



Right to Equality

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Introduction

The topic of my research is 'Right to Equality'. Right to Equality is itself a vast topic mentioned from Article 14-18 and but in this research I would be dealing specifically on Article 14¹. There are in total seven fundamental rights given to the individual namely Right to Equality, Right to Freedom, Right against Exploitation and hence forth. Right to Equality has been considered as Basic Structure of the constitution and an essential feature of democracy or rule of law in case of *Indira Gandhi v Raj Narain*² by Supreme Court and also regarded as the most important of all fundamental rights.

In Article 14, equality mentioned does not only mean formal equality but also real and substantive equality in order to strike down the inequality which has arisen due to vast social and economic differences thus ensuring social and economic justice. It is mainly for the benefit of all persons (citizen as well as alien) within the territory of India. In fact it was also held that, in *National Legal Services Authority v Union of India*³ where NALSA was petitioner whose primary objective is to provide with free legal aid to disadvantaged group of Indian society and the other petitioner are Poojya Mata Nasib Kaur Ji Women Welfare Society and Laxmi Narayan Tripathi, a renowned transgender activist, the word 'person' includes not only males and females but also transgender and gave their gender right to self identification and court also held that since they were treated as socially and economically backward they would be granted reservation in educational institution

and even if they are entitled to equal protection of law. Moreover the foreigners do not have any equal right that could be claimed with that of Indians.

According to 'Right to Equality under Article 14' by Monika Sharma, "Article 14 guarantees to every individual the right to equality before the law and also equal protection of law. 'Equality before law' is a declaration that all person are equal within the territory of India, meaning thereby not giving any special preference to any particular individual or group and that every person is subjected to the ordinary law of land and 'Equal protection of law' states that every person will be protected equally within the territory of India without any discrimination on the basis of caste, religion, race, etc. Thus, equality before law is dynamic term and has two meanings i.e. No person is above law and the state is authorised to ensure equality among all individual."

In Article 14 of Constitution of India: A brief explanation by Pradnya Parihar, "Thus, equality before law is negative demand from the state i.e. not to discriminate while equal protection of demands a more positive action from the state i.e. to bring all the citizens to an equal footing."

There are namely two expressions mentioned in Article 14 means equality of status and opportunity and the main objective of both expression is to ensure equal justice. Hence, the two expressions are:

- Equality before law- this phrase is very common in almost all written constitution example, Irish constitution and also West

German Constitution and its sole purpose is to guarantee fundamental rights. It is of English Origin. According to Dr. Ivor Jennings, "Equality before law means that among equals the law should be equal and should be equally administered, that like should be treated alike." It is held basic to the Rule of Law. Rule of Law states that no man is above the law and whatever be his rank is subjected to ordinary law of land. If there is breach of Rule of Law would ultimately result to breach of Article 14. Equality before law is a dynamic concept having many faces, one of which is that there shall be no special privilege given to particular person, class or group and the other is the obligation of state to bring about equal society through this law. In case of *K .C. Sarkar v Rajesh Ranjan*⁴, there was an appeal against the decision of Patna high court where application was filed by respondent seeking bail in a trial pending before the CBI court. Ajit Sarkar was then an MLA from Patna constituency in state of Bihar. There was enmity between respondent and Ajit as a result of political differences. On 14th January, 1998, Ajit was returning in his official car after attending a panchayat and he and his companions were attacked by two motor cycles with weapons as a result of which Ajit along with two companions died and only Rameshwar Oraon was seriously injured. Thus the respondent was charged for this offence. It was held that MPs/ Influential politicians are not above the law and while in custody are to be kept in prison as normal employer.

Thus, it is a negative concept as it means absence of any special provision to any particular individual. It also includes arbitrary power of government.

- Equal protection of law- This phrase is adopted from the constitution of the United States of America and also in the Universal Declaration of Human Rights which describes it as "nor shall any state- deny to any person

within its jurisdiction equal protection of law". It means that every person is subjected to equal treatment in similar circumstances, both in privileges as well as liability imposed by law. In other words it means that there should be no discrimination between two or more persons and equal law should be applied in equal situations. The rule is that the like should be treated alike and not the unlike should be treated alike. Thus, it is positive in nature as it focuses on ensuring equality of treatment in all equal situation. In short, Since all the persons are born equal, therefore the state cannot take away any right.

Both the expressions are corollary to each other. It is difficult to imagine each other separately. If there is violation of equal protection of law then there is violation of equality before law. In case of *Srinivasa theatre v Government of Tamil Nadu*⁵, supreme court held that two expressions mentioned in article 14 does not mean the same. The two expressions have to be read and interpreted with reference to context of Constitution of India and not on the basis of interpretation of constitution of other countries from whom it is borrowed.

Moreover, Article 14 guarantees equal protection not only regarding to substantive law but procedural law also and it also criticizes discrimination not only by substantive but also by procedural law. This means individuals can avail procedural rights for the purpose of relief and defence. If a special procedure is mentioned to distinguish from other then class must be based on intelligible differentia having reasonable relation with the object that is sought to be achieved.

Exception to Right to Equality

When there was proclamation of emergency under article 359, the enforcement of article 14 was suspended.

The president and the governor under article 361 are not answerable to any court for their exercise of power and duties even though it may lead to

violation of article 14. Thus, they are free from any criminal and civil proceedings.

The member of parliament and of state legislation are said to be free from any liability imposed on them in regard to anything done or within house even though it leads to violation of article 14.

Article 31 C excludes some laws for the purpose of implementing some directive principles, this again forms an exception to article 14.

Various Doctrines Mentioned in Article 14

Rule of Law

The concept of equality has its basis from rule of law and if there is breach of rule of law would lead to breach of equality under article 14. The theory of Rule of Law was given by A.V. Dicey. Dicey theory on rule of law has three pillars in regard to the concept that a government should be based on the principle of law and not men, they are:

(a) Supremacy of law

Law is always over all people in fact above those persons who are administering the law. Thus, it does not include the rank or position of person. It places checks and balances over the government for making and administering law.

(b) Equality before law

It's sole purpose is to ensure that the law is enforced and administered and applied in a just manner. It holds that no person can discriminate any other person or group on the basis of sex, class, religion, race ,etc. It has been mentioned in Article 14 of Indian Constitution.

(c) Predominance of legal spirit

According to Dicey the above two principle is insufficient if there is no enforcing authority and this authority could only be found in the court.

India adopted Rule of Law concept from common law. It is provided that constitution shall be the supreme power in the land and legislative and executive derive its power from them and any law made by them does not stands in conformity with

them would deemed to be invalid. In short it checks executive arbitrariness. Further, article 14 ensues every person as equal and no person shall be discriminated on the basis of place of birth, caste, religion, etc. and also provides for separation of power. By all these methods constitution fulfils Dicey's theory.

In other words, Rule of law means that no man can be or is above law and each one is subject to the ordinary law of land irrespective of the rank or position they hold. He observes that "with us every official from the prime minister down to constable or a collector of taxes is under the same responsibility for every act done without legal justification as any other citizen."

Doctrine of Equity

This doctrine is derived from English common law and is being followed in India even after India became independent in 1947. Doctrine of equality is a dynamic and evolving concept. Its main goal is equality of status and of opportunity. Under this doctrine the object is to secure to all person either a citizen or a non-citizen, equality of status and opportunity as mentioned in the preamble of the constitution. Its main focus is to treat all persons alike.

It aims to bar discrimination and prohibits laws which are discriminatory in nature. It includes two phrases: first to provide each individual with equal protection of law and the other to treat every individuals equally before law as no person is above law.

Doctrine of Reasonable Classification

Equality in Article 14 does not mean absolute equality (where everyone is treated in similar manner and this resulting an ignorance to social and educational inequalities existing in the society). It does not mean that all the laws are universal or general and also that same law must apply to all persons. Article 14 does not mean that all the laws that are made are applicable to all persons. According to this doctrine, the legislature has the right to treat two types of person

differently but on reasonable ground. This means that reasonable classification must be done on intelligible differentia i.e. persons or things that are grouped together form distinct groups so that it can be distinguished from other group. For example, the maternity benefit is given to the working women and not others. Thus, all persons are not equal and so their needs vary and therefore require separate treatment. If same laws are applied to every individuals in general then it would result in the violation of right to equality. So, the legislature is required to tackle with diverse problems by selecting, classifying people in the way law is supposed to operate. This is also referred as positive discrimination and it is permitted as it is not arbitrary, artificial and evasive. There must be nexus between basis of classification as well as object of act which makes such classification.

In case of Charanjit Lal Chowdhary v Union of India⁶, the governor general promulgated the Sholapur Spinning and Weaving Company Ordinance, 1950 and granting the central government to take over its management and administration which was earlier closed due to dispute between the management and its employees.

It was held that there was no infringement of Article 14 even though the legislature has against the company and its shareholders. Further it was also held that law or act or action should be constitutional even if it applies to one person or class of person, if there was sufficient basis or reason for it.

However if positive or reasonable discrimination is permitted then at the same time class legislation is prohibited i.e. any legislation differentiating between same class of people. When the person belong to same group they are to be treated equally. There is violation of article 14 only when the persons are treated differently.

In case of D.S. Nakara v Union of India⁷ where there were two family pension schemes in operation since January 1, 1964, one which continued to be in force for those who retired

before the above mentioned date or those who did not contribute to non-contributory scheme and the other who to the contributory scheme. The widows of government servants who denied to make contributions were denied pensions and this continued even after changes in 1977. Thus, the court held this as a violation of article 14 as they the government pensioners retiring before or after date both belong to the same class for the purpose of providing pensions.

- Test for reasonable classification:
In case of R.K. Dalmia v Justice Tendolkar⁸ laid down the following test to determine reasonable classification. These are-
 - (a) The classification must be done on the basis of intelligible differentia which distinguishes person or thing of one group to other
 - (b) Differentia must be rational to the object that is to be achieved by the statute in question.
 Thus the court held that the following principles are to be kept in mind while determining the validity of the action or act for the violation of article 14.
- Principle determining reasonable classification
 - (a) Law should be constitutional even if it relates to single individual. Due to some special reason or situation the law is related to him and not others, then he would be considered as a class.
 - (b) There is burden upon the person who attacks the constitutionality of certain law to prove that there is certain violation of constitutional principles.
 - (c) It can only be denied if there is no classification and difference against any individual or class but targets particular individual or class.
 - (d) It should be understood that whatever legislature does is for the needs of people and its laws are mainly focusing to remove any discrimination.

- (e) The legislature has the right to recognise the harm and put restrictions to particular cases where the need is very much clear.
- (f) Matter of common knowledge, matter of common report, the history, statement of object and reason of statute are very necessary to be taken into consideration while deciding the constitutionality.
- (g) Since good faith and knowledge are important for legislature but if there is nothing on the face of law or circumstances surrounding be brought to the knowledge of the court, the presumption of constitutionality cannot be carried thoroughly.

Thus, doctrine of reasonable classification has been important to determine the scope and content of article 14. In case of *E.P. Royappa v state of Tamil Nadu*⁹, Justice Bhagwati gave new concept of equality:

‘Equality is a dynamic concept with many aspects and dimensions and it cannot be cribbed, cabined and confined within traditional and doctrinaire limits. Equality is antithetic to arbitrariness. In fact, equality and arbitrariness are sworn enemies, one belong to rule of law while other to the whim and capacity of monarch. Where an act is arbitrary, it is implicit in it that it is unequal both according to political logic and constitutional law and therefore violative of Article 14.

Doctrine of Classification

This is applied for the determination of reasonability of state action which is basis of article 14. It particularly deals with the test that whether the state action is arbitrary or not. If the state action is arbitrary it would violate article 14 and this would not be justified on basis of doctrine of classification. The basic content of article 14 is that strikes down arbitrariness of state action and ensure fairness and equality of treatment in order to ensure fair justice.

Right to Equality does not mean that everyone is to be treated equally irrespective of situation. If they are treated equally they violate article 14. In order to find out which groups are to be treated unequally so that it doesn't violate Article 14 classification has to be made and such classification must be reasonable.

In *Ajay Haisa v Khalid Mujhib*¹⁰, where the petitioners challenged the procedure of admission in regional engineering college. Two tests would be conducted for the purpose of admission one written test and the other viva and viva would be conducted for only 2 or 3 minutes. When the result were out the petitioners noticed that they had obtained good marks but were unable to secure admission because of less marks obtained in viva exams and the candidates who qualified had less marks in written but good in viva and succeeded in securing admission. Hence, the petitioners filed the writ challenging the constitutional validity of article 14 on ground for admission was their right to equality.

The supreme court struck down on the basis of constitutionally invalid and further laid down that “what Article 14 strikes at is arbitrariness because an action that is arbitrary must necessarily involves negation of equality.” So, court held that not more than 15% of total marks should be given for oral interview.

Doctrine of Reasonability

It is very necessary that every administration and judicial order must be strongly supported by reason. It is the heartbeat of every possible conclusion. Reason provides clarity in order. Absence of order renders the decision unsustainable. Hence, reason ensures transparency and fairness while making judgement or decision or order. This has been set as a hallmark of Article 14.

In case of *Victoria Memorial Hall v Howrah Ganatantrik Nagrik Samity*¹¹ On January 4, 1960 foundation of VHM was laid down by king George V and was completed December 28, 1921 its construction was completed and inaugurated by

Edward VIII and was opened for public viewing. Afterwards the museum attained the status of National Museum of modern Indian history. Further many cupolas were added to the main monument. In 2000, the government of India advised VHM to take steps for modernisation. For better preservation and maintenance, the NEERI had given various suggestions but they were not considered. Alleging for mismanagement and abuse of historic museum and also contending that the museum was at risk a writ was filed by the Howrah Ganatantrik Nagrik Samity and the rejection of recommendation by expert committee by high court without valid reason was illegal. It was held that disclosure of reason is important and also giving reason minimises the chance of arbitrariness.

Doctrine of Intelligible Differentia

The expression 'intelligible differentia' means difference capable of being understood. It is the factor to distinguish or differentiate one state or class from other class or state but it must be capable of being understood. However it is one of the required test to identify reasonability of the classification. In case of State of West Bengal v Anwar Ali Sarkar, Mr. Anwar Ali and 49 others were tried for various offences committed by them in raiding a factory called Jessop Factory as an armed gang. The accused claimed for appeal in High Court to issue writ on ground of equal protection of law enjoyed by Article 14(4) of Constitution of India.

The court held that classification must be in rational nexus between the basis of classification and object of act which makes the classification. The act was void since it granted arbitrary, uncontrolled and unguided power on the government which was unreasonable and so violated Article 14 i.e. restricts equal protection if law.

Analysis

- The Right to Equality under article 14 states that it is not absolute.

- Though it declares to be constitutionally absolute but provides certain immunity to certain individual. Example, foreign diplomats enjoy protection from countries judicial process.
- 'Equal protection of law' is positive in nature but must not provide to all the individual as all person are not equal by nature or circumstances and their needs too vary.
- There are various doctrines laid down in Article 14 like Doctrine of reasonability, doctrine of reasonable classification, etc.
- In most of the countries the state not only discriminate but also make special provision for the disadvantaged section and also take various affirmative actions. But our country discriminate but it is permitted and positive discrimination with the mindset of contributing to just and equal society.
- Equality is not just philosophical, abstract but also real and pragmatic equality.

Conclusion

Article 14 states that the state shall not any of its individual within the territory of India:

- (A) Equality before law (no man is above law irrespective of rank and status and all are equal in eyes of law)
- (B) Equal protection of law (State cannot treat unequals as equals)

Equality before law is negative demand from state in the sense that it should not discriminate and Equal protection of law is positive demand that is to bring all individuals in equal footings.

However when there was declaration of emergency, this served as an exception to the right to equality as during that time people's right were infringed.

There are various doctrines laid down in this Article like

- Doctrine of Equity-
- Doctrine of reasonable classification- if the persons are classified they must be done on reasonable ground.

- Doctrine of reasonability- for any order reason is very important in order to ensure fair justice
- Doctrine of classification-. In order to find out which groups are treated unequally classification has to be made.
- Doctrine of Intelligible Differentia- it is a necessary factor to distinguish one group from other group and must be capable of being understood.

Therefore, Article 14 aims to guarantee all individual equal protection of law in the country by treating every person equal before the law irrespective of rank or post that it holds. There can be act of fairness without being just and reasonable. Intelligible differentia clubbed with reasonability, justness, fairness will ultimately amount to equality.

Equality before law- The State shall not deny to any person equality before law or the equal protection of laws within the territory of India.

References

1. AIR 1975 SC 2299
2. AIR 2014 SC 1863
3. 2004 7 SCC 539
4. AIR 1992 SC 999
5. AIR 1951 SC 41
6. AIR 1983 SC 130
7. 1958 AIR 538
8. AIR 1974 SC 555
9. AIR 1981 SC 487
10. AIR 2010 SC 1285