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RIGHT TO EQUALITY & RULE OF LAW: A CONCEPTUAL STUDY FOR ADMINISTRATION OF DUE JUSTICE

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ABSTRACT

Indian Constitution is supreme as we are not having a secular based religion like other countries as it simply means that India welcomes every religion in its equal aspect as known by the *Due Interpretation of Preamble that India is a Secular Country*. Thus, we can say that we are not having any sponsored religion in our country. For protecting person's belief, faith and worship, the religious freedom has been granted under the Indian Constitution provided that this freedom is subject to reasonable restrictions on the ground of public order, morality, and health. When we speak about democracy it includes fundamental rights, fundamental duties, equality before law, secularism etc. *Administration of Justice* is indispensable as it is the paramount consideration for the wholesome benefit of the citizens of India. *Right to Equality under Article 14 of the Indian Constitution* is the wider interpretation of due administration of justice as it includes multiple factors, doctrines and provisions which is for the gross benefit of the citizens whether educationally, financially, and, socio-economically.

Under this Research Article, the Author has fruitfully endeavored to summarize about meaning and nature of Right to Equality, Global Scenario of Right to Equality, Concept of Rule of Law. The Author has used an extensive research skill to write this Research Article and has maintained the absolute due analysis and interpretation for covering the socio-legal analysis respectively.

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1. INTRODUCTION ON RIGHT TO EQUALITY UNDER THE CONSTITUTION OF INDIA

When talking about Indian Constitution and right to equality we can notice that in our preamble the idea of equality has been stated expressly as well as impliedly which includes natural, social, civil, political, economic, and legal equality.

- Article 14 is for giving protection to everybody equally and all people are equal in the eyes of law.
- Article 15 is for prohibiting discrimination on the ground of religion, race, caste, place of birth, sex, or any of them but this Article provides special provisions for women, children and backward classes of people.
- Article 16, is for providing equality of opportunity in the matters of public employment whereas special provisions are made for backward classes.
- Article 17, is for forbidding the practice of untouchability in all forms.
- Article 18, is for abolition of accepting titles except those which are for academic or military title from a foreign land.

2. GLOBAL SCENARIO OF RIGHT TO EQUALITY

Right to Equality comes as a savior in a society when discrimination comes in the way of civil society in general. It popped up in a multifaceted way be it a politics enforcement of law, administration of justice, education, employment and like. There are different reasons why people are being discriminated; some of the reasons are as follows:

- Racial origin.
- Ethnic origin.
- National origin.

- Religious origin.
- Cultural origin.
- Linguistic origin.
- Social origin such as aborigines, indigenous people, communities of African or Asian origin etc.
- Discrimination against persons with disabilities.
- Discrimination with the persons affected by AIDS and the like.
- Discrimination on the ground of gender.

In combating discrimination, the role of Judges, lawyers and prosecutor is immense as their task to check whether the existing laws and regulations prohibiting discrimination is going on as per the norms of the land or not.

There is also a century long history in the international parlance regarding establishment of right to equality in the land of discrimination and practically got the start of acceptance in some form or the other from the First World War. There are numerous Universal Legal provisions which guarantees right to equality before the law. Some of these are mentioned here under:

- **Universal Declaration of Human Rights, 1948:** According to this declaration equal dignity and right has been provided to all human beings and it has been stated that they are born free. [1] Moreover equal protection of law has been provided and discrimination of any kind will be considered as violative under this declaration. [2]
- **Convention on the Prevention and Punishment of the Crime of Genocide, 1948:** According to this convention no matter whether genocide is committed at the time of war or at the time of peace it will be consider as equal and will be punished and preventive measures would be taken. [3]

- **International Covenant on Civil and Political Rights, 1966:** Under various provisions of this International Covenant on Civil and Political Rights protection against discrimination is provided also it declares all people to be equal before the court [4] and tribunal. [5]
- Moreover, this covenant states about the equal participation of every citizen without any discrimination in public life. [6]
- Protection to the ethnic, religious, and linguistic minorities is expressly stated in this covenant. [7]
- **International Covenant on Economic, Social and Cultural rights, 1966:** This Covenant focuses on the social, economic, and cultural rights so that no person can be discriminated on the ground of equal wage and work. [8]
- **International Convention on the Elimination of All Forms of Racial Discrimination, 1965:** This convention focuses on the issue of discrimination against race, color, national or ethnic origin. [9]
- **Convention on the Rights of the Child, 1989:** This convention focuses on the issue of disability among child and focuses on the child's education and providing protection to them. [10]
- **Convention on the Elimination of All Forms of Discrimination against Women, 1979:** This Convention focuses on the Racial Discrimination against women and it covers within its ambit the private sphere too. [11]
- **Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, 1981:** This Declaration gave due preference to the freedom of thought, conscience and religion and these rights shall not be curtailed as these are the basic rights one could have and no discrimination can be made on these grounds. [12]

- **Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, 1992:** Under this Declaration the protection would be given to the existing national or ethnic, cultural, religious, and linguistic identity of minorities. Within their respective territories. [13]
- **African Charter on Human and Peoples' Rights, 1981:** This Charter focuses on the concept of equality before law and equal protection of law. [14]
- **African Charter on the Rights and Welfare of the Child, 1990:** This Charter prohibits discrimination on a specific ground and focus on the rights and welfare of the child in general. [15]
- **American Convention on Human Rights, 1969:** The motto behind this Convention is to give due respect to the rights and freedom recognized in the treaty. [16]
- **Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights, 1988:** The motive behind bringing this Protocol into force is to give due focus on the Economic, Social and Cultural Rights. [17]
- **Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women, 1994:** The motto behind this convention is to eliminate gender based violence in both public and private spheres. [18]
- **Inter-American Convention on the Elimination of All Forms of Discrimination Against Persons with Disabilities, 1999:** The major issue regarding the existence of the vary Convention is to provide protection to the disable persons and promotion of their full integration into the society. [19]
- **European Convention on Human Rights, 1950:** This Convention is differing from the other general human right treaties as according to this convention the allegations of discrimination fall outside the ambit of this Convention which has no connection with rights and freedoms. [20]

- **European Social Charter, 1961, and European Social Charter (revised), 1996:** As per this revised Charter certain modification has been made relating to the previous charter and protection against poverty has been included. [21]
- **Framework Convention for the Protection of National Minorities, 1994:** This framework Convention is unique in its own term as it focuses on the protection of national minorities in general. [22]

3. EQUALITY BEFORE LAW

When we say ‘**Equality before law**’ it means that law should be equal among the equals and all should be treated alike. The law is same for all its citizens irrespective of their social status, race, religion, sex, political background and the like.

Article 14 of the Constitution of India states about classification and permits that too and gave due preference to reasonable classification but it prohibits class legislation which might be bias and gave privilege to a particular class of people and enhance improper discrimination and the same has been stated in one of the leading cases of Anwar Ali. [23]

4. EQUAL PROTECTION OF LAWS

Focusing on the scenario of India the maker of our Constitution gave due importance towards right to equality and made it a fundamental right not only for the citizens but also for the persons who are not the citizens of our land. The basic idea behind this Article 4 to promote liberalization so that all should be treated equally before the law as in any society liberty is directly related with equality, so due preference given on this ground was the need of the hour then as well as for now itself.

5. CONCEPT OF EQUAL PROTECTION OF LAW

Equal protection of the laws has been adopted from Article 1 of the 14th Amendment Act of the US Constitution. According to which guarantees equal protection to all the people within a territory and could not discriminate on that ground or the law of the territory would deny the same as equal protection of law falls within the ambit of Article 14, i.e., Right to Equality before

the law and equal protection of law.

The idea behind this right is to bring socio-economic changes in the society and put a positive obligation to give a check on the violation of rights and the same has been stated in one of the famous case of Stephens College. [24]

6. ANALYSIS OF RULE OF LAW

Rule of Law is derived from a French phrase 'La Principe de legality' which means principle of legality. The concept of the rule of Law is not of any recent origin it is in practice from Greek times around 350 BC when Plato and Aristotle dealt with the concept. One of the basic principles of Constitution is rule of law and it is at equal par with that of American Constitution.

The idea of the Rule of law is grounded on the concept of Justice, fairness and inclusiveness which is entirely the basis of Administration. In simple words we can say that Rule of Law means no person is above law and everybody is under obligation to maintain the rule of law and abide by it irrespective of their status and position in society all are equal before the law and no one can be above law.

In 1885, Prof. A.V Dicey developed the concept of Coke and gave three principles to the rule of law for achieving supremacy of law in his book Law and the Constitution. The principles are:

- **Supremacy of Law:** It states that every person should be governed by law.
- **Equality before Law:** It states about equality before law and equal subjection of all classes by the ordinary law courts of the land and the rank and position of anybody will not come in rescue as all are equal before law.
- **Predominance of Legal Spirit:** It states about the dominant role of the law and every person is bound by the law and the whole administration system would be regulated by the law and every action would be done in accordance with the law.
- Rule of law would be in the stage of overarching source of security when the liberals who focus on the protection of liberty averts.
- When there is a disagreement among the liberals regarding what one can count as genuine application of the rule of the law.

- Rule of law is a complex idea and when we try to realize the same it becomes more complex.
- Independency of judiciary would become a problem as the privilege given to the judiciary might be misused.
- Giving too much importance to the law and the legal proceeding might shaped as a disadvantaged position in our society.

7. UNDERLYING PRINCIPLE TO THE RULE OF LAW

In the leading case of Kesavananda Bharati [25] it has been stated that without hampering the basic structure of the constitution, amendment can be made and in this vary case the principle of Basic structure has been propounded. Moreover, in the case of Indira Nehru Gandhi [26] it has been stated that the rule of the law is also the part of basic structure. The underlying principles to the rule of law are as follows:

- No person is above law and law is supreme.
- Each and everything should be done as per the law and not as per notion.
- Only in the case of breach of law the person would suffer otherwise not.
- The soul of the rule of the law is lack of arbitrary.
- The motto is equality before the law and equal protection of the law.
- There should be impartial and independent judiciary.
- It includes speedy trial.
- One should conduct fair and just procedure.

8. CONCLUSION AND SUGGESTIONS

If we consider a country to be truly secular than there should be single law prevalent for all irrespective of religion but in India we are living in a country where people of different religious background are having their own law and they are governed by their own personal law. For example, Hindu, Buddhist, Jain, Sikhs are governed by the Hindu Codes whereas Muslims are governed by Muslim Personal Laws, Christians are governed by Christian Personal Laws, and

Parsi are governed by their own personal law and so on. So, in this casewhere secularism does stands.

There is the immediate urgency for the equal administration of justice for the entire citizens who are living in the Indian Subcontinent in every aspect whether economically or financially. There must be the righteous implementation of Right to Equality i.e., *“There shall be Equality before Law and it must simultaneously bring Equal Protection of Law respectively.”* The Hon’ble Courts must play here a pivotal and equal-centric role in endeavoring *‘Due Administration of Justice to the Citizens of Indian Subcontinent.’*

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