

AN APPROACH TO INDIAN CONSTITUTION

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INTRODUCTION

The constitutional preamble gives Indians the rights of liberty in that liberty of thought of expression etc, equality –equality of status and opportunities in this way whereas fraternity – gives brotherly fellow feeling amongst the members of the Indian nation with respect the dignity of each other. Equality i.e. Article 14 and 21 are play a very important role whereas the Supreme Court quoted that these are the basic features of the constitution.

EQUALITY

The Constitution of India guarantees the rights to equality through Art 14 to 18 “equality is one of the magnificent corner stones of Indian democracy.”

Art.14 in the Constitution of India 1949

Right to Equality Articles:-

Art 14 Equality before Law—the state shall not deny to any person equality before law and equal protection before law within the territory of India

Art 15 “prohibition of discrimination on grounds of religion, race, caste sex or place of birth”.

(1) The state shall not discriminate against any citizen

(2) Citizen shall not, on ground only of religion, race, caste, sex, place.....

(a) Access to stop etc..

Art 16 Equality of opportunity in matters of Public employment.

Art 17 Abolition of Untouchability

Art 18 Abolition of titles

Article 14 is the genus while Art.15 and 16 are the species. Article 14, 15 and 16 are constituents of a single code of constitutional guarantees supplementing each other. The Right to equality is

one of the chief guarantees of the Constitution. Articles 14-16 which collectively encompass the general principles of equality before law and non- discrimination and Articles 17-18 which collectively further the philosophy of social equality (a system of guiding life)

ORIGIN

The First expression “equality before law” is of English origin and the Second expression “equal protection of law” has been taken form the American Constitution.

United States of America

Section 1 of 14 Amendment says—No state shall down to any person within its jurisdiction the equal protection of the law.

United Kingdom

No fundamental rights, no room for challenging judicial decision but only limitation against “state action” of any kind.

Burma

Section 13 “All citizens irrespective of birth, religion, sex or race are equal before the law that is to say, there shall not be any arbitrary discrimination between one citizen or class of citizens and another.

Eire

Section 40 (1) - All citizens shall, as human persons be held equal before law.

Chile

Article 10 all inhabitants of the Republic are assured equality before the law.

Universal Declaration of Human Rights 1948

Article 7 All are equal before the law and are entitled without any discrimination to equal protection of the law. (Both expression used here---which are available in the Indian constitution)

Article 14 of the Constitution embodies the principles of “non- discriminates”

Article 21 includes “rights to life” and embodies several aspects of life. It includes “opportunity”. Article 21 and 14 are the heart of the fundamental rights of the Constitution of India.

Equality before Law

The first is a negative concept. There is no special privilege in favor of any one that all are equality subject to the ordinary law of the land and no person, whatever is his rank or condition is above the law.

A Constitution bench of the Supreme Court has declared is no uncertain term that equality is a basic feature of the Constitution. Art. 14 bars discrimination and prohibit discriminatory laws. It has been expanding as a result of the judicial pronouncement and Art. 14 has come to have a “highly activist magnitude”

Equal protection of law

The second is position concept. Same law should apply to all persons; every law must have a universal application within the country.

Difference of circumstances, equal the law should be equal and equally administered, that the like should be treated like without distinction of race, sex, case etc. Both have equal common justice. In this situation not covered by Article 15 to Article 18, the general principle of equality embodies in Article 14 is attracted whenever discrimination is alleged.

The preamble to the constitution emphasizes upon the principle of equality as the basis to the Indian constitution. Neither parliament nor any state legislature can transgress (go to beyond) the principle of equality.

The Supreme Court declared in *M.G. Badappanavar V. State of Karnataka*¹ “equality is the basic feature of the Constitution of India and any treatment of equals unequally or unequal’s as equal will be violation of basic structure of the court of India.

All persons in similar circumstance shall be treated alike both in privileges and liabilities imposed. Article 14 applies both administration and legislative. Non- compliance with the rules of natural justice amounts to arbitrariness violating Article 14.

RULE OF LAW

The guarantee of equality before the law is an aspect of what Dicey calls the rule of law in England. It means that no man is above the law and that every person, whatever be his rank or conditions, is subject to the jurisdiction of ordinary courts.

Dicey wrote,-- 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.

Professor Dicey gave three meaning of the Rule of Law

1. **Absence of Arbitrary power or Supremacy of the law**—Supremacy of Law as opposed to the arbitrary power of the Government. In other words, a man may be punished for a breach of law, but he can be punished for nothing else.
2. **Equality before the law**- All classed to the ordinary law of the land administered by ordinary law courts. This means that no one is above the land/law.
In England- whether he is an official of the state or a private individual, is bound to obey the same law.
In Great Britain-there is one system of Law and one system of Courts for all, i.e. for public officials and private persons.
3. **The Constitution is the result of the ordinary Law of the Land**—it means that the source of the rights of individuals is not the written constitution but the rules as defined and enforced by the Court.

First expression and second expression apply to Indian system but third aspect of the Dicey’s rule of law doesn’t apply to Indian system as the source of rights of individuals is the

¹ AIR 2001 SC 260

Constitution of India. Therefore the rule of law embodies in Article 14 is the “basic feature” of the Indian Constitution and hence it cannot be destroyed even by an amendment of the Constitution under Article 368.

The words “any person” Article 14 denotes of the constitution that the guarantee of the equal protection of laws is available to any person which includes any company or association or body of individuals. The protection of Article 14 extends to both Citizens and non-citizens and to natural persons as well as legal person.

Exception of Rule of Law

1. Equality before the law does not mean the powers of the private citizens are the same as the powers of the public officials.
2. The rule of law doesn't prevent certain classes of persons being subject to special rulers.
 - a. Members of the armed forces are controlled by military laws.
 - b. Medical practitioners are subjected to the regulations framed by the medical council of India.
 - c. A statutory body, and are immune from the jurisdiction of ordinary courts.
3. Article 361 provides that the president or the Governors of State shall not be answerable to any court for the exercise and performance of the power and duties of the office or for any act done or purporting to be done by him in the exercise and performance of those powers and duties.
 - a. Criminal proceeding shall not be instituted or continued against the president or the governor of a state in any court during his term of office
 - b. No process for the arrest or imprisonment of the president or the governor of state shall be issued from any court during his term of office.
4. Today, Ministers And other executive bodies are given very wide discretionary powers by statute. A minister may be allowed by law “to act as he think fit” OR if he is satisfied. Such power is sometimes abused.

5. Certain members of society are governed by special rules in their professions, i.e lawyers, doctors, nurse, member of armed force and police. Such classes of people are treated differently from ordinary citizens.

LIMITATION THE EFFECTIVENESS OF ARTICLE 14

1. The scope of right to equality under Art.14 has been considerably restricted by the 42nd Amendment Act 1976. The new art 31 –c added by the 25th Amendment 1971 provides that laws made by the state for implementing the Directive Principles contained in clause (b) or clause(c) of Art 39 cannot be challenged on the ground that they are violation of Article14.
2. Article 359 (1) provides that where a proclamation of emergency is in operation that president may, by order, declare that the right to move any court for the enforcement of such rights conferred by part III (except Art. 20 and 21) shall remain suspended/automatically Article 14 suspended for the period during which the proclamation is on force.
3. Article 361(protection of President and Governors and Raj pramukhs) lays down that the president and the Governors are exempted from any criminal proceeding during the tenure of their office.

CASES

In state of Bihar V. Bihar Lecturers Association²

Facts- it has been held that there is clear distinction between a trained teacher (lecturer) and untrained teacher (lectured). Such a distinction is valid, rational and reasonable. The classification is reasonable and is based on intelligible differential which distinguish on class (trained) and the other class (untrained).

² AIR 2007 SC 1948

Judgment- Prescribing different pay scales cannot be held illegal, improper or unreasonable infringing Art 14 of the constitution. But classification must satisfy two tests otherwise it will be arbitrary.

New concept of equality—*E. P. Royappa v. State of Tamil Nadu*³

The Supreme Court has challenged the traditional concept of equality which was based on reasonable classification and has laid down a new concept of equality. Bhagwati J., Chandrachud and Krishan Iyer J.J pronounced the new concept of equality in the following words-

“Equality is a dynamic concept with many aspects and dimensions and it cannot be cribbed within traditional and doctrinaire limits. In fact, equality and arbitrariness are sworn enemies: one belongs to the rule of law in a republic while the other, to the whim and caprice of an absolute monarch. Where an act is arbitrary, it is implicit in it that it is unequal both according to political logic and constitutional law and is violative of Article 14.”

*Maneka Gandhi V. Union of India*⁴

Bhagwati J. again quoted with approval the new concept of equality propounded by him in the E. P. Royappa case....He said.

“Equality is a dynamic concept with is merely a judicial formula for determining whether the legislative or the executive action is arbitrary and therefore constitutes a denial of equality.”

*R. D. Shetty V. International Airport Authority*⁵

In this case Bhagwati J. – the doctrine of classification which is involved by the court is **not** paraphrase of Art. 14 nor is it the objective and end of that Article. It is merely a judicial formula for determining whether the legislative or executive action in question is arbitrary and therefore constituting denial of equality. If the classification is not reasonable and does not satisfy the two conditions otherwise violation of Article 14 would be breached.

Test of Reasonable Classification

1. The classification must be founded on an intelligible differentia which distinguishes person or things that are grouped together from others left out of the group: and

³ AIR 1974 SC555

⁴ AIR 1978 SC 597

⁵ AIR 1979 SC 1628.

2. The differentia must have a rational relation to the object sought to be achieved by the Act.

Some other's valid Classifications are as follows:-

1. A law may be constitutional even though it relates to a single individual even some special circumstances or reason applicable to him and not applicable to others i.e. a single individual may be treated as a class itself.
2. On the fact of the statute, there is no classification at all and no difference peculiar to any individual or class not applicable to any other individual or class, and yet the law hit only a class or particular individual.
3. The classification may be made on different basis, e.g. – geographical or according to object or occupations or the like.
4. The classification made by a Legislature need not be scientifically. Perfect or logically complete.
5. Equality before the law does not require mathematical equality of all persons in all circumstances.
6. Equal treatment does not mean identical treatment.
7. There can be discrimination both in the substantive as well as the procedure law. Article 14 applies to both.

The case relates the reasonableness of classification under Article 14. Some of these cases are as follow.

Cut off Dates—*D.S. Nakara V. Union of India*⁶

The Government issued an office memorandum announcing a liberalized pension scheme for retired Government servants but it made applicable to those who had retired after march 31, 1979. The Supreme Court in above case held that the fixing of the cut – off date to be discriminatory as violating Article 14.

Civil Services—*Mohan Kumar singhania V. Union of India*⁷

⁶ AIR 1983 SC 130

⁷ AIR 1992 SC 1

The Supreme Court has ruled that each of the various civil Services, namely, I.A.S, I.F.S, I.P.S Group A and B Services is a ‘Separate and determinate’ service forming a distinct cadre and that each of the service is founded on intelligible differentia which on rational grounds distinguishes persons grouped together from those left out and that the difference are “read and substantial” having a “rational and reasonable nexus” to the “object sought to be achieved”

Also the same relates cases like Air India V. Nargesh Meerza⁸ and Vishaka V. State of Rajasthan⁹

CONCLUSION

The action of the state is arbitrary it cannot be justified even on the basis of doctrine of classification. It is attracted where equals are treated differently without any reasonable that is why we have—“justice should not only be done but it must also be seen to be done” Without equality you cannot fight before the court or the state.

REFERENCES:

Books & Acts

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2. Constitution of India, Bare Act--Baxi
3. Indian Constitution. J. N. Pandey
4. Comparative Constitution – D.D. Basu
5. Domestic Violence Act 2005

⁸ AIR 19814 SC 1829

⁹ AIR 1997 SC 3014