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Article 14- Right To Equality

Authored By- Jayati Khatter

Fundamental Rights

The Constitution of India, the lengthiest constitution in the world, provides six fundamental rights namely, Right to Equality, Right to Freedom, Right against Exploitation, Right to Freedom of Religion, Cultural and Educational Rights and, Right to Constitutional Remedies in its Part III. While some are applicable to citizens only, a few could be availed by non-citizens as well.

As the name suggests, these rights are so crucial that, in their absence, protection of human integrity and dignity, which majorly contributes towards the societal development would not be possible. Fundamental Rights are justiciable rights, which means that, they are enforceable in the court of law. Our constitution makers believed that fundamental rights are vital for the welfare of the people, and so, provided constitutional remedies. Therefore, if a person's fundamental rights get infringed when administrative authorities are exercising their power, he can seek the help of the five writs mentioned in the constitution and approach the Supreme Court under article 32 and the High Court under article 226.

These rights are also referred to, as the Magna Carta of the Indian constitution. It is so, because, Magna Carta was the first ever document to put into writing the principle that the King and his government was not above the law. It aimed at preventing the King from abusing his power, and placed limits of royal authority by establishing law as the most supreme power in itself. Therefore, it could be said that Magna Carta is similar to Equality before Law, which is based on the well-known maxim, "However high you may be, Law is above you" and "All are equal before the law".

Right To Equality

Article 14 as enshrined in the Indian Constitution states "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 article promises to every person, including non-citizens and transgenders, the right to equality before the law or the equal protection before the laws. Right to Equality has also been mentioned in Article 7 of Universal Declaration of Human Rights (UDHR). The two keywords which could be grasped from the aforementioned article, are "equality before the law" and "equal protection" which are taken from the English Common Law and US Constitution respectively.

Rule of Law

Sir Edward Coke, Chief Justice in James I's reign, gave the concept of "Rule of Law". But it was A.V. Dicey who developed the theory of Coke CJ in his book "An introduction to the Study of the Law of Constitution" which got published in the year 1815. Dicey declared rule of law as one of the fundamental principles of the English legal system. In the aforesaid book, he laid down three principles which gave away the basic meaning of rule of law. The three principles were, Supremacy of Law, Equality before Law and, Judge-made Constitution.

i. Supremacy Of Law

In the words of Dicey, rule of law means the absolute supremacy or predominance of regular law as opposed to the influence of arbitrary power or wide discretionary power. It disbars existence of arbitrariness, of prerogative or even wide discretionary power on the part of the government.

In a nutshell, no man can be arrested, punished or be lawfully made to suffer in body or goods except by due process of law and for a breach of law established in the ordinary legal manner before the courts of land. This principle was described as “the central and most characteristic feature” of common law.

ii. Equality Before Law

The second principle of Rule of Law states that there must be equality before the law or that all the classes be subjected to the ordinary law of the land administered by the ordinary law courts equally. According to Dicey, all persons in England were subject to one and the same law, and there were no separate tribunals or special courts for officers of the government and other authorities.

He was totally against the French legal system of *droit administratif* since there were separate administrative tribunals for deciding cases between the officials of the state and the citizens of the state. As per Dicey, exemption of the civil servants from the jurisdiction of the ordinary courts of the law and providing them with the special tribunals was the negation of equality.

iii. Judge-Made Constitution

In many countries, rights such as right to personal liberty, right to education, right against exploitation are guaranteed by a written constitution, however, in England it was not the case. Such rights are the result of judicial decisions in concrete cases which have usually arisen out of conflicts between the two parties.

Therefore, Dicey emphasised that rule of courts of law as guarantors of liberty and proposed that the rights would be secured more adequately if they were enforceable in the courts of law than by mere declaration of those rights in a document, as in the latter case they can be ignored, curtailed or trampled upon.

Equal Protection

Article 14 of our Indian constitution, which was derived from Section 1 of the United States Constitution's 14th Amendment Act, guarantees "equal protection of the law."

In contrast to 'equality before the law,' the phrase 'equal protection of the law' is a positive one. It simply means that all people in similar situations have the same rights and obligations. It essentially means that all people should be treated equally and that no one should be discriminated against. Equals and unequal cannot be placed on the same level and treated in the same way.

The phrase "equality before the law" has a negative connotation because it indicates that no special privileges are granted to any individual. On the other side, the phrase "equal protection of the law" is a positive idea, implying that individuals in similar circumstances should be treated equally.

The phrases "equality before the law" and "equal protection of the law" come from the English Common Law and the American Constitution, respectively.

The concept of 'equality before the law' emphasises that all people must be subjected to the usual law of the land, which is administered by ordinary law courts. It suggests that no one is exempt from the law. The concept of 'equal protection of the laws,' on the other hand, indicates that all people in similar situations must face the same legal treatment. The emphasis is on treating like persons in the same way.

In a couple of cases, this distinction was also clarified. In *Sri Srinivasa Theatre v. Government of Tamil Nadu*¹, it was decided that the terms "equality before the law" and "equal protection of the law" do not have the same meaning, despite the fact that they have a lot in common. In the first expression, the term 'law' had a more general meaning, whereas in the second expression, it had a more specific meaning. It was also noted that 'equality before the law' is a multifaceted term with many elements. And, as envisaged in the Preamble and Part IV of the Indian Constitution, one of the features implies the lack of any privileged class or person who was above the law, while the other denotes the state's commitment to make society more equal. The concept of equal protection of the law is merely a part of the concept of equality before the law, according to the case of *State of West Bengal v. Anwar Ali Sarkar*². It's impossible to picture 'equality before the law' being maintained when the 'equal protection of the law' is breached.

Exception To Equality Before Law In India

Article 361 of the Indian constitution protects the President and Governors and Rajpramukhs from the doctrine of Equality before law. According to this article,

- i. The President, the Governor, or the Rajpramukh of a State shall not be held liable in any court for the exercise and execution of their powers and responsibilities, or for any act done or purported to be done by them: Provided, however, that any court, tribunal, or body created or authorised by either House of Parliament for the investigation of a charge under Article 61 may evaluate the President's conduct: Furthermore, nothing in this section should be regarded as limiting anyone's right to pursue appropriate proceedings against the Governor of India or a State's government.
- ii. During the President's tenure of office, no criminal actions against him or the Governor of a State shall be commenced or continued in any court.
- iii. During the President's time of office, no process for the arrest or incarceration of the President or the Governor of a State shall be issued by any court.
- iv. Any civil proceeding in which relief is sought against the President or the Governor of a State may be brought in any court during his term of office in respect of any act done or purported to be done by him in his personal capacity, whether before or after he assumed office as President or Governor of such State, until the expiration of two months after notice in writing has been delivered to the President or Governor, as the case may be, or until the expiration of two months after notice in writing has been delivered to the President or the Governor, as he claims.

Article 14 Permits Classification But Prohibits Class Legislation

Article 14 which clearly states that there should be equal subjection of all the classes of people to the laws and that they should be protected under the eyes of law, paves way for this doctrine of reasonable classification. It is sometimes, also known as Reasonable Classification. In a nutshell, article 14 says that equals must be treated equally while unequally must be treated differently, and for that the state must not only not treat people unequally but it must also take positive steps to eradicate already existing inequalities, especially the ones which treat human beings as less than one, and that is when reasonable classification comes into picture.

¹ AIR 1992 SC 999

² AIR 1952 SC 75

The principal of equality, does not necessarily mean, that every law must have a universal application upon all those persons who are definitely not the same, do not have the same needs and definitely not same circumstances and opportunities. The varying needs and situations demand different treatment.

The Supreme Court of India in *Kedar Nath Bajoria v. State of W.B.*³, held that “The equal protection of the laws guaranteed by the article 14 of the constitution does not mean that all the laws must be general in character and universal in application and the state is no longer to have the power of distinguishing and classifying persons or things for the purposes of legislation.”

Doctrine Of Legislative Classification

A legislative classification in order to be valid must be reasonable. For a classification to be considered permissible, two indispensable conditions must be fulfilled, namely,

- i. The classification must be founded on intelligible differentia, distinguishing grouped together persons or goods from the left-out ones of the group.
- ii. The differential must be in a rational relation with the sought object that is to be achieved by the act.⁴

Thus, the object of classification cannot be any object, it must be lawful.

The Honourable Supreme Court of India has established certain important principles which illuminate the scope of permissible classification.⁵

1. A legislation may be constitutional even if it applies to a single individual if that single individual is treated as a class by himself due to exceptional circumstances or reasons that apply to him but not to others. However, such laws are viewed with scepticism, particularly when they affect an individual's private rights.
2. There is always a presumption in favour of an enactment's constitutionality, and the burden of proof is on those who challenge it to establish that it violates constitutional principles. The individual who claims that article 14 has been violated must show that not only has he been treated differently from others, but that he has also been treated differently from those in similar situations without any justification, and that such differential treatment has been made unjustifiably.⁶
3. It must be assumed that the legislature recognises and understands the needs of its own people, that its laws are geared at problems that have been identified through experience, and that its discriminatory treatment is justified.
4. The legislature is permitted to distinguish between different degrees of harm and to limit its restrictions to those circumstances where the need is regarded to be the most obvious.
5. In order to uphold the presumption of constitutionality, the court may consider items of common knowledge, matters of common report, historical context, and any condition of facts that might be imagined existing at the time of legislation.⁷
6. While the legislature's good faith and knowledge of the situation must be assumed, the presumption of constitutionality cannot be used to hold that there must be some undisclosed and unknown reasons for subjecting certain individuals or corporations to hostile or discriminatory legislation at all times.

³AIR 1953 SC 404

⁴ W.B. v. Anwar Ali Sarkar, AIR 1952 SC 75

⁵ Ram Krishna Dalmia v. Justice S.R. Tendolkar AIR 1958 SC 538

⁶Ramchand Jagdish Chand v. Union of India, AIR 1963 SC 563

⁷Supt. & Remembrancer of Legal Affairs v. Girish Kumar Navalakha AIR 1975 SC 1030

7. It is not necessary for a categorization to be scientifically correct or logically complete.⁸
8. The legitimacy of a rule must be determined by considering its overall impact rather than focusing on exceptional circumstances. The court must determine whether the classification is correct after taking all factors into account.⁹
9. To evaluate the feasibility of classification, the court must look beyond the ostensible classification and to the law's objective, applying the test of "palpable arbitrariness" in the context of the times' felt requirements and societal necessities informed by experience.¹⁰
10. In illegal conduct, there is no entitlement to equality. Discrimination cannot be claimed on the basis of someone obtaining an illicit benefit or advantage that he was not entitled to.¹¹
11. The right to equality applies to both the giving of favours and the imposing of duties.¹²

Affirmative Action

Affirmative actions help a State in the development and progress of an individual, since these are positive actions taken by a state, they help the people in developing and progressing. The Indian Constitution expressly provides for affirmative actions which extends till reservation policy.

Reservation is a policy aimed at redressing previous prejudice against lower-income and minority groups by improving their economic and educational prospects. Reservations are a means of promoting equality of opportunity. It is frequently implemented in government and educational contexts to guarantee that minorities are represented in all programmes. Reservation is justified to compensate for historical discrimination, oppression, or exploitation by a culture's ruling class, or to alleviate current discrimination. The objective of affirmative action is to achieve social equality by giving socio-economically disadvantaged persons preferential treatment. Furthermore, the primary goal of reserve is to achieve social equality.

Social equality refers to a social situation in which all members of a society or isolated group have the same status in a certain area. At a bare minimum, social equality entails equal legal rights, such as security, voting rights, freedom of expression and assembly, and the scope of property rights. It does, however, cover access to education, health care, and other social benefits. It also encompasses equal chances and responsibilities, implying that it affects the entire society. In contrast to economic or income equality, social equality refers to social equality.

Mandal Commission Report

The Mandal Commission was founded in India in 1979 by Prime Minister Morarji Desai's Janata Party government with the purpose of "identifying the socially or educationally disadvantaged." It was chaired by Indian lawmaker Bindheshwari Prasad Mandal and employed eleven social, economic, and educational indices to assess backwardness. The commission's report from 1980 affirmed Indian law's affirmative action practise, in which members of lower castes (known as Other Backward Classes (OBC) and Scheduled Castes and Tribes) were given exclusive access to a certain percentage of government jobs and slots in public universities, and recommended changes to these quotas, increasing them by 27 percent to 49.5 percent. Article 340 established this commission for the purposes of articles 15 and 16.

⁸Kedar Nath Bajoria v. State of W.B. AIR 1953 SC 404

⁹Mohd. Usman v. State of A.P. AIR 1971 SC 1801

¹⁰Shashikant Laxman Kale v. Union of India AIR1990 SC 2114

¹¹Chandigarh Admn.v. Jagjit Singh AIR 1995 SC 705

¹²State of U.P. v. Mata Tapeshwari Saraswati Vidya Mandir AIR 2010 SC 402

Mandal Commission's Recommendations Regarding Reservation

According to Mandal Commission recommendations on reservations for Scheduled Castes and Scheduled Tribes, India's SC and ST population is 22.5 percent, so 22.5 percent reservation has been made for them in all services and public sector under the Central Government, and reservation in states should be based on their population.

Other Backward Classes are recommended for reservation because they account for 52 percent of India's total population. As a result, 52 percent of all Central Government posts should be reserved for them, but due to Supreme Court rulings, the total amount of reservation should be less than 50 percent. As a result, recommended reservations for OBC, ST, and SC combined should be less than 50%. As a result, the commission has set aside 27% of the seats for them.

Indian Judiciary's Approach Concerning Reservation

The Indian Judiciary has issued rulings sustaining reservations and others fine-tuning their implementations. A number of reservations-related decisions have since been changed by the Indian parliament through constitutional amendments. State and federal governments have disregarded some Indian judicial decisions. The main judgments issued by Indian courts that indicate the constitutional status of reservations are:

Ajay Hasia v. Khalid Mujib

The regional engineering college in *Ajay Hasia v. Khalid Mujib*¹³ admitted candidates after a written test on the basis of an oral interview. The oral interview test was contested on the grounds that it was arbitrary and unreasonable because it was given a high percentage of the marks although candidates were only interviewed for 2-3 minutes. The court ruled that the provision requiring a high proportion of points for oral test reallocation of one-third of total marks was arbitrary and unreasonable, and so violated Article 14 of the constitution. The oral interview exam, it is claimed, cannot be considered a very satisfactory test for addressing and assessing the calibre of candidates because it is subjective and dependent on first impressions, and its outcome is impacted by numerous unclear elements and is vulnerable to exploitation. It cannot be the sole criterion. It should only be used as a backup or supplementary exam, and it should be carried out by people of high integrity, calibre, and qualification.

The court recommended that the interview be taped so that it could be judged on whether it was performed arbitrarily. In this case, a large number of candidates were admitted based on strong interview scores despite low written exam scores, but the court rejected to overturn admissions due to the lag of 18 months, when the students had almost finished three semesters. A mere hunch that certain candidates had received high marks in the interview but very low marks in the written test did not prove that the selectors were being dishonest.

D.V. Bakshi v. Union of India

In *D.V. Bakshi v. Union of India*¹⁴, the petitioners argued that the rule allocating 100 marks with 50 pass marks for oral tests is invalid since it provides the authorities arbitrary power to pick and choose candidates. The court separated the case of *Ajay Hasia* from the current one, holding that allocating maximum marks for oral tests is not arbitrary, particularly in professional selections. When it comes to selection for public service employment, the test that may be valid for competitive tests or admittance to educational institutions may not be valid. The test that was used to help *Ajay Hasia* cannot be used to grant a licence as a Custom

¹³ AIR 1981 SC 487

¹⁴ AIR 1993 SC 2374

House Agent. There is no hard and fast rule in this regard, as much depends on the sort of performance required for the responsibility that the candidate will handle after his selection. A Custom House Agent's tasks, responsibilities, and functions are unique, requiring not only a high level of probity and honesty, but also intellectual skills, adaptability, judgement, and the ability to make quick choices in accordance with the law, rules, and regulations. As a result, there is justification for selecting such people using an oral test with a passing score of 50%.

How Can Positive Affirmation And Legislative Classification Help In Bringing Out Equality?

Equality has been promised by the state under Article 14 of the Indian Constitution, which is regarded as the soul of the Indian Constitution because no country can be considered a republic without equality, and it is the need for equality that has compelled human beings to join the state in order to obtain security, equal protection of the law, and equality in all aspects. We included the word equality from the French Revolution in our Preamble, which demonstrates the goals of our Constitution, and Article 14 is a step toward achieving that goal. Equality implies that those who are similar should be treated similarly, and those who are dissimilar should be treated similarly. That is why Article 14 allows for appropriate classification of likes and unlikes, with unlikes receiving special treatment to bring them on par with likes, despite the fact that identical treatment under unequal conditions would be inequitable. The goal of equality will not be considered accomplished until all people are on an equal footing. As a result of this desire for equality, the concept of reservation or affirmative action was born. Reservation is a particular treatment provided to the unlikes in society until they reach parity with the likes.

Reservation is a notion that was created with the goal of providing special assistance to the weak so that they may overcome their disadvantages and compete with the strong. The Supreme Court has given wonderful judgments in landmark cases such as *D.V. Bakshi v. Union of India*¹⁵ and *Air India v. Nargesh Mirza*¹⁶, which prove that inequality will never be tolerated anywhere, and thus the judgments in these cases have established new landmarks in the concept of equality.

Reservation is a potent remedy for achieving equality, which is a state of total fairness.

¹⁵AIR 1993 SC 2374

¹⁶ AIR 1981

Conclusion

The Indian Constitution is one of the world's best and most comprehensive written constitutions. Article 14 of our Constitution is the heart of the Indian Constitution, and Article 21 is a distant second, what is the point of existence if there is no equality? The Indian reservation system has been a tremendous achievement in strengthening the situation of the backward classes, and the position of the backward and oppressed classes in India has improved dramatically in recent decades. There are also some flaws in the identification of the Backward Classes because, despite many years of reservation, their position has not progressed to the extent that it should have. Our current reservation system is caste-based, and it has been observed that the upper segment of each class, which is ahead of the others, is developing and taking full advantage of reservation, and that they have now achieved both economic and social equality because they are financially sound, whereas the lower segment of the same caste is still unaware of their reservation rights and remains backward. To equalise this imbalance within the same caste, reservation policies should be based on economic conditions, so that each and every individual in our country who is socially and economically backward has an equal opportunity to progress.

