareni collieries Co. Ltd.*, (2005) 2 SCC 227 : AIR 2005 SC 744.
81. *P.P. Enterprises v. Union of India*, AIR 1982 SC 1016 : (1982) 2 SCC 33.
82. *Pathumma v. State of Kerala*, AIR 1978 SC 771 : (1978) 2 SCC 1.
83. *Inderjeet v. State of Uttar Pradesh*, AIR 1979 SC 1867 : (1979) 4 SCC 246.
84. *Hyderabad Karnataka Education Society v. State of Karnataka*, AIR 1983 Knt. 251, 268.
85. *R.C. Cooper v. Union of India*, AIR 1970 SC 564 : (1970) 1 SCC 248.

Union of India.[86] The object of the Act being to unearth black money lying secreted, and to canalise the same into productive purposes, the classification made between those possessing black money and others could not be regarded as arbitrary or irrational. It was based on intelligible differentia having rational relation with the object of the Act. Only limited immunities had been granted to the holders of the bearer bonds. These are necessary to induce the holders of black money to invest in bearer bonds.

In the instant case, the Supreme Court emphasized that the laws relating to economic activities should be viewed with greater indulgence than ordinary laws and economic laws may not be struck down merely on account of crudities and inequities inasmuch as such legislations are designed to take care of complex situations and complex problems which do not admit of solutions through any doctrinaire approach or straight-jacket formulae.

In the words of the Court:

> "Another rule of equal importance is that laws relating to economic activities should be viewed with greater latitude than laws touching civil rights such as freedom of speech, religion etc… The court should feel more inclined to give judicial deference to legislative judgment in the field of economic regulation than in other areas where fundamental human rights are involved."

There is no Fundamental Right in a citizen to carry on trade or business in liquor.[87] The State under its regulatory power has the power to prohibit absolutely every form of activity in relation to intoxicants such as its manufacture, storage, export, import, sale and possession. However, when the State decides to grant such right or privilege to others, the State cannot escape the rigour of Art. 14. In this connection, the Supreme Court has observed in *Nandlal*:[88]

> "But while considering the applicability of Art. 14 in such a case we must bear in mind that having regard to the nature of the trade or business the Court would be slow to interfere with the policy laid down by the State Government for grant of licences for manufacture and sale of liquor. The court would, in view of the inherently pernicious nature of the commodity allow a large measure of latitude to the State Government in determining its policy of regulating manufacture and trade in liquor. Moreover, the grant of licences for manufacture and sale of liquor would essentially be a matter of economic policy where the court would hesitate to intervene and strike down what the State Government has done unless it appears to be plainly arbitrary, irrational or *mala fide*".[89]

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86. AIR 1981 SC 2138 : (1981) 4 SCC 675.
To justify the classification, the Court emphasized upon the evils of blackmoney, *viz.*, it adversely affects revenue; there are other adverse economic effects; it corrodes the economy. There was thus need to tackle this problem. It was thus necessary to give certain immunities to the holders of these bonds, *e.g.*, they were not required to disclose the nature and source of acquisition of such bonds, these bonds were not to be taken into account for proceedings under any tax law, etc.

87. See, *infra*, under Art. 19(1)(g), Ch. XXIV, Sec. H.

88. *State of Madhya Pradesh v. Nandlal Jaiswal*, AIR 1987 SC 251, at 279 : (1986) 4 SCC 566.

89. Also see, *Khoday Distillers Ltd. v. State of Karnataka*, AIR 1996 SC 912, at 915.

(p) GEOGRAPHICAL DIFFERENTIATION

Geographical considerations may form a valid basis of classification for purposes of legislation in appropriate cases. In this connection, the Supreme Court has recently observed in *Clarence Pais v. Union of India*[90]:

> "Historical reasons may justify differential treatment of separate geographical regions provided it bears a reason and just relation to the matter in respect of which differential treatment is accorded. Uniformity in law has to be achieved, but that is a long drawn process."

The State of Rajasthan passed an Act prescribing a procedure for fixing fair and equitable rent payable by the tenants in the Marwar region. It was challenged on the ground that it did not apply to the whole State. Rejecting the objection, the Supreme Court stated that Art. 14 prohibits unequal treatment of persons similarly situated. The Act would be bad if it were established that conditions prevailing in other areas of the State were similar to those in Marwar where the Act applied. This was not proved. An Act could not be held discriminatory merely because it did not apply to the whole State.[91]

One uniform law need not operate throughout the State regarding any particular matter. If circumstances so warrant, a State can be divided into several zones and different laws regarding the same matter applied to these zones. Thus, Orissa can have two Acts to nationalise road transport, one applying to that part of the State which was previously British, and the other to that part which was previously princely, as the conditions in the two parts differ materially.[92]

With the States' Re-organisation in 1956, territories from one State became part of another State. To avoid any dislocation in the legal system, the States Reorganisation Act stipulated that the existing laws would continue in force in these areas. The result was that in some cases, different laws prevailed in different areas of a State on the same subject. This was held valid on the ground that "differentiation arises from historical reasons; and a geographical classification based on historical reasons can be upheld as not being contrary to the equal protection clause in Art. 14."[93]

The Indian Income-tax Act provides for recovery of arrears of income-tax according to the land revenue recovery law prevalent in each State. These laws differ from State to State and prescribe different procedures, some harsher than others. It was argued that income-tax being a Union subject, the procedure for recovery of income-tax must be uniform throughout India, for to the Union all defaulters were alike and similarly situated, and thus prescribing different machinery from State to State created discrimination.

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90. AIR 2001 SC 1151, 1155 : (2001) 4 SCC 325.
91. *Kishan Singh v. State of Rajasthan,* AIR 1955 SC 795 : (1955) 2 SCR 531.
92. *Ram Chandra v. State of Orissa,* AIR 1956 SC 298.
93. *Bhaiya Lal v. State of Madhya Pradesh,* AIR 1962 SC 981 : 1962 Supp (2) SCR 257.
Also, *State of Madhya Pradesh v. Bhopal Sugar Industries,* AIR 1964 SC 1179 : (1964) 6 SCR 846; *Shri Amar Mutt v. Commr., H.R. & C.E. Dept.,* AIR 1980 SC 1 : (1979) 4 SCC 642.

The provision was held valid on the ground that to group the defaulters state-wise was to classify them on a geographical basis and this was an intelligible differentia. To subject the defaulters to the same coercive process as has been devised by their State, on a consideration of local needs, could not be regarded as bereft of a reasonable nexus between the basis of classification and the object sought to be achieved by the Indian Income-tax Act.[1] A law need not be applied to the whole State all at once. No discrimination arises if the law, to begin with, is applied to selected areas in the State.[2]

Under the Arms Act, an offence could be tried only after obtaining the sanction of the Central Government, but in the area North of the Ganga and Jamuna rivers, an offence could be tried without any such sanction. The distinction was held bad as it was based on an irrational factor. The differentiation between the area North of Ganga-Jamuna and the rest of the country had been made as a result of the political situation existing in 1857, *viz.*, the largest opposition to the British Government had come from the talukedars in this area. But in the changed political situation of today, it was impossible to sustain any such distinction.[3]

Although geographical difference can be a basis of classification provided it had nexus with the object to be achieved, mere geographical classification cannot be sustained where the Act instead of achieving the object of legislation defeats the very purpose for which it has been made.[4]

(q) PROCEDURAL DIFFERENTIATION

Art. 14 guarantees equal protection not only as regards substantive laws but procedural laws as well. Art. 14 condemns discrimination not only by a substantive law but also by a law of procedure.[5]

As the Supreme Court has observed:[6] Art. 14 "not only guarantees equal protection as regards substantive laws but procedural laws also come within its ambit. The implication of the Article is that all litigants similarly situated are entitled to avail themselves of the same procedural rights for relief, and for defence with like protection and without discrimination." It means that all litigants, similarly situated, are entitled to the same procedural rights for relief and for defence. This means that if special procedure is laid down for a class of people as distinguished from others, then the 'class' must be based on a rational differentia having a reasonable relation with the object sought to be achieved. Further, all in the same 'class' should be subjected to the same law; there cannot be selectivity within a class. If within the same class some are subjected to a more drastic procedure than others, then it is discriminatory and bad under Art. 14. If two laws apply to a class, then the one which is more burdensome is discriminatory and so void under Art. 14.

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1. *Collector of Malabar v. E. Ebrahim*, AIR 1957 SC 688 : 1957 SCR 970.
2. *Shanmugha Oil Mill v. Market Committee*, AIR 1960 Mad. 160.
3. *Jai Lal v. Delhi Adm.*, AIR 1962 SC 1781 : (1963) 2 SCR 864.
4. *Sarbananda Sonowal v. Union of India*, (2005) 5 SCC 665 : AIR 2005 SC 2920, Illegal migrants (Determination by Tribunals) Act 1983, held to be unconstitutional.
5. *Charan Lal Sahu v. Union of India*, AIR 1990 SC 1480 : (1990) 1 SCC 613.
6. *Shri Meenakshi Mills Ltd., Madurai v. A.V. Visvanatha Sastri*, AIR 1955 SC 13 : (1955) 1 SCR 787.

The above-mentioned principles can be illustrated by a few examples. A law in Jammu and Kashmir laying down a procedure, materially different from the ordinary criminal procedure, to try 'enemy agents' was held valid because the term 'enemy agents', as defined in the ordinance, constituted a clearly defined class. Creating a new offence, and providing a stringent procedure for its trial, do not give rise to discrimination as permissible classification under Art. 14 need not be of persons only; even offences of a serious nature may be treated as a class and tried in a way different from ordinary offences and dealt with by a drastic procedure without violating the equal protection clause.[7]

According to S. 27 of the Evidence Act, a statement made to a police officer by an accused in custody when it leads to the discovery of a fact is admissible in evidence. It was argued against the provision that it drew a distinction between statements made by persons in custody and those not in custody. The provision was however upheld because the classification between persons in custody and those not in custody in the context of admissibility of statements made by them concerning the off-ence charged was not arbitrary or artificial.[8]

Under S. 178A of the Sea Customs Act, if goods like gold, diamonds, etc., are seized in the reasonable belief that they are smuggled goods, then the burden of proving that they are not smuggled goods is on the person from whose possession they have been seized. The provision was challenged as discriminatory, for under the ordinary law it is for the prosecution to establish its case, and not for the accused to prove his innocence. Nevertheless, the provision was held valid because it was designed to minimize smuggling; it applied to goods which could easily be smuggled, and the classification of goods was based on an intelligible differentia which had a rational relation to the object sought to be achieved by the Act, *viz.*, to prevent smuggling.[9]

Under the Supreme Court Rules, while no security is required to be given for filing a writ petition under Art. 32 to enforce a fundamental right, a security has to be given for moving an application for reviewing an order already made on a writ petition. There is no discrimination involved here, for in a review petition, the Court is asked to re-open a matter which had already been closed after hearing the parties.[10]

The Punjab Municipalities Act, 1911, provides for removal of a member of a municipality after giving him a hearing under specified circumstances. It also provides for removal of a member of a municipality without a hearing. This is discriminatory, for while in one case hearing is to be given to the member concerned, it may not be given in the other cases.[11]

Differential treatment by way of a provision saving proceedings in execution and those pending execution has been held to be violating Art. 14.[12]

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7. *Rehman Shagoo v. State of Jammu & Kashmir*, AIR 1960 SC 1 : (1960) 1 SCR 680.
8. *State of Uttar Pradesh v. Deoman Upadhyaya*, AIR 1960 SC 1125 : (1961) 1 SCR 14.
9. *Babu Lal v. Collector of Customs*, AIR 1957 SC 877.
10. *Lala Ram v. Supreme Court of India*, AIR 1967 SC 847 : (1967) 2 SCR 14.
11. *Ram Dial v. State of Punjab*, AIR 1965 SC 1518 : (1965) 2 SCR 858.
Also see, *Mohta & Co. v. Vishwanath*, AIR 1954 SC 545 : (1955) 1 SCR 448; *Muthiah v. C.I.T.*, AIR 1956 SC 269 : (1955) 2 SCR 1247.
12. *Mahendra Saree Emporium (II) v. G. V. Srinivasa Murthy*, (2005) 1 SCC 481 : AIR 2004 SC 4289.

(r) LEGISLATION APPLICABLE TO A SINGLE PERSON

A statute based on a reasonable classification does not become invalid merely because the class to which it applies consists of only one person. A single body or institution may form a class. A legislation specifically directed to a named person or body would be valid if, on account of some special circumstances, or reasons applicable to that person, and not applicable to others, the single person could be treated as a class by himself. The Act may however be bad if there are no special circumstances differentiating the person concerned from the rest, or if others having the same attributes are not covered by the Act. A restriction imposed by reason of a statute, can be upheld in the event it is found that the person to whom the same applies, forms a separate and distinct class and such classification is a reasonable one based on intelligible differentia having nexus with the object sought to be achieved.[13]

The contention that the institution Indian Council of World Affairs (ICWA) was singled out and though there were several other institutions run by societies or other organizations which were in the grip of more serious mismanagement and maladministration were not even touched and Parliament chose to legislate as to one institution only, did not find favour with the Court. Moreover, no other institution is named or particularized so as to be comparable with ICWA. In the ICWA case successive Parliamentary Committees found substance in the complaints received that an institution of national importance was suffering from mismanagement and maladministration. The satisfaction of the President that emergent action was called for would not be vitiated merely because earlier the normal legislative process could not culminate in legislative enactments.[14]

A large cotton textiles mill employing a large labour force, closed down due to mismanagement. Parliament enacted an Act empowering the Central Government to appoint its own directors to take over the control and management of the company and its properties. A shareholder challenged the Act on the ground that since it singled out the company, it was discriminatory and bad under Art. 14. The Supreme Court by a majority declared the Act to be valid. Noting the background conditions leading to the passage of the Act in question, *viz.*, mismanagement of the company's affairs which prejudicially affected production of an essential commodity (*i.e.*, cloth) and had created serious unemployment among a section of the community, the Court pointed out that the facts with regard to the company were of an 'extraordinary' character and "fully justified the company being treated as a class by itself". Also, the petitioner failed to show that there were other companies in the same position as the company in question.

The minority's view in the instant case however was different. Accepting the proposition that a legislation having a reasonable classification could not be held to be unconstitutional even if its application was found to affect only one person, it, nevertheless, held the Act in question bad as it made no classification; it selected a particular company and imposed liabilities on it. The minority agreed that though presumption should be made in support of the constitutional validity of a law, yet it held that in the instant case such a presumption was excluded as discrimination was writ large over the face of the Act.[15]

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13. *John Vallamattom v. Union of India*, (2003) 6 SCC 611 : AIR 2003 SC 2902.
14. *Dharam Dutt v. Union of India*, (2004) 1 SCC 712 : AIR 2004 SC 1295.
15. *Charanjit Lal v. Union of India*, AIR 1951 SC 41 : 1950 SCR 869.

To put an end to protracted litigation which arose after the death of a rich jagirdar, the Hyderabad Legislature passed an Act allowing the claims of a few, and dismissing those of the other claimants. The Act was held invalid on the ground that it denied to a few persons a right to enforce their claims in a court and thus discriminated them from the rest of the community in respect of a valuable right which 'the law secures to them all'. The only purpose of the legislation was to end certain private disputes but that did not furnish any rational basis for the discrimination made. Continuance of a dispute even for a long period of time between rival claimants to the property of a private person is not such an unusual circumstance as to invest a case with special or exceptional features and make it a class by itself justifying its differentiation from all other cases of succession disputes.[16]

The principle of the above case was again applied in *Ram Prasad Sahi v. State of Bihar*.[17] The court of wards granted a lease of land to the appellant. Thinking it to be against law, the Bihar Legislature enacted legislation to cancel this particular lease. Holding the Act void, the Supreme Court stated that the dispute was a legal dispute pure and simple between two private parties. What the Legislature had done was to single out a certain individual and deny him the rights which every Indian had to have his case adjudicated upon by a judicial tribunal according to law. The presumption of constitutionality of a legislative enactment, would not assist the State when on the face of a Statute there is no classification at all, and no attempt has been made to select any individual or group with reference to any differentiating attribute peculiar to that individual or group and not possessed by others.

A special law passed for Shri Jagannath Temple was held valid for the temple held a unique position amongst the Hindu temples and so it could be given a special treatment.[18] Special provisions can be made for each university as each university is a class by itself. Art. 14 does not require that provisions of every University Act must always be the same.[19]

The Prime Minister is allowed the use of an Indian Air Force aircraft for non-official purposes (including election) but not so the leaders of other political parties. This is not discriminatory because in view of the P.M.'s status and duties, he is a class by himself. It is necessary to ensure his personal safety and enable him to discharge official business promptly so that national interests may not suffer.[20]

A law providing for taking over of Auroville by government does not infringe Art. 14 as the Auroville institution has a uniqueness of its own.[21] In the same category would fall a law made applicable to a few specified objects and persons. A law nationalising twelve specified sugar mills in the State of Uttar Pradesh was held valid as these mills were in intolerable economic condition.[22]

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16. *Ameerunnissa v. Mahboob Begum*, AIR 1953 SC 91 : 1953 SCR 404.
17. AIR 1953 SC 215 : 1953 SCR 1129.
18. *Bira Kishore Deb v. State of Orissa,* AIR 1964 SC 1501 : (1964) 7 SCR 32.
Also, *Tilkayat Shri Govindlalji v. State of Rajasthan,* AIR 1963 SC 1638 : (1964) 1 SCR 561.
19. *Azeez Basha v. Union of India,* AIR 1968 SC 692 : (1968) 1 SCR 833.
20. *P.V. Sastri v. Union of India,* AIR 1974 Del. 1.
21. *S.P. Mittal v. Union of India,* AIR 1983 SC 1 : (1983) 1 SCC 51.
22. *Ishwari Khetan Sugar Mills v. State of Uttar Pradesh,* AIR 1980 SC 1955 : (1980) 4 SCC 136.

A single institution is capable of being treated as a class by itself if there are special circumstances or reasons which are applicable to that institution. Moreover, it is clear from the language of Entries 62 and 63 that there can be legislation in respect of a single institution.[23]

A retired member of the State Electricity Board was appointed as its Chairman in 1982 for five years. Thereafter, his appointment was further extended for five years. Thus, he was to remain in office up to 1992. With the elections to the State Legislative Assembly of Himachal Pradesh, a new Chief Minister came in power in 1990. Before the respondent's appointment could come to an end, the State Government promulgated an ordinance fixing the age of retirement for members and the Chairman of the Board at 65. The ordinance was to apply not only to future appointees but also to the present incumbents in the Board.

The respondent-Chairman of the Board challenged the constitutional validity of the ordinance (which later became an Act of the State Legislature) under Art. 14, as he had to retire from the chairmanship of the Board on reaching the age of 65 years but before his tenure came to an end. The High Court quashed the notification retiring the chairman issued under the Ordinance on the ground that the provision fixing the age of retirement could apply only prospectively and not to the present incumbents in office. On appeal by the State Government, the Supreme Court reversed the High Court and, after an exhaustive review of the case-law, upheld the validity of the Ordinance in question.[24]

The Court ruled that no one could quarrel with the desirability of the policy that a terminal point of time be provided beyond which a chairman and members of the State Electricity Board must cease to hold office by operation of law. The law is in general terms. The fact that it applies to one person at the moment does not make it invalid. Art. 14 does not come in the way of a legislature enacting a law applicable to one single person if there is reasonable classification. In the words of the Court:[25]

> "The possibility of this legislation applying to one or more persons exists *in principle*. The fact that only one individual came to be affected cannot render the legislation arbitrary as violative of Art. 14. This is because S. 3 is in general terms and the incidents of its applying to one individual does not render the legislation invalid."

The Court also pointed out that the courts have always refrained from attributing *mala fides* to the Legislature.[26]

The Bihar Legislature enacted an Act to nationalise institutions fulfilling certain criteria. The programme for nationalisation was to be carried out in phases. Under the Act immediately only one institution was taken over. Accordingly, the Schedule to the Act in question mentioned only one institution for take-over, but there was a provision in the Act to amend the Schedule by adding more institutions. The Supreme Court held the Act valid in *Lalit Narayan Mishra Institute of Economic Development & Social Change, Patna v. State of Bihar*,[27] on the

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23. *Dharam Dutt v. Union of India*, (2004) 1 SCC 712 : AIR 2004 SC 1295.
24. *State of Himachal Pradesh v. Kailash Chand Mahajan*, AIR 1992 SC 1277 : 1992 Supp (2) SCC 351.
25. *Ibid.*, at 1305.
26. See, *K. Nagaraj v. State of Andhra Pradesh*, AIR 1985 SC 551 : (1985) 1 SCC 523.
27. AIR 1988 SC 1136.

ground that no question of singling one institution arose. The Court refused to accept the argument that a law in general terms but affecting only one person at the time becomes a single person's legislation and thus violates Art. 14. The Court observed:

> "When nationalisation has to be done in a phased manner, all the institutions cannot be taken over at a time. The nationalisation in a phased manner contemplates that by and by the object of nationalisation will be taken over."

Consequent upon the Bhopal Gas Disaster, Parliament enacted the Bhopal Gas Disaster (Processing of Claims) Act, 1985. Under this Act, the Central Government took over the exclusive right of representing and acting on behalf of every victim for claiming compensation from the concerned multinational corporation. In place of the victims, the Central Government became entitled to file suits against the company for compensation. The validity of the Act was challenged on two main grounds, *viz.*, (*i*) Could Parliament enact such a law? (*ii*) Was the law not discriminatory under Art. 14? The Supreme Court upheld the law on both these grounds in *Charan Lal Sahu v. Union of India*.[28] The Court ruled that the Act in question was passed in recognition of the right of the sovereign to act as *parens patriae*. In the words of SABYASACHI MUKHARJI, C.J.:[29]

> "But there is no prohibition or inhibition, in our opinion, conceptually or jurisprudentially, for Indian State taking over the claims of the victims or for the State acting for the victims as the Act has sought to provide…."

The Court also ruled that the Act was not discriminatory as the victims formed a distinct class having several distinguishing marks deserving special treatment, *e.g.*, many of the victims of the tragedy could not have pursued the legal remedies on their own pitted as they were against a multinational and a big Indian corporation; the victims became exposed to a contingent of foreign contingency lawyers who descended on the scene. Again, in the words of SABYASACHI MUKHARJI, C.J.:[30]

> "….the claimants and victims can legitimately be described as a class by themselves different and distinct, sufficiently separate and identifiable to be entitled to special treatment for effective, speedy, equitable and best advantageous settlement of their claims. There indubitably is differentiation. But this differentiation is based on a principle which has rational nexus with the aim intended to be achieved by its differentiation. The disaster being unique in its character in the recorded history of industrial disasters and situated as the victims were against a mighty multinational with the presence of foreign contingency lawyers looming on the scene, in our opinion, there were sufficient grounds for such differentiation and different treatment. In treating the victims of the gas leak disaster differently and providing them a procedure which was just, fair, reasonable and which was not unwarranted or unauthorized by the Constitution, Art. 14 is not breached."

(s) TWO LAWS

If there are two laws covering a situation, one more drastic than the other, there is the danger of discrimination if the Administration has a discretion to apply any of these laws in a given case. Of the two persons placed in similar situa-

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28. AIR 1990 SC 1480 : (1990) 1 SCC 613.
29. *Ibid.*, 1506.
30. *Ibid.*, at 1533.

tion, one may be dealt with under the drastic law and the other under the softer law. To minimise any chance of such discrimination, the courts insist that the drastic law should lay down some rational and reasonable principle or policy to regulate administrative discretion as to its application. If the drastic law fails to do so, then it will be void under Art. 14.

This proposition was applied by the Supreme Court before 1974. To evict a person from unauthorised occupation of public premises, a Punjab Act provided for a summary procedure. The collector had not two choices; he could either himself order eviction under the special law, or could file an ordinary suit in a court for eviction under the general law. The Punjab law was declared void under Art. 14 because being a drastic law it laid down no policy to guide the collector's choice as to which law to follow in what cases; the matter was left to his unguided discretion and so there could be discrimination within the same class *inter se*, *viz.*, unauthorised occupants of public premises.[31]

A logical consequence of this ruling was the amendment of the general law to provide that no court would have jurisdiction to entertain any suit in respect of eviction of unauthorised occupants of public premises. With this amendment the law became valid for now only one procedure was available to evict unauthorised occupants. The procedure by way of suit was no longer available, and therefore, the vice of discrimination disappeared.[32]

The Supreme Court reconsidered the matter in *Maganlal Chhagganlal v. Greater Municipality*.[33] Here was involved the question of the validity of a Bombay Act which was *pari passu* with the earlier Punjab Act declared invalid in the *Northern India* case. The Supreme Court felt worried by the fact that the argument based on the availability of two procedures, one more onerous than the other and, therefore, discriminatory, should have led to the apparently harsher procedure becoming the rule and resort to ordinary civil courts being barred. The Court wondered as to "who benefits by resort to the ordinary civil courts being barred." The Court found it difficult to reconcile itself to the position that the mere possibility of resort of the civil court should make invalid a procedure which would otherwise be valid. Therefore, *Northern India* was now overruled, and the Bombay Act was upheld. The proposition regarding discriminatory procedures was rephrased as follows: where a statute providing for a more drastic procedure different from the ordinary procedure covers the whole field covered by the ordinary procedure, without any guidelines as to the class of cases in which either procedure is to be resorted to, the statute will be hit by Art. 14. Even there, a provision for appeal may cure the defect.

Further, if in such cases from the preamble and surrounding circumstances, as well as the provisions of the statutes themselves explained and amplified by affidavits, necessary guidelines could be inferred, the statute will not be hit by Art. 14. Then again, where the statute itself covers only a class of cases, the statute will not be bad. The fact that in such cases the executive will choose which cases are to be tried under the special procedure will not affect the validity of the stat-

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31. *Northern India Caterers v. State of Punjab*, AIR 1967 SC 1581 : (1967) 3 SCR 399.
Also see, *Rayala Corpn. v. Director of Enforcement*, AIR 1970 SC 494 : (1969) 2 SCC 412.

32. *Hari Singh v. Military Estate Officer, New Delhi*, AIR 1972 SC 2205 : (1972) 2 SCC 239.

33. AIR 1974 SC 2009. Also, *Ahmedabad Municipality v. Ramanlal*, AIR 1975 SC 1187 : (1975) 1 SCC 778; *Chairman, Auqaf Comm. v. Suraj Ram*, AIR 1976 J&K 14.

ute. Therefore, the Court held that the argument that the mere availability of two procedures will vitiate one of them, that is the special procedure, is not supportable.

Applying the proposition in the instant case, the Court held that the statute in question lays down the purpose behind it, *i.e.* speedy eviction of unauthorised occupants of government premises. This provides sufficient guidance to the authorities in whom the power is vested. It would be extremely unreal to hold that an officer would resort to the dilatory court proceedings in any case when he has at his disposal a quick procedure. The provisions of the Act "cannot be struck down on the fanciful theory that power would be exercised in such an unrealistic fashion". The fact that the Legislature considered that the ordinary procedure is inefficient or ineffective in evicting unauthorised occupants of government property, and therefore provided a special procedure for it, is a clear guidance for the authorities charged with the duty of evicting unauthorised occupants. In addition, the Court also held that the difference between the ordinary court procedure and the special procedure was not so unconscionable as to attract the vice of discrimination. Under the special procedure, there was a provision for the concerned person to be heard and represented by a lawyer.[34] "After all Art. 14 does not demand a fanatical approach."

The Court explained *Maganlal* later in *Iqbal Singh*[35] by saying that mere availability of two procedures would not justify the quashing of a provision as being violative of Art. 14. What is necessary to attract the inhibition of Art. 14 is that there must be "substantial and qualitative differences" between the two procedures so that one is really and substantially more drastic than the other. Thus, as a result of *Maganlal*, judicial attitude towards differential procedures has become very tolerant.[36]

Under S. 5(1)(*a*) of the Minimum Wages Act, the government was required to appoint a committee representing all interests to hold a detailed enquiry regarding the concerned employment before advising the government in the matter of fixing minimum wages. Under S. 5(1)(*b*), the government could itself publish proposals for minimum wages and give two months time to the affected persons to make representations.

S. 5 was challenged as discriminatory on the ground that the procedure under (*a*) was more advantageous to the employers than under (*b*) as their representatives on the committee could have a better say, and there was no guidance given to the government as to when it should follow which procedure. The Court rejected the challenge saying that the purpose of both procedures was to collect necessary data concerning an employment; the advice of the committee in (*a*) was not binding on the government, the government could adopt either of the procedures depending upon whether it has sufficient data or not concerning an employment to enable it to fix minimum wages and so there was no discrimination.[37]

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34. Also see, *Pandia Nadar v. State of Tamil Nadu*, AIR 1974 SC 2044 : (1974) 2 SCC 539.
35. *Iqbal Singh v. State (Delhi Adm.)*, AIR 1977 SC 2437.
36. The *Maganlal Chhaganlal* doctrine has been applied in *State of Gujarat v. Dharam Das*, AIR 1982 SC 781; *State of Uttar Pradesh v. Arshad Ali Khan*, AIR 1982 SC 780 : (1981) 4 SCC 144; *S.T. Commr. v. Radhakrishan*, AIR 1979 SC 1588; *Director of Industries, U.P. v. Deep Chand*, AIR 1980 SC 801 : (1980) 2 SCC 332.
37. *C.B. Boarding & Lodging v. State of Mysore*, AIR 1970 SC 2042 : (1969) 3 SCC 84.

Under the Bombay Town Planning Act, 1954, land could be acquired by following a procedure less favourable, and paying less compensation, than the Land Acquisition Act. It was argued that the existence of two laws for acquiring land, one less favourable than the other, was discriminatory under Art. 14. But the Supreme Court rejected the contention in *Prakash Amichand Shah v. State of Gujarat.*[38] The Court ruled that while the State could acquire property under the Land Acquisition Act, the local authority working under the Planning Act could do so only under that Act. There was no option to the local authority to resort to one or the other of the alternative methods which result in acquisition. Also, since the acquisition under the Town Planning Act was for a particular purpose, the Act could provide for payment of compensation for such acquisition and it was not necessary to pay compensation under the Land Acquisition Act. The Court thus found that there was no denial of equal protection of laws or the equality before the law in the instant case.

But when two laws covering the same matter differ on substantive points, the harsher law may still be held invalid under Art. 14. When there existed two legal provisions for acquisition of land for a public purpose, lower compensation being payable under the one law than under the other, the drastic law was held bad because there was no classification to whom it would apply and the State could give one owner different treatment from the other equally situated.[39]

(t) SPECIAL COURTS

In *State of West Bengal v. Anwar Ali Sarkar*,[40] was involved a Bengal law permitting setting up of special courts for the 'speedier trial' of such 'offences', or 'classes of offences' or 'cases', or 'classes of cases', as the State Government might direct by a general or special order. These courts were to follow a procedure less advantageous to the accused in defending himself than the procedure followed by the ordinary criminal courts.

The Act was held invalid as it made no reasonable classification, laid down "no yardstick or measure for the grouping either of persons or of cases or of offences" so as to distinguish them from others outside the purview of the Act. The government had the power to pick out a case of a person and hand it over to the special tribunal while leaving the case of another person similarly situated to be tried by the ordinary criminal courts. It gave 'uncontrolled authority' to the executive 'to discriminate'. The necessity of 'speedier trial' was held to be too vague, uncertain and indefinite criterion to form the basis of a valid and reasonable classification.

On the other hand, in *Kathi Raning Rawat v. Saurashtra*,[41] a provision practically similar to the one involved in the *Anwar Ali* case was held valid because

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38. AIR 1986 SC 468 : (1986) 1 SCC 581.

39. *Deputy Commissioner, Kamrup v. Durganath*, AIR 1968 SC 394 : (1968) 1 SCR 561; *Nagpur Improvement Trust v. Vithal Rao*, AIR 1973 SC 689 : (1973) 1 SCC 500; *Om Prakash v. State of Uttar Pradesh*, AIR 1974 SC 1202 : (1974) 1 SCC 628; *D.S. Rege v. Municipal Corp. of Greater Bombay*, AIR 1979 Bom. 311.

In *State of Kerala v. Cochin Town Planning Trust*, AIR 1980 SC 1438 : (1980) 3 SCC 554, the Court has observed that the basis of equity jurisprudence is that classification is not permissible for compensation purposes so long as differentia relied on has no rational relation to the object in view: *ibid.*, 1446. See also, *P.C. Goswami v. Collector of Darrang*, AIR 1982 SC 1214 : (1982) 1 SCC 439.

40. AIR 1952 SC 75 : 1952 SCR 284.

41. AIR 1952 SC 123 : 1952 SCR 435.

the Court found that a policy was stated in the preamble to the Act, and that the government was expected to select such offences, classes of offences and classes of cases for trial in special courts as were calculated to affect public safety, maintenance of public order, etc.

Comparing the above two cases, it would appear that the main difference in the terms of the statutes, which resulted in different judicial verdicts as to their validity, was that the preamble to the Saurashtra Act was more elaborately worded than that to the Bengal Act. While the term 'speedier trial' used in the Bengal Act to set up special courts was held to be indefinite, the words 'public safety, etc.' in the preamble to the Saurashtra Act were held to be more definite and as giving a guiding principle to control administrative discretion. In essence, therefore, the difference would appear to be more of a drafting nature rather than of substance.[42]

Though the principle that law should lay down the policy if discretion to classify is vested by it in the executive, and that the executive cannot be given an uncontrolled authority to differentiate, was applied in both cases, yet difference arose in its application to specific circumstances. However, in the Saurashtra law the provision authorising the government to pick out any individual 'case' for trial by a special court was held invalid as being discriminatory. The government could specify a 'class' of cases, offences or persons for trial by special courts, but it could not claim a power to send a single, specific 'case' out of a class to a special court for trial.

The principle laid down in the above cases has been reiterated and applied in several other cases pertaining to special courts, though the result reached by the courts may not always appear to be quite satisfactory. In *Kedar Nath v. State of West Bengal*,[43] the law setting up special courts mentioned the offences triable by them but gave a discretion to the government to allot cases for trial to these courts. Two questions were raised for the consideration of the Supreme Court: (i) Did the law disclose any reasonable classification as to the offences mentioned ? (ii) Was the discretion left with the government to select cases for trial by special courts valid?

The Court answered both the questions in the affirmative. As regards the first, it held that the types of offences mentioned in the Act were those which were widely prevalent during wartime and the policy was clear in the Act. It should however be noted that the Act in question contained no specific words to define the policy. The Court discovered the underlying policy by its own process of rationalization. On the second question, the argument that the government could make a discriminatory choice among persons charged with the same offence, submitting one case for trial to a special court and leaving the other for trial by an ordinary court, and thus discriminate within the same class, was rejected on the ground that the standards, policy and purpose of the Act were laid down in clear terms, and the administrative authority "is expected to select the cases to be brought before the courts in fulfilment of that policy".

So far as the power to refer specific cases was sustained, the *Kedar Nath* case goes beyond the *Saurashtra* case mentioned above, but a subtle difference be-

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42. See, *K. Haldar v. State of West Bengal*, AIR 1960 SC 457 : (1960) 2 SCR 646.
43. AIR 1953 SC 404 : 1954 SCR 30.

tween the situations in the two cases may be noted: whereas the *Saurashtra* law made no classification of offences itself and left the whole matter to the executive subject to the policy statement in its preamble, the law in the *Kedar Nath* case itself made the classification of offences for trial by special courts, and subject to this classification, power to refer specific cases was conferred on the executive. Nevertheless, by its holding in the *Kedar Nath* case, the Court did dilute to some extent the principle it evolved in the *Saurashtra* case,[44] for the government could pick and choose individual cases for trial by special courts.

In August, 1978, the President made a reference to the Supreme Court under Art. 143(1) of the Constitution,[45] seeking the Court's opinion on the constitutional validity of the Special Courts Bill proposing the setting up of special courts for speedy trial of offences committed by the holders of high public and political offices during the emergency of 1975-77. The proposed court was to be presided over by a sitting or retired High Court Judge to be appointed by the Central Government in consultation with the Chief Justice of India, and the accused could appeal to the Supreme Court against the verdict of such a court. The Supreme Court ruled that Parliament could make the law in question under entries 11A of List III and entry 77 of List I,[46] and that it did not infringe Art. 14 as the classification provided for by the Bill was valid. "The promulgation of emergency is not and cannot be a matter of normal occurrence in a nation's life, and "offences alleged to have been committed during the period of emergency constitute a class by themselves and so do the persons who are alleged to have utillised the high public or political offices by them as a cover or opportunity for the purpose of committing those offences."[47] The Court also invoked Art. 21 to assess the fairness of the procedure provided for in the Bill—this aspect is discussed later.[48]

The above-mentioned bill was enacted as the Courts Act, 1979 with one major change. Originally it was confined only to the trial of offences committed during the emergency, but, in Parliament, its scope was expanded so as to provide for setting up of special courts for trial of offences committed by those who held high "public or political offices" for all time to come. The Act was thus envisaged to be a permanent measure instead of being confined only to the emergency.

The Act was upheld by the Supreme Court in *State (Delhi Administration) v. V.C. Shukla*,[49] against challenge under Art. 14. The Court said that the main object of the Act was to provide for the speedy trial of certain class of offences, *viz.*, offences committed by person holding high public or political offices as a trust. Such persons have been placed in a separate class. For maintaining democracy, administrative efficiency and purity, it is necessary that when such persons commit serious abuse of power and are guilty of a breach of trust reposed in them, they form a special class of offenders. Quick disposal of such cases is necessary, for if such cases are allowed to have their normal, leisurely, span before normal courts, then the whole purpose in launching them may be frustrated. The term 'high public or po-

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44. For comprehensive discussion of these cases see the *Maganlal Chhagganlal* case, *supra*, footnote 36.
45. *Supra*, Ch. IV, Sec. F(g).
46. *Supra*, Ch. X, Secs. F and D.
47. AIR 1979 SC 478 : (1979) 1 SCC 380.
48. *Infra*, Ch. XXVI.
49. AIR 1980 SC 1382 : (1980) Supp SCC 249.

litical office' is not vague; it bears a clear connotation as it means persons holding top positions wielding large powers.

(u) UNREASONABLE LAWS

As has been explained by BHAGWATI, J., in *Bachan Singh v. State of Punjab,*[50] Rule of law which permeates the entire fabric of the Indian Constitution excludes arbitrariness. "Wherever we find arbitrariness or unreasonableness there is denial of rule of law." Art. 14 enacts primarily a guarantee against arbitrariness and inhibits state action, whether legislative or executive, which suffers from the vice of arbitrariness. "Every state action must be non-arbitrary and reasonable. Otherwise, the court would strike it down as invalid."

This new dimension of Art. 14 transcends the classificatory principle. Art. 14 is no longer to be equated with the principle of classification. It is primarily a guarantee against arbitrariness in state action and the doctrine of classification has been evolved only as a subsidiary rule for testing whether a particular state action is arbitrary or not. If a law is arbitrary or irrational it would fall foul of Art. 14. As an example, it has been held that any penalty disproportionate to the gravity of the misconduct would be violative of Art. 14.[51]

But controlled discretion exercisable according to a policy for a purpose clearly enunciated by a statute does not suffer from the vice of conferment of unrestricted discretion.[52]

A statutory provision providing for payment of compensation for the land acquired by the State from a person, in several annual instalments instead of one lump sum, is unreasonable. The Supreme Court has argued that the owner of the land would require compensation in lieu of land forthwith to re-establish himself by purchasing another piece of land and, therefore, compensation ought to be paid in one lump sum.[53] But section 2(6) of the West Bengal Sales Tax Act, 1994 which requires the transporter to disclose the name of the consignor or consignee was not oppressive, irrelevant or arbitrary. Moreover for the purpose of such disclosure no special proforma is mandatory nor any machinery required to effectuate the provision.[54] A mere hardship cannot be a ground for striking down a valid legislation unless it is held to be suffering from the vice of discrimination or unreasonableness.[55]

The Court has, however, pronounced a self imposed restraint that ordinarily it will not determine the merits of the legislation and arrive at a conclusion that it is arbitrary violating Art. 14. The Court has pointed out that "inquisitorial inquiry"

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50. AIR 1982 SC 1336; *infra,* Ch. XXVI.
Also, *E.P. Royappa v. State of Tamil Nadu,* AIR 1974 SC 555 : (1974) 4 SCC 3; *Maneka Gandhi v. Union of India,* AIR 1978 SC 597 : (1978) 1 SCC 248; *Ramana D. Shetty v. International Airport Authority,* AIR 1979 SC 1628 : (1979(3 SCC 489; *Ajay Hasia v. Khalid Mujib,* AIR 1981 SC 487 : (1981) 1 SCC 722; see, *infra,* note 48 on 1042.

51. *Bhagat Ram v. State of Himachal Pradesh,* AIR 1983 SC 454, 460 : (1983) 2 SCC 442; For unreasonable and arbitrary provisions see *Salem Advocate Bar Association v. Union of India,* (2005) 6 SCC 344 : AIR 2005 SC 3353.

52. *Federation of Railway Officers Association v. Union of India,* (2003) 4 SCC 289 : AIR 2003 SC 1344.

53. *State of Tamil Nadu v. Ananthi Ammal,* AIR 1995 SC 2114 at 2120 : (1995) 1 SCC 519.

54. *State of West Bengal v. E.I.T.A India Ltd.,* (2003) 5 SCC 239 : AIR 2003 SC 4126.

55. *Prafulla Kumar Das v. State of Orissa,* (2003) 11 SCC 614 : AIR 2003 SC 4506.

is beyond the province of judicial review.[56] Qualifying the word "ordinarily" implies that in certain situations the Court might consider the merits. The Court has pointed out in Kerala Scheduled Tribes case that there is a presumption that the ground realities are known to the State, and, therefore, "if anybody raises a contrary contention it would be for him to bring on record sufficient material to lead the Court to arrive at a conclusion that "State's action was arbitrary".[57]

A law which was justified at the time of its enactment may, with the passage of time, become arbitrary and unreasonable with the change in circumstances.

In Motor General Traders v. State of Andhra Pradesh,[58] the Supreme Court has observed:

> "What was once a perfectly valid legislation may, in course of time, become discriminatory and liable to challenge on the ground of its being violative of Art. 14." In *Synthetics and Chemicals Ltd. v. State of Uttar Pradesh*,[59] the Supreme Court has observed that "restriction valid under one circumstance may become invalid in changed circumstances".

A provision not unconstitutional at the commencement of the Constitution can be rendered unconstitutional by later developments and thinking such as gender equality.[60]

Under the Bombay Rent Restriction Act, rents of premises were frozen at the level of 1st September, 1940. The Supreme Court declared the provision to be unreasonable and arbitrary and violative of Art. 14 in the year 1998 in view of so much inflation in the country since 1940.[61]

The Bar Council made a rule debarring persons aged above 45 years from enrolment as an advocate. The Supreme Court declared the rule to be discriminatory, unreasonable and arbitrary and thus violative of the principle of equality enshrined in Art. 14.[62]

Reservation by institutional preference is not violative of Art. 14 so long as it is reasonable and reasonableness has to be judged from a pragmatic point of view having regard to changed circumstances and practical realities.[63]

Merely because an appeal is not provided in a statute, would not by itself render a statute constitutionally invalid. However, if no appeal is provided for under a statute, an aggrieved party will still have the remedy of approaching the High Courts and Supreme Court in exercise of its power of Judicial review. Hence S. 3 Maharashtra Act. 17 of 1986 read with S. 9 Maharashtra Act 15 of

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56. *State of Kerala v. Peoples Union for Civil Liberties, Kerala State Unit*, (2009) 8 SCC 46 : (2009) 9 JT 579.

57. *State of Kerala v. Peoples Union for Civil Liberties, Kerala State Unit*, (2009) 8 SCC 46, 91. See also *V. Subramanyam v. Rajesh Raghuvendra Rao*, (2009) 5 SCC 608: AIR 2009 SC 1858.

58. AIR 1984 SC 121 : (1984) 1 SCC 222. Also, *Rattan Arya v. State of Tamil Nadu*, AIR 1986 SC 1444 : (1986) 3 SCC 385.

59. AIR 1990 SC 1927 : (1990) 1 SCC 109.

60. *John Vallamattom v. Union of India*, (2003) 6 SCC 611 : AIR 2003 SC 2902.

61. *Malpe Vishwanath Acharya v. State of Maharashtra*, AIR 1998 SC 602 : (1998) 2 SCC 1.

62. *Indian Council of Legal Aid and Advice v. Bar Council of India*, AIR 1995 SC 691 : (1995) 1 SCC 732.

63. *Saurabh Choudri v. Union of India*, (2003) 11 SCC 146 : AIR 2004 SC 361.

1987 abolishing appeals from original or appellate jurisdiction, was constitutionally invalid.[64]

D. ADMINISTRATIVE DISCRETION & ART. 14

A common tendency in modern democracies is to confer discretionary power on the government or administrative officers. The power is usually couched in very broad phraseology and gives a large area of choice to the administrator concerned to apply the law to actual factual situations.

In order to ensure that discretion is properly exercised, it is necessary that the statute in question lays down some norms or principles according to which the administrator has to exercise the discretion. Many a time the statutes do not do this and leave the administrator free to exercise his power according to his judgment. This creates the danger of official arbitrariness which is subversive of the doctrine of equality. To mitigate this danger, the courts have invoked Art. 14. In course of time, Art. 14 has evolved into a very meaningful guarantee against any action of the Administration which may be arbitrary, discriminatory or unequal.[65]

This principle manifests itself in the form of the following propositions:

(1) A law conferring unguided and unrestricted power on an authority is bad for arbitrary power is discriminatory.

(2) Art. 14 illegalises discrimination in the actual exercise of any discretionary power.

(3) Art. 14 strikes at arbitrariness in administrative action and ensures fairless and equality of treatment.

(i) CONFERRING ABSOLUTE DISCRETION

Proposition (1), stated above, envisages that a law conferring absolute or uncontrolled discretion on an authority negates equal protection of law because such power can be exercised arbitrarily so as to discriminate between persons and things similarly situated without reason.[66] As Bhagwati, J., has observed: "The law always frowns on uncanalised and unfettered discretion conferred on any instrumentality of the State."[67] Where power granted is open to use disproportionate to purpose to be achieved is invalid in the absence of guidelines or principles or norms which are 'essential' for exercise of such power.[68]

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64. *Jamshed N. Guzdar v. State of Maharashtra,* (2005) 2 SCC 591 : AIR 2005 SC 862. *Quare*: Whether appellate and supervisory jurisdiction could be alternative.

65. *Shrinivasa Rao v. J. Veeraiah,* AIR 1993 SC 929; *R.L. Bansal v. Union of India,* AIR 1993 SC 978 : 1992 Supp (2) SCC 318.

66. For discussion on proposition (2) See, *infra*, (ii) on 1272, under the heading "Administrative Discrimination".

67. *Sheo Nandan Paswan v. State of Bihar,* AIR 1987 SC 877, 895 : (1987) 1 SCC 288; see also *Ajit Kumar Nag v. GM (PJ) Indian Oil Corpn. Ltd.,* (2005) 7 SCC 764 : AIR 2005 SC 4217.

68. *District Registrar and Collector v. Canara Bank,* (2005) 1 SCC 496 : AIR 2005 SC 186.

The Court can veto any conferment of discretionary power on an authority if it is too broad, sweeping or uncanalised. The Supreme Court has laid down the applicable principle in the following words in *Naraindas*:[69]

> "Article 14 ensures equality before law and strikes at arbitrary and discriminatory state action….
>
> If power conferred by statute on any authority of the State is vagrant and unconfined and no standards or principles are laid down by the statute to guide and control the exercise of such power, the statute would be violative of the equality clause, because it would permit arbitrary and capricious exercise of power, which is the antithesis of equality before law".

In *Sudhir Chandra*,[70] the Supreme Court has observed:

> "… Our Constitution envisages a society governed by rule of law. Absolute discretion uncontrolled by guidelines which may permit denial of equality before law is the antithesis of rule of law. Absolute discretion not judicially reviewable inheres the pernicious tendency to be arbitrary and is therefore violative of Art. 14. Equality before law and absolute discretion to grant or deny benefit of the law are diametrically opposed to each other and cannot coexist."

It means that the legislature cannot validly enact a provision conferring naked or arbitrary power on the Administration to be exercised by it in its absolute discretion. No law ought to confer excessive discretionary power on any authority. The court can veto conferment of discretionary power on an authority if it finds it to be naked or arbitrary. S.73 of the Stamp Act, 1899 (as applicable in the Andhra Pradesh) has been held to suffer from the vice of excessive delegation, since (i) there were no guidelines as to the persons who may be authorized by the Collector, and (ii) there was no requirement of reasons being recorded by the Collector or the person authorized for his belief necessitating search, and (iii) the power of impounding documents could be exercised without giving notice or a chance to make good the deficit stamp duty, except in case of documents in custody of a bank (no reasons having being given for making the distinction), and the power to adjudicate upon need for impounding documents in all cases being vested in the person authorized. A discretionary power may not necessarily be a discriminatory power but where a statute confers a power on an authority to decide matters of moment without laying down any guidelines or principles or norms, the power has to be struck down as being violative of Article 14. The A.P. Amendment permits inspection being carried out by the Collector by having access to the documents which are in private custody i.e. custody other than that of a public officer. According to the Court it is clear that this provision empowers invasion of the home of the person in whose possession the documents "tending" to or leading to the various facts stated in Section 73 are in existence. Section 73

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69. *Naraindas v. State of Madhya Pradesh*, AIR 1974 SC 1232 : (1974) 4 SCC 788; Guidelines or principles or norms for exercise of discretionary power is essential. see also *District Registrar and Collector v. Canara Bank*, (2005) 1 SCC 496 : AIR 2005 SC 186. See also *Punjab Dairy Development Board v. Cepham Milk Specialities Ltd.*, (2004) 8 SCC 621 : AIR 2004 SC 4466, impost of cess on the licenced capacity of the producer of milk and dairy products following *Kishan Lal Lakhmi Chand v. State of Orissa*, 1993 Supp (4) SCC 461; See also *Raichurmatham Prabhakar v. Rawatmal Dugar*, (2004) 4 SCC 766 : AIR 2004 SC 3625; Rent Act conferring arbitrary and unreasonable power.

70. *Sudhir Chandra v. Tata Iron & Steel Co. Ltd.*, AIR 1984 SC 1064, 1071 : (1984) 3 SCC 369.

being one without any safeguards as to the probable or reasonable cause or reasonable basis or materials violates the right to privacy both of the house and of the person. Under the garb of the power conferred by Section 73 the person authorized may go on rampage searching house after house i.e. residences of the persons or the places used for the custody of documents. The possibility of any wild exercise of such power may be remote, but then on the framing of Section 73 the possibility cannot be ruled out. Any number of documents may be inspected, may be seized and may be removed and at the end the whole exercise may turn out to be an exercise in futility. The exercise may prove to be absolutely disproportionate to the purpose sought to be achieved. A reasonable nexus between stringency of the provision and the purpose sought to be achieved must exist[71]

The rationale underlying this proposition is that unbridled discretionary power may degenerate into arbitrariness, or may result in discrimination and, thus, contravenes Art. 14 which bars discrimination.[72]

To be valid, discretionary power ought to be hedged by policy, standards, guidelines or procedural safeguards to regulate its exercise otherwise the court may declare a provision conferring sweeping powers on the Administration as void. Bhagwati, J., has enunciated the principle in *Maneka Gandhi*[73] as follows:

> "… when a statute vests unguided and unrestricted power in an authority to affect the rights of a person without laying down any policy or principle which is to guide the authority in exercise of this power, it would be affected by the vice of discrimination since it would leave it open to the Authority to discriminate between persons and things similarly situated."

The above-mentioned principle is often invoked by the courts to assess the validity of laws conferring discretionary power. There is voluminous case-law in this area, but only a few illustrations may be given here to denote how the courts apply the principle in practice. A fuller discussion on this topic falls appropriately in the realm of Administrative Law.[74] In the context of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971, the Supreme Court has held that the initiation of proceedings under the Act must be as a last resort and the doctrine of proportionality should be applied to find out whether the power has been reasonably exercised.[75]

A statutory provision authorising the State Government, if it considers it necessary or expedient, to requisition by a written order any movable property and pay such compensation to the owner thereof as it may determine, is bad as it confers uncontrolled power on the government. There are no guidelines in the law regarding the object or purpose for which the government could requisition any

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71. *District Registrar and Collector v. Canara Bank*, (2005) 1 SCC 496 : AIR 2005 SC 186.
72. *District Registrar and Collector –vs- Canara Bank* (2005) 1 SCC 496 : AIR 2005 SC 186.
73. *Maneka Gandhi v. Union of India*, (1978) 2 SCJ at 350.
Also see, *E.P. Royappa v. State of Tamil Nadu*, AIR 1974 SC 555 : (1974) 4 SCC 3
74. For a detailed discussion on this topic, see, JAIN, *A TREATISE ON ADM. LAW*, I, Ch. XVIII; JAIN, *CASES & MATERIALS ON ADM. LAW*, III, Ch. XV; see also *Indra Parkash Gupta v. State of J & K*, (2004) 6 SCC 786 : AIR 2004 SC 2523.
75. *Teri Oat Estates (P) Ltd. v. U. T. Chandigarh*, (2004) 2 SCC 130 : (2003) 10 SCALE 1016.

movable property; there is no requirement that the property can be requisitioned only for a public purpose.[76]

A regulation made by Air India International, a statutory corporation, fixed the normal age of retirement of air hostesses at 35 years but authorised the managing director to extend the same to 45 years at his option subject to other conditions being satisfied. The regulation was held bad as it armed the managing director with uncanalized and unguided discretion to extend the age of retirement of any air hostess. No guidelines, principles or norms were laid down subject to which the power was to be exercised.[77] Nor was there any procedural safeguard available to an air hostess who was denied extension.

S. 6(4) of the U.P. Industrial Disputes Act, 1947, authorised the State Government to remit an order of a labour tribunal for reconsideration of the adjudicating authority and that authority was to submit the award to the government after reconsideration. The Supreme Court noted that S. 6(4) did not require the Government to hear the parties before remitting the award to the concerned adjudicating authority, the Government was not required to give reasons for remitting the award; the Government was not required to inform the authority the specific points on which it was to reconsider the award. In *B.B. Rajwanshi v. State of Uttar Pradesh*,[78] the Supreme Court declared S. 6(4) unconstitutional under Art. 14. The Court observed:

> "The provision cannot be upheld in the absence of necessary statutory guidelines for the exercise of the power conferred by it having regard to the fact that the proceeding before the labour court or the industrial tribunal is in the nature of quasi-judicial proceeding where parties have adequate opportunity to state their respective cases, to lead evidence and make all their submissions."

S. 6(4) was so widely worded that it was likely to result in grave injustice to a party in whose favour an award was made as S. 6(4) could be used to re-open the whole case. S. 6(4) conferred "unguided and uncontrolled powers" on the State Government. The power could be used arbitrarily to favour one party over the other; the power was capable of serious mischief.[79] The Court refused to accept the argument that the Government could seek necessary guidance from the object and content of the Act.

In practice, however, courts show a good deal of tolerance and deference towards conferment of discretion, and it is only in an extreme situation that a statutory provision is declared invalid on the ground of conferring excessive administrative discretion. There are a number of cases in which conferment of broad discretion has been upheld on such grounds as: the statutory provision conferring power has sufficient guidelines, principles or policies to regulate the exercise of power; the power has been conferred on a high official who is not expected to misuse the same but is expected to exercise the power reasonably and rationally;[80] there are procedural safeguards subject to which the power is to be

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76. *State of Punjab v. Khan Chand*, AIR 1974 SC 543 : (1974) 1 SCC 549.
77. *Air India v. Nergesh Meerza*, AIR 1981 SC 1829 : (1981) 4 SCC 335.
78. AIR 1988 SC 1089 : (1988) 2 SCC 415.
79. *Ibid.*, 1096.
80. *Chinta Lingam v. Union of India*, AIR 1971 SC 474 : (1970) 3 SCC 768; *State (Delhi Adm.) v. V.C. Shukla*, AIR 1980 SC 1382 : 1980 (3) SCR 500; *infra*.

exercised, such as, natural justice, recording of reasons for the decision, provision of appeal to a higher authority, etc.[81]

In *Laxmi Divi*[82] the court has reiterated the principle that mere likelihood of abuse of discretionary power conferred under statute would not render the statutory provision unconstitutional. There is always a difference between a statute and the action taken under a statute *i.e.* the statute may be valid and Constitutional but the action taken under it is invalid. Thus while considering the validity of Section 47A of the Stamp Act the Court held that an arbitrary market value whether or not based on extraneous considerations can always be challenged in judicial review proceedings.

As regards laying down of principles or guiding norms, it has been held, for instance, that it is not essential that the very section in the statute which confers the power should also lay down the rules of guidance, or the policy for the administrator to follow. If the same can be gathered from the preamble, or the long title of the statute and other provisions therein, the discretion would not be regarded as uncontrolled or unguided and the statute in question will not be invalid. At times, even vague policy statements to guide administrative discretion have been held by the courts as complying with Art. 14.[83]

An Orissa Act authorised the State Government to take over any estate free from all encumbrances. According to its preamble, the Act was passed in pursuance of the Directive Principles of State policy to secure economic justice to all.[84] The Supreme Court ruled that there was a clear enunciation of the policy in the Act, and the discretion vested in the government was not absolute as it had to be exercised in the light of this policy. All estates in the State could not be taken over at once due to financial difficulties and, therefore, in the very nature of things it was necessary to give "a certain amount of discretionary latitude to the State Government."[85]

The Kerala Education Bill gave a broad power of control to the government over private schools. As for example, government could recognise or not a newly established school, or could take over any school. The Supreme Court held that the general policy of the Bill was deducible from its preamble and the title, and the same was further reinforced by more definite statements of policy in different clauses. The government was to exercise its discretion to implement that policy. The power to take over schools could be exercised only after the Assembly

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81. *Sukhwinder Pal Bipan Kumar v. State of Punjab*, AIR 1982 SC 65 : (1982) 1 SCC 31; *Gram Saba, Shahzadpur v. State of Punjab*, AIR 1982 P&H 33; *Shiv Dutt Rai Fateh Chand v. Union of India*, AIR 1984 SC 1194, 1212 : (1983) 3 SCC 529.

82. *Govt. of Andhra Pradesh v. P. Laxmi Devi*, (2008) 4 SCC 720 : AIR 2008 SC 1640.

83. *Chandrakant Saha v. Union of India*, AIR 1979 SC 314 : (1979) 1 SCC 285; *Organo Chemical Industries v. Union of India*, AIR 1979 SC 1803 : (1979) 4 SCC 573; *New India Industrial Corp. Ltd. v. Union of India*, AIR 1980 Del 277; *R.R. Verma v. Union of India*, AIR 1980 SC 1461 : (1980) 3 SCC 288; *State (Delhi Administration) v. V.C. Shukla*, AIR 1980 SC 1399; *A.K. Roy v. Union of India*, AIR 1982 SC 710 : (1982) 1 SCC 271; for discussion on Roy, see, *infra*, under *Preventive Detention*, Ch. XXVII, Sec. B; *Shri Ram Bearings Ltd. v. Union of India*, AIR 1982 Pat. 93; *State of Mysore v. M.L. Nagade & Gadap*, AIR 1983 SC 762 : (1983) 3 SCC 253; *Ashok K. Yadav v. State of Haryana*, AIR 1987 SC 454 : (1985) 4 SCC 417.

Also see, M.P. JAIN, *THE EVOLVING INDIAN ADM. LAW*, 93-102 (1983).

84. See, *infra*, Ch. XXXIV.

85. *Biswambhar v. State of Orissa*, AIR 1954 SC 139 : 1954 SCR 842.

Also, *Bhairebendra v. State of Assam*, AIR 1956 SC 503 : 1956 SCR 303.

passed a resolution authorising the government to do so. Thus the Bill was held valid under Art. 14.[86]

S. 10(1) of the Industrial Disputes Act empowers the government to refer an industrial dispute to a board for settlement, or a court of enquiry, or a tribunal for adjudication. It was challenged on the ground that it gave arbitrary power to the government to discriminate between parties similarly situated. Rejecting the contention, the Court observed that "no two cases are alike in nature", and the industrial disputes which arise in particular establishments require to be treated having regard to the situation prevailing in the same. The discretion is not uncontrolled as the criteria to exercise it are to be found within the Act itself.[87]

A Bihar Act enacted that every appointment, dismissal, removal of any teacher of a college made during November, 1961, and March, 1962, would be subject to such order as the Chancellor "may, on the recommendation of the University Service Commission", pass. The provision literally appears to give uncanalised powers to the Chancellor to do what he liked with respect to the said appointments. The Court however 'read down' the provision and held it valid. The Chancellor's authority was only to satisfy himself that the said appointments etc., were in accordance with the relevant University Act both as to the substantive and procedural aspects thereof. Then, before passing the order, he would receive recommendation from the University Commission which was bound to give a hearing to the person concerned. This was not uncanalised power.[88]

The power conferred by S. 10(3)(*c*) of the Passport Act on the Passport Authority to impound a passport "in the interests of general public" has been held to be not unguided or uncontrolled. The ground is not vague and indefinite. These words have a well-defined meaning as they have been taken from Art. 19(5).[89] There are several procedural safeguards as well, *e.g.*, recording of reasons for impounding the passport, supplying a copy thereof to the affected person, and an appeal from him to a higher authority and hearing of the affected person.[90]

Under S. 105 of the Customs Act, if the Assistant Collector has reason to believe that some goods or documents are secreted, he can authorize any officer of customs to search for the same. The Assistant Collector is not obligated to give reasons for his belief, or to give the particulars of the goods or the documents. Nevertheless, the Supreme Court rejected the argument that arbitrary power was conferred on the Assistant Collector to make a search.

The Court ruled that not only a policy has been laid down but effective checks on his exercise of the power to search have been imposed. The policy is that the search could be in regard to the goods liable to be confiscated, or for the documents relevant to a proceedings under the Act. Though the Assistant Collector need not give reasons for ordering a search, yet if the existence of his belief is questioned in any collateral proceeding, he has to produce relevant evidence to sustain his belief. Under S. 165(5) of the Cr.P.C., he has to send forthwith to the

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86. *In Re Kerala Education Bill,* AIR 1958 SC 956 : 1958 SCR 995; *supra*.
87. *Niemla Mills Ltd. v. The 2nd Punjab Tribunal,* AIR 1957 SC 329 : 1957 SCR 335.
88. *Jagdish Pandey v. Chancellor, Bihar Univ.,* AIR 1968 SC 353 : 1968 (1) SCR 231; *supra*.
89. *Infra*, Ch. XXIV, Sec. F.
90. *Maneka Gandhi v. Union of India,* AIR 1978 SC 597, 631 : (1978) 1 SCC 248. *Infra,* Ch. XXIV.

Collector of Customs a copy of any record made by him and the Collector can certainly give necessary directions if the Assistant Collector goes wrong. Further, under S. 136(2) of the Customs Act, the Assistant Collector can be prosecuted and punished if he requires any person or place being searched without having reason to believe that he has such goods on his person, or that goods are secreted in that place.[91]

A land tax law was challenged on the ground that it left the power to determine land value to the subjective satisfaction of the tax commissioner. The argument was rejected for the proceedings before him were *quasi*-judicial and an appeal lay against his decision to a tribunal. The commissioner had to reach the decision about land value objectively on materials produced before him.[92]

Under the Income-tax Act, a person may be assessed either at the place of business or residence. But the Commissioner of Income-tax may transfer a case from one I.T.O. to another, while the Board of Revenue could transfer it from one place to another. The validity of the provision was sustained in *Pannalal Binjraj v. Union of India*,[93] in the face of an attack that it vested the executive with arbitrary power to transfer the case of an assessee from one place to another while others similarly situated could continue to be assessed at the place of their business or residence. The Court held that the provision had been made for 'administrative convenience' and 'convenient and efficient assessment' of income-tax and, therefore, the power to transfer assessment was not naked but was guided and controlled by the purpose which is to be achieved by the Act itself. The case may be characterised as the high water-mark of judicial deference to administrative convenience, for 'administrative convenience' by itself could hardly be regarded as a definite policy to control administrative discretion.[94]

A law authorised the competent authority to declare an area as a slum area, to declare house unfit for human habitation, and declare a slum area as a clearance area. These provisions were challenged under Art. 14 on the ground that they did not provide for a reasonable opportunity to the affected parties to be heard. The considerations which the authority had to keep in view in deciding whether an area was a slum area, or whether a house was unfit for habitation were laid down.

Considering the constitutionality of the impugned provisions, the Supreme Court stated in *State of Mysore v. Bhat*,[95] that there were two possible approaches to this question. One, to hold the provisions unconstitutional because they did not provide a reasonable opportunity for the affected parties to be heard. Two, if in the absence of anything to the contrary, the authority concerned was bound to follow the principles of natural justice, the law was not unconstitutional but the orders issued by the authority would be bad if issued without following natural justice.

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91. *Gopikisan v. Assistant Collector, Customs,* AIR 1967 SC 1298 : (1967) 2 SCR 340.
But see, *Abdul Wahab & Co., v. Asst. Commr., C.T.*, AIR 1968 Mys 100, where power of search and seizure conferred by the Mysore Sales Tax Act, 1957, was held invalid under Art. 14.

92. *Asst. Commr., U.L.T. v. B. & C. Co.,* AIR 1970 SC 169 : (1969) 2 SCC 55.

93. AIR 1957 SC 397 : 1957 SCR 233.

94. M.P. JAIN, Administrative Discretion and Fundamental Rights, 1 *JILI*, 247-8; M.P. JAIN, JUSTICE BHAGWATI and Indian Constitutional Law, 2 *JILI*, 36.

95. AIR 1975 SC 596 : (1975) 1 SCC 110.

The Court adopted the second alternative in the instant case. There was nothing in the Act militating against the opportunity to be heard. Further, the nature of the statutory duty was such that it implied an obligation on the authority to hear before deciding. The statutory provisions were therefore held valid, but the orders made under them were declared invalid as these had been issued without giving hearing to the affected persons. The Court could come to this conclusion because of the fact that the right of hearing is now given a wide operation in administrative proceedings.[1]

Broad discretion conferred on a high official may be held valid on the ground that he is expected to act with responsibility and not to misuse his power. As the Supreme Court observed in *Organo Chemicals*:[2]

> "When power is conferred on high and responsible officers they are expected to act with caution and impartiality while discharging their duties … The vesting of discretionary power in the State or public authorities or an officer of high standing is treated as a guarantee that the power will be used fairly and with a sense of responsibility."

To illustrate this principle, broad discretion conferred on the Comptroller and Auditor-General in respect of fixation of seniority among the staff was upheld on the ground that he was a high ranking constitutional authority who would act according to the needs of his department and without arbitrariness.[3] In many cases, large discretionary power conferred on the government without any built-in safeguards or guidelines, have been held valid on the ground that the government can be expected to exercise its powers with extreme caution and care.[4]

In *Union of India v. Annam Ramalingam*,[5] the Supreme Court upheld the validity of S. 28 of the Gold Control Act, 1968, against attack on the ground, that it provided no criteria or guidelines for the exercise of his power by the Administrator. S. 28 barred a licensed dealer, unless authorised by the Administrator, to carry on business as a money lender or banker on the security of ornaments or any other article. Although, there was no express rule prescribing the conditions or circumstances for grant of power had been made, that was held not to be decisive of the matter.

S. 28 being a part and parcel of the entire scheme of gold control as envisaged by the Act "the object of the enactment and the scheme affords sufficient guidance to the Administrator in the matter of exercising his discretion under that section". S. 28 was designed to prevent circumvention of other provisions of the Act. Against the Administrator's order a revision lay to the Central Government

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1. JAIN, *A TREATISE ON ADM. LAW*, I, Ch. IX.

2. AIR 1979 SC 1803 : (1979) 4 SCC 573.
For detailed comments on this case see, M.P. JAIN, Survey of Adm. Law *in I.L.I., XV ANNUAL SURVEY OF INDIAN LAW*, 324-6 (1979).

3. *Accountant-General v. S. Doraiswamy*, AIR 1981 SC 783 : (1981) 4 SCC 93.

4. *Laxmi Khandsari v. State of Uttar Pradesh*, AIR 1981 SC 873, 888 : (1981) 2 SCC 600.
In *A.K. Sabhapathy v. State of Kerala*, AIR 1983 Ker 24, the Kerala High Court said: "The fact that the power vests in the government is itself a sufficient safeguard".
But see, *contra*, *Jaswant Singh v. Sub-Divisional Officer*, AIR 1982 P&H 69, where the High Court has said that arbitrary discretionary power with no guidelines is not valid even though the power is conferred on a high authority like the State Government. This is only one of the many criteria to judge the constitutionality of a statute. This is a correct judicial attitude. Also see, *supra*.

5. AIR 1985 SC 1013 : (1985) 2 SCC 443.

"which implies that he will have to make judicious use of his power or discretion and any improper exercise is liable to be corrected by a higher authority".

On the whole, while the basic principle stands, *viz.*, uncontrolled discretion ought not to be conferred on the administration, the general judicial tendency is to apply this principle in a very flexible manner. The courts tend to uphold the law rather than declare it invalid on this ground which is done only in rare cases.[6] The proposition that high officials can be entrusted with large powers is untenable. Every person, high or low, is susceptible to misusing power in the absence of proper controls. The status of an officer is no guarantee that he will not misuse his powers.[7] In fact, the Supreme Court has itself warned that "wide discretion is fraught with tyrannical potential even in high personages, absent legal norms and institutional checks."[8]

A powerful reiteration of the principle that uncontrolled and unguided discretionary power is incompatible with Art. 14 comes from the Supreme Court in *Suman Gupta v. State of Jammu & Kashmir*.[9] The Medical Council of India in a report on undergraduate medical education, recommended that with a view to encouraging national integration, 10 per cent of the seats in every medical college, other than those where admissions were planned on an All India basis, should be reserved on a reciprocal basis for students from other States. This recommendation was later accepted at a joint conference of the Central Council of Health and the Central Family Welfare Council with the modification that such reservation should be 5%. Thereafter, the States of Andhra Pradesh, Jammu & Kashmir, Karnataka, Kerala and Tamil Nadu agreed among themselves to nominate candidates reserved in the medical colleges of the other participating States.

The instant case raised the question of the validity of the nominations made by the Governments of Andhra Pradesh and Jammu & Kashmir reciprocally in the medical colleges of each other on the ground that the nominations were made by the State Governments in their absolute and arbitrary discretion. The Supreme Court declared this procedure of nominating candidates by the governments "in their absolute and unfettered choice" to seats for the MBBS course in medical colleges outside their respective States on a reciprocal basis as unconstitutional under Art. 14.

While commending the goal of national integration as highly commendable and laudable, the Court has not accepted the thesis that the selection of candidates for that purpose must remain in the unlimited discretion and the uncontrolled choice of the State Government. "The exercise of all administrative power vested in public authority must be structured within a system of controls informed by both relevance and reason, relevance in relation to the object which it seeks to serve, and reason in regard to the manner in which it attempts to do so." Art. 14 is violated by powers and procedures which in themselves result in unfairness and arbitrariness. The Court has emphasized:

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6. Also see, *Jyoti Pd. v. Union Territory of Delhi*, AIR 1961 SC 1602 : (1962) 2 SCR 125; *Naraindas v. State of Madhya Pradesh*, AIR 1974 SC 1232.

7. *Kishan Chand v. Commr. of Police*, AIR 1961 SC 705, 715 : (1961) 3 SCR 135 (SUBBA RAO , J.)

8. *Mohinder Singh Gill v. Chief Election Commr.*, AIR 1978 SC 851 : (1978) 1 SCC 405.

9. AIR 1983 SC 1235 : (1983) 4 SCC 309.

> "…there is a well-recognised distinction between an administrative power to be exercised within defined limits in the reasonable discretion of designated authority and the vesting of an absolute and uncontrolled power in such authority. One is power controlled by law countenanced by the Constitution, the other falls outside the Constitution altogether."

Thus, if the State Government desires to advance the objective of national integration it must adopt procedures "which are reasonable and are related to the objective". It is incumbent on the government to adopt a criterion or restrict its power by reference to norms which, while designed to achieve its object, nevertheless, confine the flow of that power within constitutional limits.

The Court rejected an argument of the State Governments that as the governments finance medical education within their respective States, they are entitled to exercise absolute discretion in the nomination of the candidates to seats in medical colleges outside the States concerned, "specially when the nomination is part of a reciprocal arrangement between the different States."

The Court directed the Medical Council of India "to formulate a proper constitutional basis for determining the selection of candidates for nomination to seats in medical colleges outside the State in the light of the observations contained in this judgment." Until such a policy is formulated and concrete criteria are embodied in the selection procedure, the nominations are to be made by selecting candidates strictly on merit, the candidates nominated being those in order of merit, immediately below the candidates selected for admission to the medical college of the home State.

S. 3 of the Prevention of Corruption Act, 1988, empowers the State Government to appoint as many special Judges as may be necessary "for such case or group of cases" as may be specified in the notification. The validity of this provision was challenged under Art. 14 on the ground that it confers unfettered, unguided and absolute discretion on the Government and is thus capable of leading to abuse of power by the Government.

The Supreme Court has however upheld the validity of this provision in *J. Jayalalitha v. Union of India*.[10] The Court has agreed with the proposition that conferment of discretionary power on the executive which in the absence of any policy or guidelines permits it to pick and choose is unconstitutional.[11] But, in the instant case, the Court has ruled that S. 3(1) does not confer unfettered or unguided power because the object of the Act and S. 3 indicate when, and under what circumstances, the power conferred by S. 3 has to be exercised. The policy can be gathered from the preamble, the provisions of the enactment and other surrounding circumstances.[12]

One of the objects of the Act is to provide speedy trial far cases of corruption. This is the policy of the Act and, therefore, while exercising the power under S. 3, the Government shall have to be guided by the said policy. The Legislature could not have anticipated as to how many special Judges would be needed in an area. There-

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10. (1999) 5 SCC 138 : AIR 1999 SC 1912.

11. *Re Special Courts Bill,* 1978 (1979) 1 SCC 380 : AIR 1979 SC 478; *A.R. Antulay v. R.S. Nayak,* (1988) 2 SCC 602 : AIR 1988 SC 1531; *State of West Bengal v. Anwar Ali Sarkar, supra.*

12. See, *Jyoti Pershad v. Administrator for the Union Territory of Delhi,* AIR 1961 SC 1602 : (1962) 2 SCR 125; *Kathi Raning Rawat v. Saurashtra,* AIR 1952 SC 123 : 1952 SCR 435.

fore, the Legislature could not have laid down any fixed rule or guideline. It had to leave this matter to the discretion of the State Government as it would be in a better position to know the requirement. This is why discretion has been conferred on the State Government to appoint as many special Judges as may be necessary.

Absolute discretion to give or not to give gratuity has been rejected as unenforceable.[13]

(ii) ADMINISTRATIVE DISCRIMINATION

Here we see the application of the second proposition mentioned above.[14]

The first proposition discussed above envisages that where a statute is discriminatory either because it does not make a reasonable classification, or confers unregulated discretion on the executive, the statute itself is void under Art. 14. The second proposition being discussed now, however, envisages the situation where the statute itself does not suffer from any such vice, but the administrative authority may implement it in a discriminatory manner, or may not follow the policy or principle laid down in the Act to regulate its discretion.

In such a case, the charge of violation of equal protection may be laid against the Administration and its action quashed under Art. 14. The classic case on the point is *Yick Wo v. Hopkins*,[15] an American case. By an ordinance, the City of San Francisco made it unlawful to carry on a laundry, without the consent of the board of supervisors, except in a brick or stone building. In administering, the ordinance, 200 Chinese launderers were denied permission, even though they complied with every requisite, while 80 non-Chinese under similar circumstances had been permitted. The U.S. Supreme Court held that the ordinance has been administered with "a mind so unequal and oppressive as to amount to a practical denial by the State" of equal protection of laws. Though the law itself may be fair on its face, yet, if it is administered by public authority "with an evil eye and an unequal hand", so as practically to make unjust and illegal discriminations between persons in similar circumstances, the denial of equal justice is still within the prohibition of Art. 14. This Article secures all persons in India "not only against arbitrary laws but also against arbitrary application of laws." It ensures non-discrimination in state action both in the legislative and the administrative spheres.

The Cotton Control Order, 1950, banned all contracts and options in cotton except those permitted by the Textile Commissioner. The Commissioner permitted hedging contracts by members of the East-India Cotton Association. On being challenged by the M.B. Cotton Association which had been denied permission to enter into hedging contracts, the Supreme Court denied that there was discrimination because while East-India was an old and well-organised body dealing in hedging contracts, the *M.B. Association* was a new body and so the two Associations were not on an equal footing.[16]

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13. *Sudhir Chandra v. Tata Iron and Steel Co. Ltd.*, AIR 1984 SC 1064, 1071 : (1984) 3 SCC 369.
14. *Supra*, 1262.
15. 118, U.S. 356.
16. *M.B. Cotton Association v. Union of India*, AIR 1954 SC 634.

In *Lumsden Club v. State of Punjab*,[17] the Excise Commissioner banned the sale of liquor at the Lumsden Club but not at other clubs which were in similar position. The order was quashed as there was unjust discrimination. There could be a situation where discretion though conferred subject to a standard or policy, may be exercised in disregard of the policy. If so, it can be challenged under Art. 14.

A Tamil Trust made an application to the Government of Andhra Pradesh seeking permission to establish an engineering college for the benefit of the Tamil minority in the State of Andhra Pradesh. The Government refused permission to the Trust but at the same time it granted permission to two other societies to establish private engineering colleges. In *Vellore Educational Trust v. State of Andhra Pradesh*,[18] the Court quashed the Government's refusal of permission to the Tamil Trust as "not at all tenable" and quashed it. The Court also directed the Government to reconsider the matter and dispose it of according to law. This is an instance of discriminatory governmental action.

Although the principle is well-established that discriminatory administrative action can be challenged under Art. 14, yet, in practice, challenges to administrative action succeed only rarely, for the judicial attitude generally is to sustain administrative action against attacks of discrimination. The courts start with a presumption that the administration has not acted in a discriminatory manner; they would not easily assume abuse of power when discretion is vested in high officials. Further, the onus to prove that there has been an abuse of power is on the complainant. If, however, in a particular case, the complainant points out the circumstances which *prima facie* make out the exercise of power discriminatory *qua* him, then the authority concerned would be obligated to explain the circumstances under which the order was made. The court would then scrutinise the circumstances "with regard to the object sought to be achieved by the enactment and come to its own conclusion with respect to the *bona fides* of the order". The administration would have a good defence if it can prove *bona fides*.[19]

Selective application of law on an objective basis is not objectionable. The leading case in the area is *Ram Krishna Dalmia v. Justice Tendolkar*.[20] A commission of inquiry was appointed into Dalmia concerns by a notification under S. 3 of the Commission of Inquiry Act, 1952. S. 3 as well as the notification were challenged as discriminatory. S. 3 was held valid as the discretion conferred thereunder was not unguided because it was to be exercised subject to the policy and conditions laid down in the Act, *viz.*, a commission could be appointed to inquire into a definite matter of public importance. The notification was also sustained against the charge that it arbitrarily singled out the petitioner and his companies for hostile and discriminatory treatment and subjected them to a harassing and oppressive inquiry.

The Court held that Parliament having left the selective application of the Inquiry Act to the discretion of the government, the latter must act on the information available to it and the opinion it formed thereon. It is to be presumed, until

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17. AIR 1957 Punj. 20
18. AIR 1988 SC 130 : 1987 Supp SCC 543.
19. *Pannalal Binjraj v. Union of India*, AIR 1957 SC 397, 408 : 1957 SCR 233.
Also, MUKHERJEA J, in *Anwar Ali, supra*.
20. AIR 1958 SC 538 : 1959 SCR 279.

the contrary is proved, that the government would act honestly, properly and in conformity with the policy and the principles laid down by Parliament. The Court further held that the quality and characteristics said to exist in the petitioner's companies were so unique as to constitute a good or valid basis on which the petitioner and his companies could be regarded as a class by themselves. The facts as disclosed afforded sufficient support to the presumption of constitutionality of the notification. The petitioners failed to discharge the onus on them to prove that other persons or companies similarly situated have been left out and that they had been singled out for discriminatory and hostile treatment.

In *State of Jammu & Kashmir v. Bakshi Ghulam Mohammad,*[21] appointment of a Commission of Inquiry to enquire into acquisition of wealth by the former Prime Minister of the State by misuse of his official position was challenged as discriminatory as it was directed only against the Prime Minister and not the rest of his cabinet colleagues. The Court rejected the argument saying that it would be strange if the inquiry were also directed against all the other Ministers, for it could not be asserted that all Ministers had acquired wealth by misuse of their official position. The Prime Minister was a class by himself, and it could not be argued that by picking the former Prime Minister out of the entire cabinet for the enquiry, he had been discriminated.

At times, a statute may grant power to government to *exempt* any person or object from the operation of the Act. Such a power would be valid if not uncontrolled, and the statute in question contains a policy for its exercise.[22] But if the power of exemption granted by the statute to the government is uncanalised, unlimited or arbitrary, and the Act does not lay down any principle or policy for the guidance of exercise of discretion, or if the exemption granted is not according to the policy of the statute, the same can be quashed. Even when the grant of power of exemption is held valid, a question may still be raised that the actual exercise of power is arbitrary or illegal.

Under the Madras Buildings (Lease and Rent Control) Act, 1949, the government could exempt any building or class of buildings from the provisions of the Act. A government order exempting a specific building was held to be discriminatory as the reasons which led the government to pass the order were not such as could be countenanced by the policy or purpose of the Act.[23]

Under s. 113 of the T.N. Town and Country Planning Act, 1971, government could grant exemption to "any land or building or class of lands or buildings" from "all or any of the provisions of this Act" "subject to such conditions as they deem fit." This provision was held valid as the Supreme Court found that the preamble to the Act and many of the provisions of the Act "clearly indicate its policy". "Each of them contributes for subserving the policy of the Act, and clearly declares the purpose of the Act." Therefore, s. 113 could not be held to be 'unbridled'.

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21. AIR 1967 SC 122 : 1966 Supp SCR 401.

22. *Inder Singh v. State of Rajasthan*, AIR 1957 SC 510 : 1957 SCR 605; *Orient Weaving Mills v. Union of India*, AIR 1963 SC 98 : 1962 Supp (3) SCR 481; *Consumer Action Group v. State of Tamil Nadu*, (2000) 7 SCC 425; *Registrar of Cooperative Societies v. K. Kunyahmu*, (1980) 1 SCC 340; *A.N. Parasuraman v. State of Tamil Nadu*, (1989) 4 SCC 683.

23. *P.J. Irani v. State of Madras*, AIR 1961 SC 1781 : (1962) 2 SCR 169.

But a number of exemption orders issued under this provision were invalidated by the Supreme Court on the ground that these orders revealed non-application of mind and had been passed mechanically and arbitrarily and not in furtherance of the policy of the Act.

The State of Andhra Pradesh levied a purchase tax on purchase of sugarcane by sugar mills. The government had power to exempt from payment of tax any new factory. The government adopted the policy to grant exemption only to co-operative sugar factories and no other new factory. While 3 Judges of the Supreme Court held the exercise of discretion proper, two Judges held it invalid. According to the minority Judges, the policy of the Act was to provide incentive to the establishment of new sugar factories. Therefore, the policy regarding exemption must have some rational relation to the object. From this point of view, all new factories stand on the same footing, and there can be no justification for giving a favoured treatment to co-operative societies. Preferring co-operative societies to other new sugar factories "is wholly unrelated to the object of the exempting provision".

The view of the minority in the above case appears to be more rational for the government policy in effect meant promotion of co-operative societies and not sugar industry generally, and this was not what the Act envisaged. Each case of exemption should have been considered on merits. Whether a factory was co-operative or not was an irrelevant consideration for this purpose.[24]

At times, a statute may empower the government to extend any or all of its provisions to other persons, places or activities. Here again the same question arises: Is the power unguided? Has some policy been laid down for the purpose? If extended to a person or activity, whether this has been done according to the policy?[25]

The Government of India raised the age of compulsory retirement from 55 to 58 years subject to some conditions. The respondent was not given the benefit of this decision. The Court quashed the order holding it to be a violation of Art. 14.[26]

The Assam Foodgrains (Licensing & Control) Order, 1961, enumerated five considerations to which the licensing authority was to keep regard in granting or refusing a licence. One of these considerations was that a co-operative society was to be preferred to anyone else in certain circumstances in granting a licence. But when the government directed the licensing authority to grant licences only to a specified co-operative society, in order to create a monopoly in its favour, and the licensing officer acted accordingly, then a discrimination arose against others and this was bad under Art. 14. Under the order, it was open to the licensing authority to give preference to co-operative societies in the matter of granting a licence if in a particular locality it was of the view that that would fulfil the objectives of the statutory provision in question. But to refuse licence to anyone else only to create a monopoly in favour of one co-operative society amounted to discrimination in the administration of the law.[27]

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24. *Shri Rama Sugar Industries v. State of Andhra Pradesh*, AIR 1974 SC 1745 : (1974) 1 SCC 534.

25. *B.Y. Kshatriya v. Union of India*, AIR 1963 SC 1591; *Mohmedali v. Union of India*, AIR 1964 SC 980 : 1963 Supp (1) SCR 993.

26. *Union of India v. Mool Chand*, AIR 1971 SC 2369 : (1972) 3 SCC 273.

27. *Mannalal Jain v. State of Assam*, AIR 1962 SC 386 : (1962) 3 SCR 936.
For a comment on the case see, 4 *JILI*, 458.

When a higher qualification is prescribed having regard to the current social conditions and only graduates and post-graduates in veterinary science are coming out in large number and many degree holders are unemployed and, moreover, new diseases are discovered and new techniques are in use, the prescription of higher qualification is in consonance with the worldwide trend and in the interest of general public. Such qualification provisions are protected under the second part of Art. 19(6). Restrictions on rights of the diploma and certificate holders to continue to hold office of veterinary physician or surgeon or to practice veterinary medicine is reasonable within the meaning of Art. 19(6) and hence not violative of Art. 19(1)(g). Hardship to a section of veterinary professionals or holders of office, because of introduction of the higher qualification could not render the new provisions for higher qualification unconstitutional. Furthermore the qualifications prescribed were to operate prospectively and merely because it affected the rights of diploma and certificate holders to continue in their profession, it could not be said to have retrospective operation. The confusion which some time arises regarding conferring retrospectivity to a statute was explained to some extent by the Supreme Court in Udai Singh Dagar.[28] In that case the qualifications for veterinary practitioners was altered to the effect that their qualification should be a degree or a post-graduate degree instead of existing diplomas. The contention that it operated retrospectively since the diploma holders who are already in service could no longer hold their office was rejected by the Court on the reasoning that a person would have a right to enter into a profession and continue therewith provided he holds the requisite qualification as and when a qualification is laid down by a law within the meaning of Art. 19(1)(g) of the Constitution when the same comes into effect. In other words, it would operate prospectively and, thus those who did not fulfill the qualification from the specified date would not continue to practice from that date.

VIVA VOCE

For selecting candidates for admission to government medical or engineering colleges, or for appointment to government services, a test usually applied is that of *viva voce, i.e.*, interviewing candidates and grading them on that basis. Questions have been raised whether or not oral interview is compatible with Art. 14.

Two considerations arise in connection with the *viva voce* test. On the one hand, such a test is helpful in assessing the personality of the candidate. As the Supreme Court has itself accepted in *Ashok Kumar Yadav v. State of Haryana*,[29] the *viva voce* test "performs a very useful function in assessing personal characteristics and traits" of the candidates. On the other hand, it has been argued that an oral interview is subjective and based on first impressions and could thus lead to arbitrariness. A *viva voce* test can be manipulated. Too much reliance on this test may lead to a sabotage of the purity of the proceedings.

Taking into account these considerations, the Supreme Court has ruled that while *viva voce* test forms an important factor in the selection process but not too great reliance need be placed on it.[30]

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28. *Udai Singh Dagar v. Union of India*, (2007) 10 SCC 306 : AIR 2007 SC 2599.
29. (1985) 4 SCC 417 : AIR 1987 SC 454.
30. *Praveen Singh v. State of Punjab*, (2000) 8 SCC 633 : AIR 2001 SC 152.

While holding that oral interview could not be regarded as an irrelevant or irrational test for purposes of admission to colleges or for public employment, the Supreme Court has also laid down some safeguards to reduce chances of arbitrariness as the Supreme Court is apprehensive that if too high marks are allotted for the *viva voce* test, it may lead to misuse of power by the concerned authorities.

In case of selection for services, a somewhat higher percentage of marks is permissible for *viva voce* than in case of admission to a course for, in the latter case, the personality traits of the students are not fully developed and are still in the formative stage and, therefore, in case of students, greater importance is to be accorded to the written test than to the *viva voce* to which importance attached ought to be minimal. In case of students, *viva voce* should not be relied upon as an exclusive test but should be resorted to only as an additional or supplementary test; it must be conducted by persons of high integrity, calibre and qualification; very high marks (such as 33 per cent of the total marks) should not be allocated to the interview test. For admission to colleges, not more than 15 per cent of the total marks should be fixed for interview.[31]

However, for appointment to public services (such as munsiffs), a higher relative value may be given (say 25 per cent) to the *viva voce* test, the reason being that candidates have mature personality.[32] The Court pointed out that the written test assesses the man's intellect and the interview test the man himself and "the twain shall meet" for a proper selection. In case of services where selection is made out of mature persons, a higher weightage may be given to the *viva voce* test. If, however, selection is to be made out of younger persons whose personalities are still in the process of development, a lower weightage is to be given to *viva voce*. "It must vary from service to service according to the requirement…."

There have been several cases in which the validity of selections made on the basis of *viva voce* test have been challenged. In *Chitralekha v. State of Mysore*,[33] a system of selection of candidates for admission to the State medical colleges by *viva voce* examination was challenged on the ground that it enabled the interviewers to act arbitrarily and manipulate the results. The Supreme Court rejected the contention holding that not only had the government laid down a clear policy and prescribed defined criteria in the matter of giving marks at the interview, but it had also appointed competent men to make the selection on the basis.

On the other hand, in *Periakaruppan*,[34] the interviews were found to be vitiated. For admission to the State medical colleges, certain marks had been allotted to the *viva voce* test and the interviewers were required to take five prescribed criteria into consideration for the purpose. The interviews were quashed because the total interview marks had not been divided into separate prescribed heads and marks had been given to the candidates in a lump and not on itemised basis and also while irrelevant matters had been taken into consideration certain relevant matters had been ignored.

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31. *Ajay Hasia v. Khalid Mujib,* AIR 1981 SC 487 : (1981) 1 SCC 722.
Also, *R. Karuppan v. Ministry of External Affairs,* AIR 1982 Mad. 316: 45 marks for *viva voce* out of 345 marks for admission to the M.L. Degree Course held not arbitrary.

32. *Lila Dhar v. State of Rajasthan,* AIR 1981 SC 1777 : (1981) 4 SCC 159.

33. AIR 1964 SC 1823 : (1964) 6 SCR 368.

34. *A. Peeriakaruppan v. State of Tamil Nadu,* AIR 1971 SC 2303 : (1971) 1 SCC 38.

The most significant pronouncement in this area is *Ajay Hasia*.[35] Here a large number of candidates were given admission to the regional engineering college because of high marks obtained at the interview although they had secured low marks at the written qualifying examination. According to the Supreme Court, this did give rise to the suspicion that marks at the interview had been manipulated to favour candidates but did not prove *mala fides*. The Court did not quash the admissions made by the college because it agreed to take in 50 best students next year in addition to the normal in-take. The Court laid down the following guidelines so that the interview system might not be vitiated under Art. 14:

> "If the marks allocated for the oral interview do not exceed 15% of the total marks and the candidates are properly interviewed and relevant questions are asked with a view to assessing their suitability with reference to the factors required to be taken into consideration, the oral interview test would satisfy the criterion of reasonableness and non-arbitrariness."

The Court further suggested that the interviews be tape-recorded so that there is evidence to judge whether interviews were conducted in an arbitrary manner or not.

In case of *viva voce* test for services, even between one service and another, depending upon the significance and relevance of the personality factor, maximum marks for interview may vary, as for example, higher marks for *viva voce* test may be prescribed for the Provincial Civil Service than in case of any other service. The Supreme Court expressed the view that in Civil Service (Executive), not more than 12.2% of the total marks be allotted to the *viva voce* test. Commenting upon the prescription of 33.3% marks for recruitment to administrative services of the State, the Court said that with this enormously large spread of marks for *viva voce*, this test "tended to become a determining factor in the selection process", and this "opens the door wide for arbitrariness, and in order to diminish, if not eliminate the risk of arbitrariness, this percentage needs to be changed."

In *Ashok Yadav v. State of Haryana*,[36] the Court ruled that the allocation of 33% marks for the Provincial Civil Service was excessive and would suffer from the vice of arbitrariness and, therefore, quashed it. But, in later cases, the Court has changed its opinion and has accepted allocation of high percentage of marks for *viva voce* test for recruitment to Senior State Administrative Services.

In *Mehmood Alam Tariq v. State of Rajasthan*,[37] the Court has accepted a percentage of 33 for the purpose. Distinguishing the situation in the instant case from that which was considered in *Ajay Hasia*, the Court has pointed out that the officers to be selected for higher services would, in course of time, be required "to man increasingly responsible positions in the core services," and, therefore, these men should be endowed with personality traits conducive to the levels of performance in such services. *Ajay Hasia* refers to admission of students to edu-

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35. *Supra*, footnote 31.
Also see, *Nishi Maghu v. State of Jammu & Kashmir*, AIR 1980 SC 1975 : (1980) 4 SCC 95; *Arti Sapru v. State of Jammu & Kashmir*, AIR 1981 SC 1009 : (1981) 2 SCC 484; *Koshal Kumar v. State of Jammu & Kashmir*, AIR 1984 SC 1056 : (1984) 2 SCC 652.
Also, *infra*.

36. AIR 1987 SC 454 : (1985) 4 SCC 417.

37. AIR 1988 SC 1451 : (1988) 3 SCC 241.

cational institutions and the personality of these students "is yet to develop and it is too early to identify the personal qualities." The Court observed:

> "There is nothing unreasonable or arbitrary in the stipulation that officers to be selected for higher services and who are with the passage of time, expected to man increasingly responsible positions in the core services…..should be men endowed with personality traits conducive to the level of performance expected in such services…Academic excellence is one thing. Ability to deal with public with tact and imagination is another. Both are necessary for an officer. The dose that is demanded may vary according to the nature of the service."

A similar view has been propounded in *State of Uttar Pradesh v. Rafiquddin*,[38] where prescription of 35% marks for selection for judicial branch was upheld.

In other services, however, the Court still insists on a low percentage of marks for *viva voce*. Thus, in *Vikram Singh*,[39] allocation of 28.5% marks for interview for selection to the posts of excise inspectors was held to be too high and was thus quashed.

The Court has ruled that for selection to the posts of assistant engineers in the State Electricity Board, a maximum of 15% marks may be allotted for interview and group discussion—10% for interview and 5% for group discussion.[40] Allocation of 33% marks for interview for selection for the posts of Assistant Engineers (Civil) and (Mechanical) for Public Works Dept. was held to be too high and not in accordance with the dictum in *Ashok Yadav*.[41]

The Supreme Court has pointed out in *Indian Airlines Corporation v. Capt. K.C. Shukla*,[42] that a distinction appears to have been made in interviews held for competitive examination or admission in educational institutions and selection for higher posts. In the former case, efforts are made to limit the scope of arbitrariness by lowering down the proportion of marks at the *viva voce* but the same standard cannot be applied for selection for higher posts. This becomes clear from the ruling in *Lila Dhar*.[43] It is thus clear that no hard and fast rule can be laid down because much would depend on the level of the post and the nature of performance expected from the incumbent. Accordingly, in *Shukla,* the basis of evaluation depending on 50% on assessment of confidential reports and 50% on interviews for purposes of promotion was upheld by the Court.

In *Union of India v. N. Chandrasekharan*,[44] for the promotional post of assistant purchase officer from the post of purchase assistant—B, the promotion was based on a written test, interview and assessment of the confidential reports. The weightage given to each component was 50, 30, 20 marks. It was also prescribed that to qualify for promotion, a candidate should secure a minimum of 50% prescribed for each head and also 60% in the aggregate. This scheme of assessment was upheld by the Supreme Court.

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38. AIR 1988 SC 162 : 1987 Supp SCC 401.
Also, *Subhash Chandra Verma v. State of Bihar,* AIR 1995 SC 904 : 1995 Supp (1) SCC 325.

39. *Vikram Singh v. Subordinate Services Selection Board, Haryana,* AIR 1991 SC 1011 : (1991) 1 SCC 686; *C.P. Kalra v. Air India,* (1994) Supp (1) SCC 454.

40. *Munindra Kumar v. Rajiv Govil,* AIR 1991 SC 1607 : (1991) 3 SCC 368.

41. *Supra,* footnote 36.

42. 1993(1) SCC 17.

43. *Liladhar v. State of Rajasthan,* AIR 1981 SC 1777 : (1981) 4 SCC 159.

44. AIR 1998 SC 795 : (1998) 3 SCC 694.

(iii) ARBITRARY STATE ACTION

Art. 14 out-laws arbitrary administrative action. When there is arbitrariness in state action, Art. 14 springs into action and the courts strike down such action. Arbitrary state action infringes Art. 14.[45]

A very fascinating aspect of Art. 14 which the courts in India have developed over time is that Art. 14 embodies "a guarantee against arbitrariness" on the part of the Administration. As the Supreme Court has observed in *Royappa*:[46] "from a positivistic point of view, equality is antithetic to arbitrariness." Any action that is arbitrary must necessarily involve the negation of equality. Abuse of power is hit by Art. 14. The authority endowed with a power must free itself from political interference.[47]

The new orientation being given to Art. 14 by the courts has been explained by BHAGWATI, J., in *Bachan Singh v. State of Punjab*.[48] Rule of law which permeates the entire fabric of the Indian Constitution excludes arbitrariness. "Wherever we find arbitrariness or unreasonableness there is denial of rule of law." Art. 14 enacts primarily a guarantee against arbitrariness and inhibits state action, whether legislative or executive, which suffers from the view of arbitrariness. "Every state action must be non-arbitrary and reasonable. Otherwise, the Court would strike it down as invalid."

To challenge an arbitrary action under Art. 14, the petitioner does not have to show that there is someone else similarly situated as he himself, or that he has been dissimilarly treated. On this point, the Supreme Court has observed in *Kalra*:[49]

> "Article 14 strikes at arbitrariness in executive/administrative action because any action that is arbitrary must necessarily involve the negation of equality. One need not confine the denial of equality to a comparative evaluation between two persons to arrive at a conclusion of discriminatory treatment. An action *per se* arbitrary itself denies equality of protection by law."

This new dimension of Art. 14 transcends the classificatory principle. Art. 14 is no longer to be equated with the principle of classification. It is primarily a guarantee against arbitrariness in state action and the doctrine of classification has been evolved only as a subsidiary rule for testing whether a particular state action is arbitrary or not. If a law is arbitrary or irrational it would fall foul of Art. 14. As an example thereof, it has been held that any penalty disproportionate to the gravity of the misconduct would be violative of Art. 14.[50]

Every action of the state must be informed by reasons and guided by public interest. Actions uninformed by reason may be questioned as arbitrary. Whenever there is arbitrariness in state action, Art. 14 springs to life and judicial review strikes such an action down.[51] Arbitrariness is the antithesis of

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45. *A.P. Aggarwal v. Govt. of NCT of Delhi*, AIR 2000 SC 205.
46. *E.P. Royappa v. State of Tamil Nadu*, AIR 1974 SC 555 : (1974) 3 SCC 3.
47. *Suresh Chandra Sharma v. Chairman, U.P. SEB*, (2005) 3 SCC 153 : AIR 2005 SC 2021.
48. AIR 1982 SC 1325 : (1982) 3 SCC 24.
49. *A.L. Kalra v. P & E Corpn of India, Ltd.*, AIR 1984 SC 1361, 1367.
50. *Bhagat Ram v. State of Himachal Pradesh*, AIR 1983 SC 454, 460 : (1983) 2 SCC 442.
51. *Dwarkadas Marfatia & Sons v. Board of Trustees, Bombay Port*, AIR 1989 SC 1642; *LIC v. Escorts*, AIR 1986 SC 1370 : (1986) 1 SCC 264; *L.I.C. of India v. Consumer Education and Research Centre*, AIR 1995 SC 1811 : (1995) 5 SCC 482; *M.S. Bhut Education Trust v. State of Gujarat*, AIR 2000 Guj 160.

Art. 14.[52] Equality and arbitrariness are sworn enemies. Art. 14 strikes at arbitrariness in state action and ensures fairness and equality of treatment.[53]

In a number of cases, government action has been quashed on the ground of its being arbitrary or discriminatory. Art. 14 strikes not only at discrimination but also at arbitrariness in general. The wage board for working journalists divided the newspapers and news agencies into seven classes on the basis of gross revenues. According to this test, the P.T.I. should have been placed in the third category but the wage board placed it in the second—a higher category, thus placing on the P.T.I. more onerous obligations. This was held to be arbitrary which "singles out the P.T.I. for discrimination."[54]

Spot admissions on the last day for vacant seats without notice in State owned institutions for higher professional education was held bad as it denied equality of opportunity and the test of merit. "The State even in the exercise of its administrative power cannot act arbitrarily. Being the State it is obliged to act in a fair, reasonable and equitable manner."[55]

The State Government exempted only a specified number of prints of the *Gandhi* film (20) from payment of entertainment tax. Viewers of other prints of the film had to pay the tax. The Court held that exempting only a few prints, and not all prints of the film, was discriminatory and arbitrary.[56] When the circumstances provided under specific clauses of the Scheme and the agreement, as to events on which cash subsidy could be recovered as arrears of land revenue were not attracted on the facts, recovery of the subsidy by the State in violation of those clauses was illegal and arbitrary.[57]

The State Government fixed higher quantity of levy sugar for higher income group. The High Court held that this was not based on any rational basis as it allowed better placed persons to get more sugar at the cheapest rate.[58]

In a number of other cases, arbitrary or discriminatory exercise of power by the administration has been quashed by the courts.[59]

When an authority has power to relax a directory rule, its relaxation in particular cases has to be governed by objective considerations. No public authority can pick and choose persons for receiving the benefit of relaxation of the rules. Relaxation must be governed by defined guidelines.[60]

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52. *Express Newspapers (P.) Ltd. v. Union of India*, AIR 1986 SC 872; *Netai Bag v. State of West Bengal*, (2000) 8 SCC 262 : AIR 2000 SC 3313.
53. *Delhi Transport Corp. v. DTC Mazdoor Congress*, AIR 1991 SC 101, 196; *Mahesh Chandra v. Regional Manager, U.P. Financial Corpn.*, AIR 1993 SC 935 : (1993) 2 SCC 279.
54. *The P.T.I. v. Union of India*, AIR 1974 SC 1044 : (1974) 4 SCC 638.
55. *Ajay Kumar v. Chandigarh Adm., Union Territory*, AIR 1983 P & H 8; *Punjab Engineering College, Chandigarh v. Sanjay Gulati*, AIR 1983 SC 580 : (1983) 2 SCC 517.
56. *Globe Theatres v. State of Maharashtra*, AIR 1983 Bom. 265.
57. *Sun Beverages (P) Ltd. v. State of U. P.*, (2004) 9 SCC 116 : AIR 2004 SC 777.
58. *R. Ramanujam v. Commr. and Secretary, T.N. Govt.*, AIR 1982 Mad. 261.
59. *Jitendra Nath v. W.B. Board of Exams*., AIR 198 3 Cal 275; *Dhudaram v. State of Rajasthan*, AIR 1983 Raj. 29; *M.K. Santhamma v. State of Kerala P.S.C.* AIR 1983 Ker. 84; *J.P. Kulshrestha v. Allahabad University*, AIR 1980 SC 2141 : (1980) 3 SCC 418; *Vishundas Hundumal v. State of Madhya Pradesh*, AIR 1981 SC 1636.
60. *Principal, King George's Medical College v. Vishan Kumar*, AIR 1984 SC 221, 226 : (1984) 1 SCC 416.

When the only reason for the en masse cancellation was that a "controversy" had been raised, there was clear non application of mind to any particular case or cases and more so when infact none of the cases were examined.[61]

The Government of Uttar Pradesh issued an order terminating at one stroke the appointment of all the governmental advocates throughout the entire State. In *Shrilekha Vidyarthi v. State of Uttar Pradesh,*[62] the Supreme Court quashed the order characterising it as arbitrary: "Arbitrariness is writ large in the impugned circular." The Court stated the applicable principle as follows:

> "It is now well-settled that every state action, in order to survive, must not be susceptible to the vice of arbitrariness which is the crux of Art. 14 of the Constitution and basic to the rule of law, the system which governs us, arbitrariness being the negation of the rule of law."

Another notable principle developed by the Supreme Court out of Art. 14 is that every action of the government, or any of its instrumentalities, must be informed by reason. Any state action which is not informed by reason cannot be protected as it would be easy for the citizens to question such an action as being arbitrary. "Non-arbitrariness, being a necessary concomitant of the rule of law, it is imperative that all actions of every public functionary in whatever sphere must be guided by reason and not humour, whim, caprice or personal predilections of the persons entrusted with the task on behalf of the State and exercise of all powers must be for public good instead of being an abuse of power."[63] The decision not to fill up the vacancies has to be taken *bona fide* and must pass the test of reasonableness so as not to fail on the touchstone of Art. 14.[64]

The government and other public authorities must act reasonably and fairly and that each action of such authorities must pass the test of reasonableness.[65]

But a case of arbitrariness is not made out where two views are possible and the view taken by the government cannot be challenged on the ground that the other view is a better one.[66] Mere fact that some hardship or injustice is caused to someone is no ground to strike down the rule altogether if otherwise the rule appears to be just, fair and reasonable and not unconstitutional.[67]

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61. *Onkar Lal Bajaj v. Union of India,* (2003) 2 SCC 673 : AIR 2003 SC 2562.

62. AIR 1991 SC 537.

63. *Style (Dress Land) v. Union Territory, Chandigarh,* (1999) 7 SCC 89, 100 : AIR 1999 SC 3678; *Dolly Chanda v. Chairman, Jee,* (2005) 9 SCC 779 : AIR 2004 SC 5043*;* Admission—Arbitrary conduct of authorities. *Haryana Urban Development Authority v. Dropadi Devi,* (2005) 9 SCC 514 : AIR 2005 SC 1487. Arbitrary conduct of Development authority in delivering possessions.

64. *Food Corporation of India v. Bhanu Lodh,* (2005) 3 SCC 618 : AIR 2005 SC 2775.

65. *Hansraj H. Jain v. State of Maharashtra,* (1993) 3 SCC 634; *New Horizons Ltd. v. Union of India,* (1995) SCC 478; *Mahesh Chandra v. Regional Manager, U.P. Financial Corp.,* AIR 1993 SC 935 : (1993) 2 SCC 279; *U.P. State Road Transport Corp.v. Mohd. Ismail,* AIR 1991 SC 1099 : (1991) 3 SCC 239; *Common Cause, A Registered Society v. Union of India,* AIR 1997 SC 1886; *Shiv Sagar Tiwari v. Union of India,* AIR 1997 SC 2725 : (1997) 1 SCC 444.

66. *Onkar Lal Bajaj v. Union of India,* (2003) 2 SCC 673 : AIR 2003 SC 2562.

67. *A. P. Coop. Oil Seeds Growers Federation Ltd. v. D. Achyuta Rao,* (2007) 13 SCC 320 : (2007) 4 JT 454.

(a) RIGHT OF HEARING

In some cases, the Courts have insisted, with a view to control arbitrary action on the part of the administration, that the person adversely affected by administrative action be given the right of being heard before the Administration passes an order against him. It is believed that such a procedural safeguard may minimise the chance of the Administration passing an arbitrary order. Thus, the Supreme Court has extracted from Art. 14 the principle that natural justice is an integral part of administrative process.

Art. 14 guarantees a right of hearing to the person adversely affected by an administrative order.[68] As the Supreme Court has observed in the case noted below,[69] "The *audi alteram partem* rule, in essence, enforces the equality clause in Art. 14 and it is applicable not only to *quasi*-judicial bodies but also to administrative orders adversely affecting the party in question unless the rule has been excluded by the Act in question."[70] *Maneka Gandhi*[71] is an authority for the proposition that the principles of natural justice are an integral part of the guarantee of equality assured by Art. 14. An order depriving a person of his civil right passed without affording him an opportunity of being heard suffers from the vice of violation of natural justice and is thus an arbitrary order.[72]

A few cases may be taken note of here to illustrate this proposition.

The Maharashtra Legislature enacted an Act to provide for summary eviction of persons unauthorisedly occupying vacant lands in urban areas. The Act gave power to an authorised authority to order vacation of any land by its occupiers. The Supreme Court held the Act to be invalid in *State of Maharashtra v. Kamal*,[73] under Art. 14 on the ground that it laid down no guidelines to control the exercise of discretion by the concerned authority. The Act prescribed no procedure for the concerned authority to follow before declaring any land as "Vacant land" for the purposes of the Act. The Supreme Court emphasized that the Act conferred 'uncontrolled and arbitrary" power on the authority and, therefore, in the matters covered by the Act, a hearing procedure was of the essence of the matter.

A government company made a service rule authorising it to terminate the service of a permanent employee by merely giving him a three months' notice or salary. The rule was declared to be invalid as being violative of Art. 14 on the ground that it was unconscionable.[74] The rule in question constituted a part of the employment contract between the corporation and its employees. The Court ruled that it would not enforce, and would strike down, an unfair and unreasonable clause in a contract entered into between parties who were *not equal* in bargain-

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68. For a fuller discussion on Natural Justice, see, M.P. JAIN, *A TREATISE OF ADMINISTRATIVE LAW*, I, Chs. X and XI, 304-447; JAIN, *CASES AND MATERIALS ON INDIAN ADM. LAW*, I, Chs. IX and X, 641-919.

69. *Delhi Transport Corporation v. DTC Mazdoor Union*, AIR 1999 SC 564.

70. *Union of India v. Amrik Singh*, AIR 1991 SC 564 : (1991) 1 SCC 654; *D.K. Yadav v. JMA Industries*, (1993) 3 SCC 259.

71. *Maneka Gandhi v. Union of India*, AIR 1978 SC 597 : (1978) 1 SCC 248.
For detailed discussion on this case, see, *infra*, Ch. XXVI.

72. *Haji Abdool Shakoor & Co. v. Union of India*, JT 2001 (10) SC 438.

73. AIR 1985 SC 119 : (1985) 1 SCC 234.

74. *Central Inland Water Transport Corporation Ltd. v. Brojo Nath*, AIR 1986 SC 1571.

ing power. This was in conformity with the mandate of the "great equality clause in Art. 14."

The Court emphasized that the judicial concept of Art. 14 has progressed "from a prohibition against discriminatory class legislation to an invalidating factor for any discriminatory or arbitrary state action." The Court also emphasized that the rule was "both arbitrary and unreasonable" and "as it also wholly ignored and set aside the *audi alteram partem* rule" violated Art. 14. The Court emphasized that "the principle of natural justice has now come to be recognised as being a part of the constitutional guarantee contained in Art. 14." The rule in question was "both arbitrary and unreasonable," and it also wholly ignored and set aside the *audi alteram partem* rule and, thus, it violated Art. 14.

The above proposition has been reiterated by the Supreme Court in *D.T.C. v. D.T.C. Mazdoor Union.*[75] The Court again held, rejecting a clause authorising termination of service at a month's notice, that the freedom of contract must be founded on equality of bargaining power between contracting parties. The freedom of contract must be founded on the equality of bargaining power. There can be myriad situations which result in unfair and unreasonable bargain between parties possessing wholly disproportionate and unequal bargaining power.

The Cantonment Board, Dinapur, granted permission to the respondent to make additions to their buildings situated in the cantonment. Under a provision in the Cantonments Act, 1924, the officer commanding-in-chief had power to suspend a Board's resolution. In the instant case,[76] the OCIC cancelled the Board's resolution after giving it a hearing but not to the respondent to whom the permission had been given. The Supreme Court ruled that OCIC ought to have given a hearing to the respondent as well before cancelling the permission given by the Board. The Court observed: "*Audi alteram partem* is a part of Art. 14 of the Constitution." The real affected party in the fact situation was the party being ultimately affected by cancellation of the Board's resolution. Because of Art. 14, "no order shall be passed at the back of a person, prejudicial in nature to him, when it entails civil consequences."

Merely because in the scheme of merger of two government companies the employees of one of them would suffer in terms of seniority or chances of promotion, the whole scheme could not be treated as discriminatory or arbitrary.[77]

(b) JUDICIAL DISCRETION

Discretion vested in a judicial officer exercisable on the facts and circumstances of each particular case may not amount to a denial of equal protection unless "there is shown to be present in it an element of intentional and purposeful discrimination."

The discretion of judicial officers is not arbitrary as the law provides for revision by superior courts of orders passed by subordinate courts.[78]

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75. AIR 1991 SC 101 : 1991 Supp (1) SCC 600.

76. *Cantonment Board, Dinapore v. Taramani Devi,* (1992) Supp. (2) SCC 501 : AIR 1992 SC 61.

77. *Indian Airlines Officers' Assn. v. Indian Airlines Ltd.,* (2007) 10 SCC 684 : AIR 2007 SC 2747.

78. *Budhan v. State of Bihar,* AIR 1955 SC 191 : (1955) 1 SCR 1045.
For a comment on the case see, 1 *JILI* 181.
Also, *A. Lakshmanrao v. Judicial Magistrate,* AIR 1971 SC 186 : (1970) 3 SCC 501.

The discretion given to the judge to sentence an accused convicted of murder either to death or to imprisonment for life is not invalid under Art. 14. The judge has to balance all the aggravating and mitigating circumstances of the case and record his reasons in writing for awarding lesser punishment.[79] Similarly, discretion available to the judge in other criminal cases in the sentencing policy and the judicial fluctuations in punishment do not violate Art. 14.[80]

The same principle has been extended to discretion given to *quasi*-judicial authorities, *e.g.*, rent controller, disciplinary authority etc.[81]

(iv) GRANT OF BENEFITS BY THE STATE

A welfare state has wide power to regulate and dispense leases, licenses, contracts, etc. The modern state is a source of great wealth and, therefore, questions often arise whether it is bound by any norm in dispensing its largess.

In India, it is now well established that in dispensing its largess, the state is expected not to act as a private individual but should act in conformity with certain healthy standards and norms.[82] The principle of non-discrimination contained in Art. 14 has been applied by the Supreme Court in an area of great contemporary importance, *viz.*, conferment of benefits and award of contracts by the government.

Art. 14 has been applied to the grant of largess or benefit by the state. Even while conferring a benefit or largess, or giving a contract, the government is subject to Art. 14. This means that the Administration cannot act in an arbitrary or discriminatory manner even in the area of grant of largess or conferring benefit by it on individuals. The government is not as free as a private person to pick and choose the recipients of its largess. Whatever its activity, a government is always a government and, as such, is subject to the restraints, inherent in a democratic society. A democratic government cannot exercise its power arbitrarily or discriminately because Art. 14 is always there to regulate its discretion in all spheres. "The state need not enter into any contract with anyone, but if it does so, it must do so fairly without discrimination and without unfair procedure."[83] The government cannot lay down arbitrary and capricious standards for the choice of persons with whom alone it will deal. Every action of the government must be informed with reason and should be free from arbitrariness because government is always a government.[84] BHAGWATI, J., has laid down the principle as follows:[85]

> "Where the government is dealing with the public, whether by giving of jobs or entering into contracts or issuing quotas or licences or granting other forms of largess, the government cannot act arbitrarily at its sweet will and, like a pri-

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79. *Jagmohan Singh v. State of Uttar Pradesh*, AIR 1973 SC 947 : (1973) 1 SCC 20.
80. *Inderjeet v. State of Uttar Pradesh*, AIR 1979 SC 1867 : (1979) 4 SCC 246.
81. *Manindra Sanyal v. State of West Bengal*, AIR 1976 Cal 174; *Parkash Chander v. Haryana State Electricity Board*, AIR 1976 P&H 30.
82. *Netai Bag v. State of West Bengal*, (2000) 8 SCC 262, 274 : AIR 2000 SC 3313.
83. *Erusian Equipment and Chemicals Ltd. v. State of West Bengal*, AIR 1975 SC 266 : (1975) 1 SCC 70.
84. *Asiatic Labour Corp. v. Union of India*, AIR 1983 Guj. 86; *Durga Associates, Raipur v. State of U.P.*, AIR 1982 All 490.
85. *Ramana Dayaram Shetty v. International Airport Authority of India*, AIR 1979 SC 1628 : (1979) 3 SCC 489.

> vate individual, deal with any person it pleases, but its action must be in conformity with standard or norm which is not arbitrary, irrational or irrelevant."

In *Ramana*,[1] the International Airport Authority, a statutory body, floated a tender for running a restaurant at the Bombay Airport. Certain conditions of eligibility were laid down for the contractor. The authority awarded the contract to one who did not fulfil the norms of eligibility laid down. The Supreme Court ruled that the authority ought to have stuck to the conditions prescribed by it. The action of the authority was discriminatory as it did not give an equal chance to other persons similarly situated to tender for the contract. The Court has emphasized that when the government lays down some norms or standards of eligibility, then the government cannot award the contract to some one not fulfilling the prescribed conditions of eligibility. If the authority does so, its action becomes discriminatory since it excludes "other persons similarly situate from tendering for the contract" and that would be "plainly arbitrary and without reason".

BHAGWATI, J., speaking for the Court has expounded the relevant principle as follows:[2]

> "It is well settled rule of administrative law that an executive authority must be rigorously held to the standards by which it professes its actions to be judged and it must scrupulously observe those standards on pain of invalidation of an act in violation of them".

The most notable aspect of *Ramana* is that it put a restriction on the discretion of the Administration to award a contract to whomsoever it likes. Instead, the exercise of the power to award contract must be structured by "rational, relevant and non-discriminatory" standards or norms. This means that while inviting tenders to award a contract, the norms or standards governing the tenders should be reasonable and non-discriminatory and the concerned authority should not depart from the same arbitrarily and without justification.

In another case, allotment of quotas of resin by the State to industrial units was quashed as it was based on no reasonable basis.[3]

The principle that the state cannot act in an arbitrary or discriminatory manner in the matter of conferring or not conferring benefits on individuals and that the distribution of the largess should be reasonable has been applied in a large number of cases.[4] For example, the Supreme Court has observed in *Mahabir Auto Stores v. Indian Oil Corporation*:[5]

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1. *Ibid*.

2. AIR 1979 SC, at 1635.

3. *Om Prakash v. State of Jammu & Kashmir*, AIR 1981 SC 1001 : (1981) 2 SCC 270.

4. *Kasturi Lal v. State of Jammu & Kashmir*, AIR 1980 SC 1992 : (1980) 4 SCC 1; *Parashram Thakur Dass v. Ram Chand*, AIR 1982 SC 872; *Premjit Bhat v. Delhi Development Authority*, AIR 1980 SC 738; *Ajoomal Lilaram v. Union of India*, AIR 1983 SC 278; *Kirti Kumar v. Indian Oil Corporation, Ahmedabad*, AIR 1983 Guj 235; *Asiatic Labour Corp. v. Union of India*, AIR 1983 Guj 86; *D.S. Sharma v. Delhi Administration*, AIR 1983 Del 434; *Vikas Enterprises v. State of Uttar Pradesh*, AIR 1982 All 236.

Sri Rama Engineering Contracts v. Dept. of Space, Govt. of India, AIR 1981 AP 165; *Shriram Refrigeration India Ltd. v. State Bank of India*, AIR 1983 Pat 203; *State of Madhya Pradesh v. Nandlal Jaiswal*, AIR 1987 SC 251; *Union of India v. Hindustan Development Corporation*, AIR 1994 SC 988, 997; *Ramniklal N. Bhutia v. State of Maharashtra*, AIR 1997

[Footnote 4 Contd.]

> "It appears to us that rule of reason and rule against arbitrariness and discrimination, rules of fair play and natural justice are part of the rule of law applicable in situation or action by state instrumentality in dealing with citizens in a situation like the present one. Even though the rights of the citizens are in the nature of contractual rights, the manner, the method and motive of a decision of entering or not entering into a contract, are subject to judicial review on the touchstone of relevance and reasonableness, fair play, natural justice, equality and non-discrimination in the type of the transactions and nature of the dealing as in the present case."

In *Sterling Computers Ltd. v. M & N Publications Ltd*.,[6] the Supreme Court has ruled that even in commercial contracts where there is a public element it is necessary that relevant considerations are taken into account and the irrelevant considerations are kept out. In *Union of India v. Graphic Industries Ltd*., [7] the Supreme Court has held that even in contractual matters public authorities have to act fairly.

In the area of exercise of contractual powers by governmental authorities, the function of the courts is to prevent arbitrariness and favouritism and to ensure that the power is exercised in public interest and not for a collateral purpose.[8] The Railway Board rejected the tender of the respondent. The Supreme Court ruled that the Board had acted arbitrarily and without applying its mind while doing so. The Court characterised it as a "flagrant violation of the constitutional mandate of Art. 14."[9]

Usually, the courts do not interfere with policy matters. But, in the instant case, the Supreme Court quashed the policy because it was framed in ignorance of the facts. The court stated : "Any decision be it a simple administrative decision or a policy decision, of taken without considering the relevant facts, can only be termed as an arbitrary decision."

When a term of the tender is changed after the parties have filed their offers in response thereto, it amounts to changing the rules of the game after it has begun. In such a situation, the only way out is to begin a fresh process of initial tender all over again.[10]

It is the settled law that no one has a fundamental right to carry on trade or business in liquor.[11] In exercise of its regulatory power, the State is entitled to

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[Footnote 4 Contd.]

SC 1236; *Raunaq International Ltd. v. I.V.R. Construction Ltd*., AIR 1999 SC 393 : (1999) 1 SCC 492; *Air India Ltd. v. Cochin International Airport Ltd*., AIR 2000 SC 801 : (2000) 2 SCC 617; *Centre for Public Interest Litigation v. Union of India*, AIR 2001 SC 80 : (2000) 8 SCC 606.

This topic is discussed more fully under Administrative Law, see, M.P. JAIN, *CASES AND MATERIALS IN INDIAN ADMINISTRATIVE LAW*, Vol. II, Ch. XV, M.P. JAIN, A *TREATISE ON ADMINISTRATIVE LAW*, I Ch. XVIII.

5. AIR 1990 SC 1031, 1037 : (1990) 3 SCC 752.

6. (1993) 1 SCC 445, 464 : AIR 1996 SC 51.

7. (1994) 5 SCC 398 : AIR 1995 SC 409.

8. *Tata Cellular v. Union of India*, AIR 1996 SC 11; *Asia Foundation and Construction Ltd. v. Trafalgar House Construction (I) Ltd*., (1997) 1 SCC 738 : (1997) 1 JT 309.

9. *Union of India v. Dinesh Engineering Corpn.*, (2001) 8 SCC 491 : AIR 2001 SC 3887.

10. *Monarch Infrastructure (P.) Ltd. v. Commissioner, U.M.C.*, AIR 2000 SC 2272 : (2000) 5 SCC 287.

11. *Khoday Distilleries v. State of Karnatka*, (1995) 1 SCC 574; *Ugar Sugar Works Ltd. v. Delhi Administration*, AIR 2001 SC 1447 : (2001) 3 SCC 635.

prohibit absolutely any form of activity in relation to an intoxicant, e.g., manufacture, possession, storage, import, export, etc. The State has the exclusive privilege to manufacture, sale, etc. of liquor. But if the State decides to part with its monopoly, then the State can regulate consistent with the principles of equality enshrined in Art. 14. The Supreme Court has observed in *Doongaji & Co. v. State of Madhya Pradesh*:[12]

> "Further when the State has decided to part with such right or privilege to the others, then State can regulate consistent with the principles of equality enshrined under Art. 14 and any infraction in this behalf at its pleasure is arbitrary violating Art. 14. Therefore, the exclusive right or privilege of manufacture, storage, sale, import and export of the liquor through any agency other than the State would be subject to the rigour of Art. 14…."[13]

The Supreme Court has ruled recently in *TVL Sundarsan Granites v. Imperial Granites Ltd*.,[14] that "while grant of largess is at the discretion of the State Government, its action should be open, fair, honest and completely above board. In the instant case, grant of lease by the State in favour of a party for quarrying coloured, granite was quashed on the ground that in doing so, the State had not acted "fairly and reasonably and had not kept public interest and mineral development in the State in view".

Grant of *tehbazari* by the Nagarpalika without any notice, without any auction or without any advertisement was held to be vitiated.[15]

After the terms and conditions for award of a contract have been announced, the concerned authority cannot go back on them otherwise it may result in undue favour to a particular person.[16]

Although norms and guidelines are generally to be followed, deviations for good reasons are not barred. Thus, where the guidelines issued by the RBI to bankers said that the banks should follow the broad policies contained in the guidelines relating to 'One Time Settlement' of its customers whose accounts have been classified as NPA, deviation in minor matters which does not touch the broad aspects of the policy could not be considered as violating Art. 14.[17]

When tenders are invited for execution of a work, the contract is awarded to the lowest tenderer which is in public interest. The principle of awarding contract to the lowest tenderer applies when all things are equal. The tender system eliminates favouritism and discrimination in awarding public works. It is also in public interest to adhere to the rules and regulations subject to which the tenders are invited.

Ignoring the instructions subject to which the tenders are invited would encourage and provide scope for "discrimination, arbitrariness and favouritism

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12. AIR 1991 SC 1947 : 1991 Supp (2) SCC 324.
13. Also see, *Har Shankar v. Deputy Excise & Taxation Commr*., AIR 1975 SC 1121 : (1975) 1 SCC 737; *State of Madhya Pradesh v. Nandlal Jaiswal, supra.*
14. (1999) 8 SCC 150 : AIR 1999 SC 3835.
15. *0mprakash Tiwari v. District Magistrate, Ballia,* AIR 1996 All 115.
Also see, *Ram and Shyam & Co. v. State of Haryana,* AIR 1985 SC 1147 : (1985) 3 SCC 267.
16. *Ramana Dayaram Shetty, supra*; *Netai Bag, supra.*
17. *Sardar Associates v. Punjab & Sind Bank,* (2009) 8 SCC 257 : (2009) 10 JT 410.

"which are totally opposed to the Rule of Law and our constitutional values". The very purpose of issuing Rules/instructions is to ensure their enforcement lest the Rule of Law should be a casualty". Inclusion of an item in the schedule to the Drugs (Prices Control) Order, 1995 (made under the Essential Commodities Act, 1955) in deviation from a norm fixed in a policy decision may result in violation of Art. 14.[18]

But even if the regulations provide that normally allotment of land should be made by inviting applications, the authorities were not precluded in a given situation to take recourse to a regulation which enabled the authorities to make allotment to a particular company. This is because of the principle that when power exercised by a statutory authority is traceable to a provision of a statute, then in the absence of violation of any mandatory provision therein or illegality of the purpose, a decision taken in furtherance of the statute would not be interfered with.[19] Hence when a high level committee presided over by the Minister authorized under rules of Executive Business framed under Article 166 considers a project and recommends an allotment of land to a company which was to undertake the project and the State Government clears the project, the requirement of consultation is satisfied. In such circumstances the competent authorities were free to evolve their own procedure.[20] It was not imperative that consultation should be by exchange of letter.[21]

"Merely because a bid is the lowest the requirements of compliance of rules and conditions cannot be ignored". Also, the concerned authority is not obliged to award contract to a tenderer at the quoted price bid. The authority can always negotiate with the next lowest tenderer (in case the lowest is out for any reason) for awarding the contract on economically viable price bid.[22]

Section 3(1) of the Capital of Punjab (Development and Regulation) Act, 1952, grants power to the Central Government to "sell, lease or otherwise transfer" any land or building belonging to the government "on such terms and conditions" as it may think fit. The Court has ruled in the following case that the action of the Government under S. 3(1) "is required to be fair and reasonable and not actuated by considerations which could be termed as arbitrary or discriminatory. The Government cannot act like a private individual in imposing the conditions solely with the object of extracting profits from its leassees. Governmental actions are required to be based on standards which are not arbitrary or unauthorised".[23]

Similarly, before the government places the name of a person on the blacklist, he should be given an opportunity of hearing. Blacklisting creates a disability as it pre-

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18. *Secretary, Ministry of Chemicals & Fertilizers, Govt. of India v. CIPLA Ltd.,* (2003) 7 SCC 1 : AIR 2003 SC 3073.
19. *Chairman & MD, BPL Ltd. v. S.P. Gurarajа,* (2003) 8 SCC 567 : AIR 2003 SC 4536.
20. *Chairman & MD, BPL Ltd. v. S.P. Gurarajа,* (2003) 8 SCC 567 : AIR 2003 SC 4536.
21. *Ibid.*
22. *West Bengal Electricity Board v. Patel Engg. Co. Ltd.,* AIR 2001 SC 682 : (2001) 2 SCC 451.
23. *Style (Dress Land) v. Union Territory, Chandigarh,* (1999) 7 SCC 90 : AIR 1999 SC 3678.

vents the person concerned from the privilege of entering into lawful relationship with government for purposes of gain:[24]

Award of contract by the Government of India to a private party for development of medium size oil fields was challenged through a public interest litigation on the ground of non-application of mind. But the Court rejected the contention because on facts the contention was not substantiated. The Court also ruled that whether the oilfield was to be developed by the Oil and Natural Gas Commission on a stand alone basis was a matter of policy and the Court would not interfere with the same. If the Court is satisfied that there have been "unreasonableness, *mala fide*, collateral considerations" in awarding a contract then the Court can quash the award of contract. As to the agreed price for purchase of oil extracted from the oil field in question, the Court said that this was a highly "technical and complex" problem and the Court was not qualified to probe into this matter.[25]

A contract entered into between the Lucknow Municipal Corporation and a builder to build an underground commercial complex in a municipal park was quashed by the Supreme Court in the following case.[26] The Court characterised the contract in question as being against the law and the masterplan. The contract was entered into by the corporation without calling tenders. The contract was held to be wholly unreasonable and one-sided favouring the builder. The general rule is that to dispose of public property, tenders ought to be called or a public auction held.[27] The Court described the contract in the following words:[28]

> "A bare glance at the terms of the agreement shows that not only the clauses of the agreement are unreasonable for the Mahapalika but they are atrocious. No person of ordinary prudence shall even enter into such an agreement. Valuable land in the heart of commercial area has been handed on a platter to the builder for it to exploit and to make runaway profits."

The Court ordered the building constructed to be demolished.

The great importance of disciplining discretion of the Administration in the matter of awarding contracts cannot be lost sight of in the contemporary period. To-day the state is the source of enormous wealth. Many individuals and businesses seek largess of the government in the form of contracts, licences, leases, quotas, jobs, mineral rights, property leases, etc. There is, therefore, need to develop some norms to regulate, structure and discipline government discretion to confer such benefits. The government or any of its agencies should not be allowed to act arbitrarily and confer benefits on whomsoever they want.[29]

The court can, on a finding of arbitrary methodology, itself suggest curative solutions. In *Ravi Development*,[30] the Supreme Court criticized the judgment of the High Court which held that the adoption of a particular method was arbitrary

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24. *Eurasian Equipment & Co. Ltd. v. State of West Bengal*, AIR 1975 SC 266 : (1975) 1 SCC 70; *J. Vilanganson v. Executive Engineer*, AIR 1978 SC 930; *Raghunath Thakur v. State of Bihar*, AIR 1989 SC 620; *Southern Painters v. Fertilizers & Chemicals Travancore Ltd.*, AIR 1994 SC 1277 : 1994 Supp (2) SCC 699.

25. *Centre for Public Interest Litigation v. Union of India*, (2000) 8 SCC 606 : AIR 2001 SC 80.

26. *M.I. Builders v. Radhey Shyam Sahu*, AIR 1999 SC 2468 : (1999) 6 SCC 464.

27. See, *Tata Cellular v. Union of India*, AIR 1996 SC 11 : (1994) 6 SCC 651; *Ram & Shyam v. State of Haryana*, AIR 1985 SC 1147.

28. *M.I. Builders*, AIR 1999 SC 2468 at 2500 : (1999) 6 SCC 464.

29. This question has been discussed further in Ch. XXXIX, entitled "Government Contracts".

30. *Ravi Development v. Shree Krishna Prathisthan*, (2009) 7 SCC 462 : (2009) 5 JT 563.

and unreasonable but the Court put across certain suggestions for the consideration of the State Government in relation to fresh notice being given regarding the method and its applicability so that all persons interested can participate on equal terms promoting healthy competition.

(v) SALE OF GOVERNMENT PROPERTY

The basic principle is that a public authority does not have an open-end discretion to dispose of its property at whatever price it likes. The principle is that the sale should take place openly and the effort should be to get the best price.[31]

The several methods which can be employed for this purpose are : (i) public auction; (ii) inviting tenders for the property. As the Supreme Court has observed in *State of Uttar Pradesh v. Shiv Charan Sharma*:[32] "Public auction with open participation and a reserved price guarantees public interest being fully subserved."

The Supreme Court has laid down that mineral rights ought not be granted through private negotiations but by holding a public auction where those interested in the matter may bid against each other. The Court has observed: "Public auction with open participation and a reserved price guarantees public interest being fully subserved."[33]

In *Haji T.M. Hassan v. Kerala Financial Corpn.*,[34] the Supreme Court has emphasized that public property owned by the state or its instrumentality should be sold generally by public auction or by inviting tenders. Observance of this rule not only fetches the highest price for the property but also ensures fairness in the activities of the state and public authorities. There should be no suggestion of discrimination, bias, favouritism or nepotism. But there may be situations when departure from this rule may become necessary. However, such situations must be justified by compulsions and not by compromise. It must be justified by compelling reasons and not by just convenience.

Balco[35] is the latest pronouncement of the Supreme Court on the disposal of government property. 51% equity in Balco, a government undertaking, was sold to a private company by inviting tenders through global advertisement. The sale was challenged on various grounds but the Supreme Court rejected all the contentions and upheld the sale. The following three main propositions emerge from the Court decision:

(1) Divestment by the government in a public enterprise is a matter of economic policy which is for the government to decide. The Court does not interfere with economic policies unless there is a breach of law.

(2) Sale of an undertaking to the highest bidder after global advertisement inviting tenders at a price which was way above the reserve price fixed by the gov-

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31. *Fertilizer Corp. Kamgar Union v. Union of India*, AIR 1981 SC 344 : (1981) 1 SCC 568.
32. AIR 1981 SC 1722 : 1981 Supp SC 85.
33. *Ram & Sham Co. v. State of Haryana*, AIR 1985 SC 1147 : (1985) 3 SCC 267.
34. AIR 1988 SC 157 : (1988) 1 SCC 166.
Also see, *C. Rami Reddy v. State of Andhra Pradesh*, AIR 1986 SC 1158; *Shri Sachidanand Pandey v. State of West Bengal*, AIR 1987 SC 1109 : (1987) 2 SCC 295; *Bhupal Anna Vibhute v. Collector of Kolhapur*, AIR 1996 Bom 314.
35. *Balco Employees Union (Regd.) v. Union of India*, JT 2001 SC 466 : (2002) 2 SCC 333.

ernment could not be said to be vitiated in any way. The procedure followed was proper.

(3) The matter of fixation of the reserve price, the matter being a question of fact, the Court does not interfere unless the methodology adopted for the purpose is arbitrary.