



# INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS

Open Access, Refereed Journal Multi Disciplinary  
Peer Reviewed Edition :

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INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS

ISSN

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# COMPARATIVE ANALYSIS OF EQUALITY BEFORE LAW IN INDIA AND UNITED STATE OF AMERICA CONSTITUTION

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L.L.M 1st YEAR, SEMESTER: 2

ROLL NO: 90 DIV: B 2023-2024

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## **Abstract:**

The researcher<sup>1</sup> in this paper has done a –Comparative Analysis of Right to Equality in India and United State of America. In this research, the researcher has compare Rights to Equality guaranteed under Article 14 of the Indian Constitution, whereas the Bill of Rights has been guaranteed in the USA Constitution in its Fourteenth Amendment.

Thus the main object of the researcher is that the Indian Constitution is the longest written constitution in the world whereas the USA Constitution is the shortest constitution.

The USA Constitution was drafted in secret by delegates to the Constitutional Convention during summer 1787 these four pages documents signed on 17th September, 1787 by the government of US. That, the article also tells you about the preamble of Indian constitution as well as USA Constitution. Also the researcher has explained process of the law making in the USA Constitution and also given the title of the amendments made by the USA Constitution. As per the USA Constitution, as per the need of the society they make the amendment in their constitution.

Whereas, the Indian Constitution has itself in Part III of the Indian Constitution has guaranteed Fundamental Rights in which Article 14 deals with Equality before Law and Equal Protection of Law. Also, the researcher has given the Judicial Interpretation of Indian as well as USA Constitutions. This will help to know how the Judiciary works in every state. It also explore the conceptual framework, the influence of American principle on Indian equality provision.

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**Keywords:** Right to Equality, Indian Constitution, United State of American Constitution, Bills of Right,

## INTRODUCTION

India and United State of American are the two countries that share many similarities.<sup>2</sup> In the Context of -Equality before Law between India Constitution and United State of American Constitution is concerned in Indian Constitution it has been guaranteed in the Part III i.e. Fundamental Rights in the Indian Constitution. Whereas in United State of American Constitution is concerned Right to Equality is not been enacted in its constitution. The Declaration of Rights from the Bill of Rights expanded this concept of Right to Equality in United State. It was added as a part of the 14<sup>th</sup> Amendment Act, 1868 in the Bill of Rights, whereas the Indian concept is totally different.

The Indian Constitution, came into force on 26<sup>th</sup> January, 1950, consist of a preamble and 448 article divided into 25 parts and 12 schedule. Article 14 is the first article of Part III of Constitution, which deals with the Fundamental Rights of the citizen of India.<sup>3</sup>

The United State of America, the Constitution was drafted in secret by delegates to the Constitutional Convention during summer of 1787, this four page documents, signed on September 17, 1787 established the government of United State.<sup>4</sup>

The Indian Constitution is the longest written constitution. Whereas United State of American Original Constitution was hand written on five pages of parchment by Jacob Shallus.<sup>5</sup> The first permanent constitution is interpreted, supplemented, and implemented by the large body of federal constitution law and has influenced the constitution of our nation. Since the constitution was ratified in 1789, and it has been amended 27 times, the first ten amendments known collectively as the Bill of Rights which offer special protection of individual liberty and justice and place restriction on power of government within U.S. state.

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<sup>2</sup> <https://lexpeeps.in/right-to-equality-in-usa-and-india/> last seen on 23/03/2024

<sup>3</sup> <https://www.centurylawfirm.in/blog/article-14-of-the-indian-constitution/#:~:text=In%20recent%20times%2C%20the%20courts,of%20India%20recognized%20the%20rights> last seen on 23/03/2024

<sup>4</sup> <https://www.archives.gov/milestonedocuments/constitution/#:~:text=Drafted%20in%20secret%20by%20delegates,government%20of%20the%20United%20States>. Last seen on 23/03/2024

<sup>5</sup> <https://www.archives.gov/preservation/formats/paper-vellum.html> last seen on 23/03/2024

**A) RESEARCH PROBLEM**

The subject explores and analyses the right to equality as guaranteed in the American Constitution and Indian Constitution.

**B) RESEARCH QUESTIONS**

- To what extent may India's and United State of America's fundamental rights to equality be compared?
- Has good governance in both India and Unites States been aided by the correct application of the basic right to equality?
- To what extent the court rulings improved the statue of the rights to equality in India and the United States?

**C) Object of the Study**

- To understand the differences in the implementation of right to equality in Indian Constitution and in Unites States of American Constitution.
- To analysis the applicability of each of the two provisions in their respective countries.
- To study the development through various case laws.

**D) RESEARCH DESIGN**

- **Nature of the Study:** The research project is descriptive and analytical in nature.
- **Source of Data:** The project is largely based on secondary data, however, tertiary and electronic source of data has been referred to collect the data including case laws, books, and journal has been referred for the reference.
- **Method of Data collection:** The method used for collecting the data is Non-doctrinal.

## HISTORICAL BACKGROUND OF INDIAN CONSTITUTION

The Constitution of India guaranteed this Fundamental Rights to all citizens of India. It is one of the key positions of Indian Constitution, which was adopted on 26<sup>th</sup> January, 1950.<sup>6</sup> The Constitution of India consists of preamble, 448 articles which are divided into 25 parts and 12 schedules. Article 14 is the first article of Part III of the constitution, which deals with the Fundamental rights of the citizens of India. This article plays a critical role in safeguarding the rights and freedoms of Indian citizens and provides a legal basis for equal treatment under the law.<sup>7</sup>

The first demand of the Fundamental rights came in the form of the –Constitution of India Bill, in 1895 which is also popularly known as Swaraj Bill in 1895 it was written during the emergency of Indian nationalism and increasingly vocal demands by Indians for self- government. It talks about freedom of speech, right to privacy, and to franchise, etc.<sup>8</sup>

After Independence on 15<sup>th</sup> August, 1947 the task of developing a constitution for the nation was taken by the Constitution Assembly of India, under the presidency of Dr. Rajendra Prasad. B. R. Ambedkar became the chairperson of the Drafting Committee, while Jawaharlal Nehru and Sardar Vallabhbhai Patel became the chairpersons of committee and sub- committees responsible for different subjects.<sup>9</sup>

The fundamental rights were included in the First Draft Constitution (February, 1948), the Second Draft Constitution (10<sup>th</sup> October, 1948), and Final Third Draft Constitution (26<sup>th</sup> November, 1949), prepared by the Drafting Committee.

The preamble of the Indian Constitution is the key to open the Constitution. It is nothing but a short introduction of Indian Constitution. Preamble of the Constitution provides us a source, pattern, object. It has a great importance and significance which says that;

**“WE THE PEOPLE OF INDIA, having a solemnly resolved to constitute India into a SOVEREIGN, SOCIALIST, SECULAR, DEMOCRATIC, REPUBLIC and to secure it to all its citizens.”**

<sup>6</sup> <https://unacademy.com/content/clat/study-material/logical-reasoning/right-to-equality/#:~:text=This%20right%20is%20significant%20for,religion%2C%20or%20any%20other%20grounds> last seen on 25/03/2024

<sup>7</sup> <https://www.centurylawfirm.in/blog/article-14-of-theindian-constitution/#:~:text=In%20recent%20times%2C%20the%20courts.of%20India%20recognized%20the%20rights> last seen on 25/03/2024

<sup>8</sup> [https://en.wikipedia.org/wiki/Fundamental\\_rights\\_in\\_India#Origins](https://en.wikipedia.org/wiki/Fundamental_rights_in_India#Origins) last seen on 25/03/2024

<sup>9</sup> Supra no 7

**Thus the word SOCIALIST and SECULAR were not originally in the Preamble but were added to the Preamble by the 42<sup>nd</sup> Constitutional Amendment 1976 during the Prime Minister of Mrs. Indira Gandhi.**

Right to Equality is one of the chief guarantees of the Constitution. It is embodied in Article 14 to 18 which collectively encompass the general principles of equality before law and non-discrimination<sup>10</sup> and article 17-18 which collectively encompass further the philosophy of social equality.<sup>11</sup>

Article 14 guarantees equality before law as well as equal protection of the law to all people within the territory of India. This includes the equal subjection of all persons to the authority of law, as well as equal treatment of persons in similar circumstances.<sup>12</sup>

Right to Equality is a Fundamental Right that applies to all the people, irrespective of the caste, creed, religion or sex. The state is obliged to make available opportunities for all individual to realize their full potential. Thus the Constitution of Indian also provides certain special rights to women, children, schedule caste, tribes, and other backwards classes of citizens. These special rights are aimed at ensuring equality of opportunity and treatment for all section of the society.

Thus Right to Equality is one of the fundamental rights enshrined in the constitution of India. It could be very essential to apprehend what this Right include. There are mainly six types of Equality:

- a) Natural
- b) Social
- c) Civil
- d) Political
- e) Economic
- f) Legal

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<sup>10</sup> Basu, Durga Das (1993). Introduction to the Constitution of India (15th ed.). New Delhi: Prentice Hall of India. p. 475. ISBN 81-203-0839-5. Page no 90 last seen on 25/03/2024

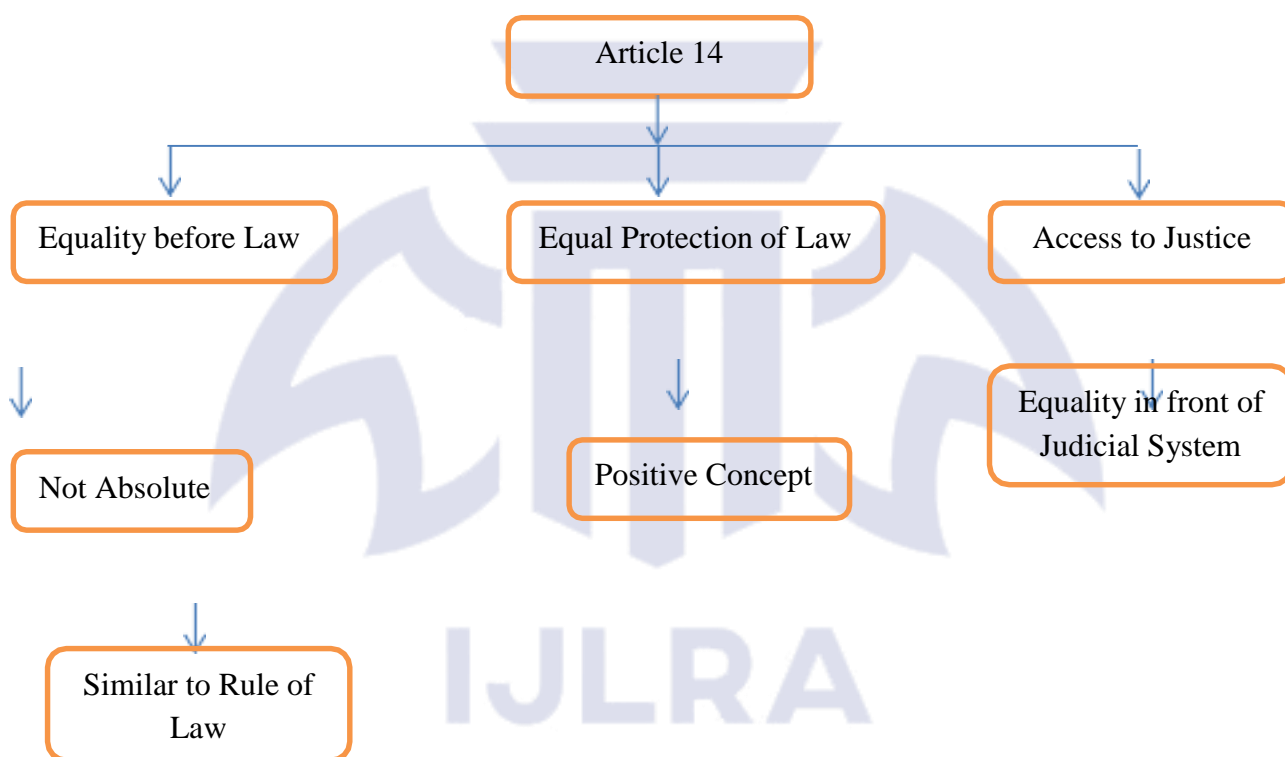
<sup>11</sup> Basu, Durga Das (1993). Introduction to the Constitution of India (15th ed.). New Delhi: Prentice Hall of India. p. 475. ISBN 81-203-0839-5. Page no 93-94 last seen on 25/03/2024

<sup>12</sup> Basu, Durga Das (2003). Shorter Constitution of India (13th ed.). Nagpur: Wadhwa & Co.p. 1972. ISBN 978-81-8038-206-2, page no 56-57 last seen on 25/03/2024

This right is significant for ensuring that all citizens have equal access to education, employment, and other opportunities. This right to equality is also essential for creating a just and equitable society. It ensures that all citizens are treated equally, regardless of their caste, religious or any other grounds.<sup>13</sup>

Article 14 basically states that, **“THE STATE SHALL NO DENY ANY PERSON EQUALITY BEFORE THE LAW OR EQUAL PROTECTION OF LAWS WITHIN THE TERRITORY OF INDIA”**

To treat all citizens equally is the basic concept of liberalism and Article 14 ensures the same to our citizens. The liberty of any person is directly connected to the equality he/she is getting in society.<sup>14</sup>



In the very famous case the question of whether the Right to Equality is absolute or not was raised. Here Supreme Court held that the Right to equality is not absolute. In this case, the State of Bengal was found to use its power arbitrarily to refer any case to the Special

<sup>13</sup> <https://unacademy.com/content/clat/study-material/logical-reasoning/right-to-equality/#:~:text=This%20right%20is%20significant%20for,religion%2C%20or%20any%20other%20grounds> last seen on 25/03/2024

<sup>14</sup> <https://blog.ipleaders.in/article-14/> last seen on 25/03/2024

Court which was made by them. It was thus held that the Act of State of Bengal violates the Right to Equality.<sup>15</sup>

In this case, the admission process of college was checked and the main issue raised was the validity of preference given to Christian students in the admission process. Here the Supreme Court held that minority institution which is receiving aid from state funds is entitled to grant preference or to reserve seats for the students of its community.<sup>16</sup>

In the famous case of where the appellant went to the Supreme Court for the unsatisfactory decision of High Court of Karnataka. According to the appellant, the High Court committed an error by not condoning the delay as there were enough reasons for them to be not able to reach the High Court on time. It is a well-established legal proposition that Article 14 of the Indian Constitution is not there to create perpetual illegality, even by extending the previous wrong decision. It was held that here the appellant was negligent on their part as the appellant was not able to show the sufficient cause for the delay and thus their appeal was rejected.<sup>17</sup>

There cannot be equality before the law for the person who is a wrongdoer. A person who is doing illegal acts cannot ask for Right to Equality in front of a court or the judicial system. In this case the Patna High Court clearly explains that there cannot be equality for illegal acts as the petitioner was himself at fault, therefore, he was made to compensate for his illegal act.<sup>18</sup>

## HISTORICAL BACKGROUND OF USA CONSTITUTION

The Constitution of USA is the Supreme law of the United Nation.<sup>19</sup> It superseded the Article of Confederation, the nation first Constitution, on March 4<sup>th</sup>, 1789. Originally included seven articles, the constitution delineated national frame and constrains the power of the federal government. The Constitution first three articles embodies

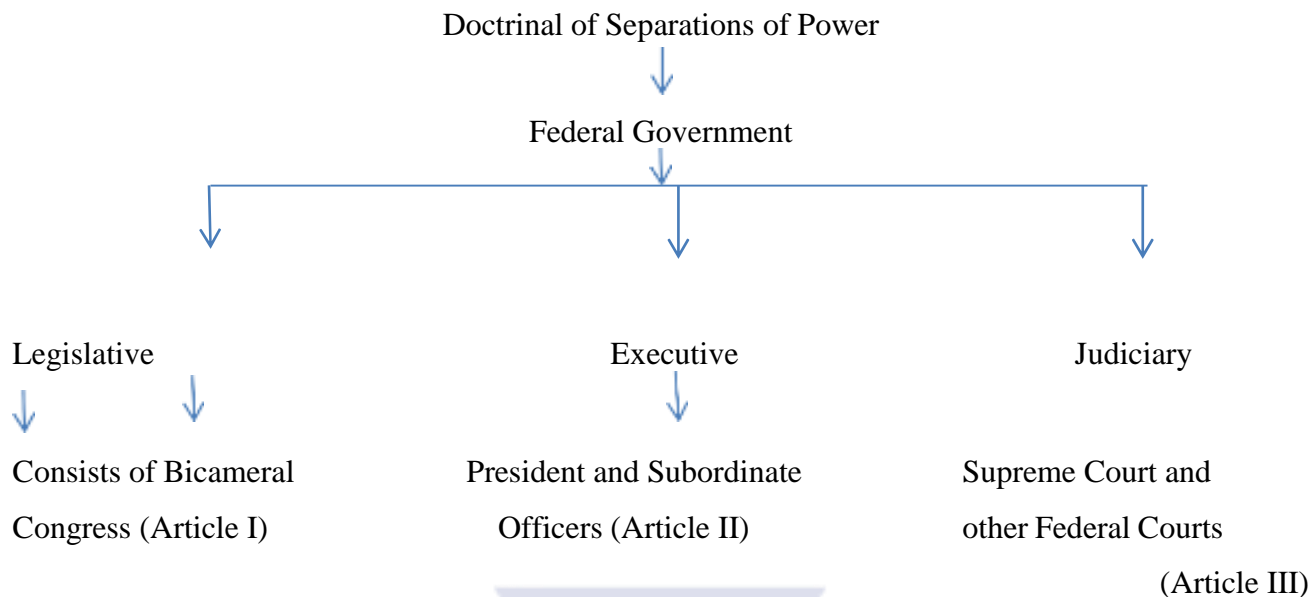
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<sup>15</sup> State of West Bengal v. Anwar Ali Sarkar, 1952 AIR 75, 1952 SCR 284

<sup>16</sup> Stephens College v. The University of Delhi. AIR 1963, 1992

<sup>17</sup> Basawaraj v. The Spl. Land Acquisition Officer 22 August, 2013

<sup>18</sup> Baliram Prasad Singh v. State Of Bihar 6 July, 2020



Article IV, Article V, and Article VI embody concept of federalism, describing the rights of the state government.<sup>20</sup>

Article VII establishes the procedure subsequently used by the 13 states to ratify it. The Constitution of United States is the oldest and longest-standing written and codified national constitution in force in the world.<sup>21</sup>

The Drafting of the Constitution, often referred to as its framing, was completed at the Constitutional Convention, which assembled at Independence Hall in Philadelphia between May 25 and September 17, 1787.<sup>22</sup> Delegates to the convention were chosen by the state legislatures of 12 of the 13 original states, Rhode Island refused to send delegates.<sup>23</sup>

<sup>19</sup> Maier, Pauline (2010). *Ratification: The People Debate the Constitution, 1787–1788*. New York: Simon & Schuster. ISBN 978-0-684-86854-7. Ref pg no 35 last seen on 25/03/2024

<sup>20</sup> [https://en.wikipedia.org/wiki/Constitution\\_of\\_the\\_United\\_States#Background](https://en.wikipedia.org/wiki/Constitution_of_the_United_States#Background) last seen on 25/03/2024

<sup>21</sup> *Goodlatte says U.S. has the oldest working national constitution*, Politifact Virginia website, September 22, 2014. Last seen on 25/03/2024

<sup>22</sup> Maier, Pauline (2010). *Ratification: The People Debate the Constitution, 1787–1788*. New York: Simon & Schuster. ISBN 978-0-684-86854-7. Ref pg no 27-28 last seen on 25/03/2024

<sup>23</sup> "America's Founding Fathers-Delegates to the Constitutional Convention". *The U.S. National Archives and Records Administration*. October 30, 2015. Retrieved February 22, 2023. Last seen on 25/03/2024

Since the Constitution was ratified in 1789, it has been amended 27 times.<sup>24</sup> <sup>25</sup>The first ten amendments, known collectively as the Bill of Rights offer specific protection of individual liberty and justice and place restriction on the power of government within the United State.<sup>26</sup><sup>27</sup>The majority of the 17 later amendments expand individual civil rights protections.

The original U.S. Constitution<sup>28</sup> was written on five pages of parchment by Jacob Shallus.<sup>29</sup> The first permanent constitution is interpreted, supplemented and implemented by a large body of federal constitutional law and has influenced the constitutions of our nations.

The Constitution of United States includes four sections:

- Introductory paragraph titled Preamble;
- List of seven Articles that define the government's framework;
- An untitled closing endorsement with the signature of 39 framers; and
- 27 amendments that have been adopted under Article V.

## **PREAMBLE OF USA CONSTITUTION**

**“We the people of United States, in order to form a more perfect Union, established Justice, ensure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United State of America.”**

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<sup>24</sup> United States Senate (1992). "Amendments to the Constitution of the United States of America" (PDF). *The Constitution of the United States of America: Analysis and Interpretation*. U.S. Government Printing Office. p. 25 n.2. ISBN 978-0-16-063268-6. Last seen on 25/03/2024

<sup>25</sup> "Constitution Day". Senate.gov. United States Senate. Archived from [the original](#) on August 12, 2016. Retrieved September 10, 2016. Last seen on 25/03/2024

<sup>26</sup> Ritchie, Donald. "Bill of Rights". Annenberg Classroom—Glossary. Leonore Annenberg Institute for Civics of the Annenberg Public Policy Center of the University of Pennsylvania. Retrieved September 21, 2014. Last seen on 25/03/2024

<sup>27</sup> Lloyd, Gordon. "Introduction to the Bill of Rights". Last seen on 25/03/2024

<sup>28</sup> "America's Founding Documents". October 30, 2015. Last seen on 25/03/2024

<sup>29</sup> "Differences between Parchment, Vellum and Paper". *August 15, 2016*. Last seen on 25/03/2024

The following are the title of the United States of America Constitution:<sup>30</sup>

- a) Article I: The Legislature;
- b) Article II: The Executive;
- c) Article III: The Judiciary;
- d) Article IV: The State;
- e) Article V: The Amendment Process;
- f) Article VI: The Federal Powers;
- g) Article VII: The Ratification;
- h) Amendments;
- i) Safeguard of Liberty (Amendment 1,2,3);
- j) Safeguard of Justice (Amendment 4,5,6,7, and 8);
- k) Unenumerated rights and reserved powers (Amendment 9 and 10);
- l) Government Authority (Amendment 11,16,18, and 21);
- m) Safeguards of civil rights (Amendment 13,14,15,19,23,24, and 26);
- n) Government processes and procedure (Amendment 12,17,20,22,25, and 27);

The Constitution was written during the summer of 1787 in Philadelphia, Pennsylvania, by 55 delegates to a Constitutional Convention that was called ostensibly to amend the Article of Confederation (1781-1789), the country's first written Constitution.<sup>31</sup>

In 1787-88, in an effort to persuade New York to ratify the Constitution, Alexander Hamilton, John Jay, and James Madison published a series of essays on Constitution<sup>32</sup> and republican government in New York Newspaper. The book was written under the pseudonym –Publius and collected and published in the book form as –The Federalist (1788) becomes the classic exposition and defence of the Constitution.

The meaning of the Equal Protection Clause has been the subject of much debate, and inspired the well-known phrase –Equal Justice under Law. This clause was the basis for Brown V. Board of Education,<sup>33</sup> the Supreme Court decision that helped to dismantle racial

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<sup>30</sup> [https://en.wikipedia.org/wiki/Constitution\\_of\\_the\\_United\\_States#CITEREFMaier2010](https://en.wikipedia.org/wiki/Constitution_of_the_United_States#CITEREFMaier2010) last seen on 25/03/2024

<sup>31</sup> <https://www.britannica.com/topic/Constitution-of-the-United-States-of-America> last seen on 25/03/2024

<sup>32</sup> *The Federalist* (1788), a book-form publication of 77 of the 85 Federalist essays.

<sup>33</sup> Brown V. Board of Education 17<sup>th</sup> May, 1954

segment. The clause has also been the basis for *Obergefell V. Hodges*<sup>34</sup> which legalized same-sex marriages, along with many other decisions rejecting discrimination against, and bigotry towards, people belonging to various groups.

While the Equal Protection Clause itself applies only to state and local governments, the Supreme Court held in *Bolling V. Sharpe*<sup>35</sup> that the Due Process Clause of the Fifth Amendment nonetheless requires equal protection under the laws of the federal government via reverse incorporation.



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<sup>34</sup> Decided on 26<sup>th</sup> June, 2015

<sup>35</sup> Decided on 17<sup>th</sup> May. 1954

## DIFFERENCE BETWEEN EQUALITY BEFORE LAW IN INDIA AND USA CONSTITUTION

The US Constitution is rigid in its format and consists of only 7 articles and 27 amendments. The Indian Constitution, on other hand, is the lengthiest Constitution written to date. It consists of 12 schedules and 448 articles in 22 parts.<sup>36</sup>

The following are the distinguish between Equality in the Constitution of USA and India:<sup>37</sup>

1) **Right to Equality in India:** In India, the right to equality is a fundamental right guaranteed under Article 14 of the Constitution. Here is a point wise discussion of the right to equality in the context of India:

a) **Equality before Law:** Article 14 ensures equality before the law, which means that all individuals, regardless of their background, are subject to the same laws and procedures. It prohibits arbitrary discrimination by the state and promotes equal protection of the law for all.

b) **Equality of Opportunity in Public Employment:** Article 16 ensures equality of opportunity in public employment. It prohibits discrimination in matters of employment on grounds of religion, race, caste, sex, descent, place of birth, or residence. It also provides for reservations or affirmative action to promote the representation of disadvantaged communities in public services.

c) **Gender Equality:** The right to equality in India includes efforts to address gender inequality. The Constitution guarantees equal rights to women and prohibits discrimination on the basis of gender. Laws have been enacted to combat practices such as dowry, domestic violence, and workplace harassment.

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<sup>36</sup> <https://unacademy.com/content/bpsc/study-material/polity/the-us-constitution-and-the-indian-constitution/#:~:text=The%20US%20Constitution%20is%20rigid,448%20articles%20in%2022%20parts> last seen on 28/03/2024

<sup>37</sup> <https://edukemy.com/blog/analyse-the-distinguishing-features-of-the-notion-of-equality-in-the-constitutions-of-the-usa-and-india-250-words-15-marks/#:~:text=The%20US%20Constitution%20emphasises%20formal,injustices%20and%20protecting%20gro up%20rights> last seen on 28/03/2024

2) **Right to Equality in USA:** In the United States, the right to equality is protected under the Equal Protection Clause of the Fourteenth Amendment to the Constitution. Here is a point wise discussion of the right to equality in the context of the USA:

a) **Equal Protection Clause:** The Equal Protection Clause states that no state shall deny any person within its jurisdiction equal protection under the law. This clause ensures that individuals are entitled to equal treatment and prohibits discrimination by the government based on race, colour, religion, sex, or national origin.

b) **Gender Equality:** The right to equality also encompasses gender equality. Over the years, the USA has made progress in addressing gender-based discrimination and promoting equal rights for women. Legislation such as the Equal Pay Act and Title VII of the Civil Rights Act have aimed to combat gender-based disparities and promote equal treatment in employment and other areas.

c) **Legal Protections:** In addition to the Equal Protection Clause, various federal and state laws protect against discrimination, including the Civil Rights Act of 1964, the Voting Rights Act of 1965, and the Americans with Disabilities Act. These laws aim to ensure equal treatment and protection across different aspects of life.

3) **Role of Judiciary:**<sup>38</sup>

a) **USA:** The US Supreme Court has played a significant role in interpreting and developing the principle of equality, expanding its scope through landmark cases such as *Brown v. Board of Education*<sup>39</sup> and *Loving v. Virginia*<sup>40</sup>.

b) **India:** The Indian judiciary has also played an active role in interpreting and enforcing the principle of equality, notably through the doctrine of the basic structure, which states that the principle of equality is a part of the basic

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<sup>38</sup> <https://pwnlyias.com/pyq/analyze-the-distinguishing-features-of-the-notion-of-equality-in-the-constitutions-of-the-usa-and-india-250-words-15-marks/#:~:text=Body%3A-,Distinguishing%20features%20of%20the%20notion%20of%20Equality%20in%20the%20Constitutions,all%20persons%20within%20its%20jurisdiction> last seen on 08/03/2024.

<sup>39</sup> 17<sup>th</sup> May, 1954

<sup>40</sup> 388 U.S. 1 (1967)

structure of the Indian Constitution and cannot be abridged or abrogated by any amendment.

#### 4) **Similarities between the Constitution of India and the Constitution of the USA:**<sup>41</sup>

- a) Both Constitutions are in the written format, even though the American Constitution is not as vast as the Indian Constitution.
- b) Both the Indian and US Constitutions are federal in their form. They state that the power belongs to the Central Government.
- c) Both Constitutions lay down the foundations of the fundamental rights of the people.
- d) The distribution of powers to maintain and safeguard democracy is another common feature between the two Constitutions.
- e) The Constitution of India is amendable, whereas that of America cannot be amended.<sup>42</sup>
- f) The US Constitution cannot change its form, whereas the Constitution of India can change its form given the circumstances to protect the country. It means that the American Constitution is completely federal, while the Constitution of India is quasi-federal. Quasi-federal means that, if need be, the states' powers will become null and void, and the Centre becomes the supreme power.
- g) Dual citizenship is followed in the American Constitution; that is, people need to have the citizenship of the state as well as the country. India's Constitution works on single citizenship, which means the resident should be a citizen of the country, no matter the state they reside in.
- h) The President is the head of the country in America. The Prime Minister represents the country and the choice of people in India.
- i) The American Constitution has no provisions for a national emergency. It is a special feature mentioned only in the Indian Constitution. In an emergency,

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<sup>41</sup> <https://unacademy.com/content/bpsc/study-material/polity/the-us-constitution-and-the-indian-constitution/#:~:text=The%20US%20Constitution%20is%20rigid,448%20articles%20in%202022%20parts> last seen on 28/03/2024.

<sup>42</sup> <https://unacademy.com/content/bpsc/study-material/polity/the-us-constitution-and-the-indian-constitution/#:~:text=The%20US%20Constitution%20is%20rigid,448%20articles%20in%202022%20parts> last seen on 28/03/2024

the powers go to the Central Government or President, depending on the situation. The powers of the state in such scenarios become null and void.

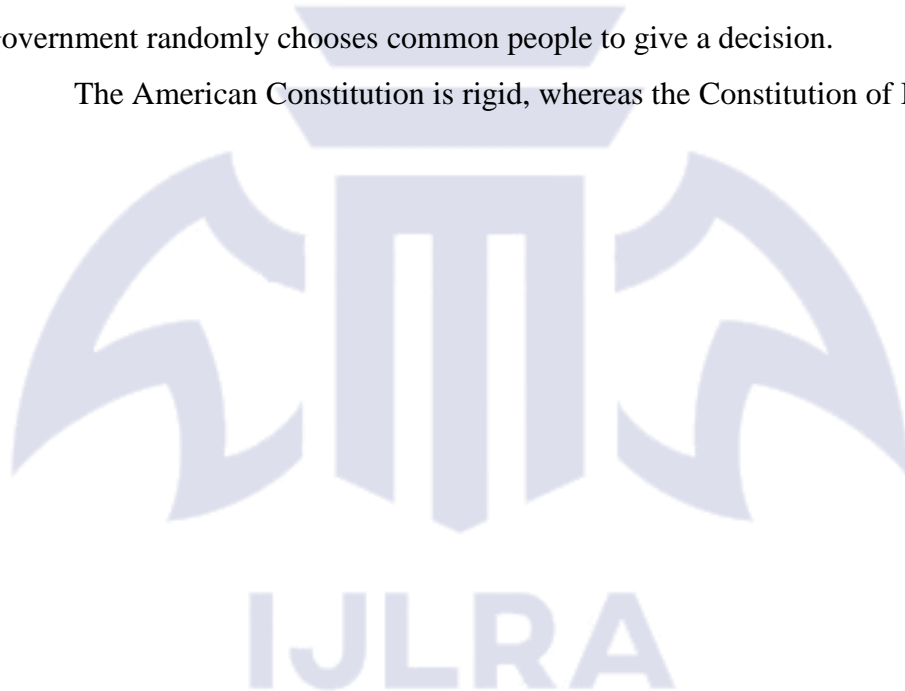
j) Indian states cannot request the amendment of the Indian Constitution. However, in America, the states have equal power and can request to amend the Constitution.

k) An Indian President is elected by the members of Rajya Sabha and serves the office for 5 years. In America, people directly elect their President, who serves the office for 4 years. Presidents of the USA cannot be elected more than twice.

l) The state Governors in America are elected by the citizens of America themselves. However, Indian Governors get their power from the President.

m) The main difference in both Constitutions is that the judges take over criminal trials in India, and the judiciary is the supreme power. American trials are carried out by a special jury, in which the Government randomly chooses common people to give a decision.

n) The American Constitution is rigid, whereas the Constitution of India is flexible.



## JUDICIAL INTERPRETATION OF EQUALITY BEFORE LAW IN USA CONSTITUTION

After the American Civil War, three new constitutional amendments were adopted;<sup>43</sup>

- a) The Thirteenth Amendment, 1865, abolished slavery;
- b) The Fourteenth Amendment, 1868, which granted citizenship to those who had been enslaved;
- c) The Fifteenth Amendment, 1870, which guaranteed formerly enslaved men the right to vote.

The Fourteenth Amendment placed an important federal limitation on the states by forbidding them to deny to any person –life, liberty, or property, without due process of law and guaranteeing every person within a state’s jurisdiction –the equal protection of its laws.

Later interpretations by the Supreme Court in the 20th century gave these two clauses added significance. In *Gitlow v. New York*<sup>44</sup>, the due process clause was interpreted by the Supreme Court to broaden the applicability of the Bills of Rights.

The Supreme Court applied the equal protection clause of the Fourteenth Amendment in its landmark decision in *Brown v. Board of Education of Topeka*, in which it ruled that racial segregation in public schools was unconstitutional. In the 1960s and ‘70s the equal protection clause was used by the Supreme Court to extend protections to other areas, including zoning laws, voting rights, and gender discrimination. The broad interpretation of this clause has also caused considerable controversy.

After the fourteenth Amendment 1868 they were included five sections in the USA Constitution,

Section 1 defines that, **“All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due**

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<sup>43</sup> <https://www.britannica.com/topic/Constitution-of-the-United-States-of-America/Civil-liberties-and-the-Bill-of-Rights> Last seen on 28/03/2024

<sup>44</sup> 268 U.S. 652 (1925) decided on June 8, 1925

**process of law; nor deny to any person within its jurisdiction the equal protection of the laws.”<sup>45</sup>**

**Gong Lum v. Rice**, case in which the U.S. Supreme Court on November 21, 1927, ruled (9–0) that a Mississippi school board had not violated the Fourteenth Amendment’s equal protection clause when it classified a student of Chinese decent as –colored<sup>||</sup> and barred her from attending a white High School.

In 1954 the U.S. Supreme Court overturned *Cumming* with its decision in *Brown v.*

Board of Education of Topeka.<sup>46</sup>



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<sup>45</sup> <https://www.archives.gov/founding-docs/amendments-11-27> last seen on 28/03/2024

<sup>46</sup> <https://www.britannica.com/event/Gong-Lum-v-Rice> last seen on 28/03/2024.

## JUDICIAL INTERPRETATION OF EQUALITY BEFORE LAW IN INDIAN CONSTITUTION

Over the years, the Indian judiciary has played a significant role in interpreting and expanding the scope of Article 14. The Supreme Court has held that the right to equality includes the right to equal access to justice, the right to live with dignity, the right to a fair trial, and the right to be free from discrimination on arbitrary grounds.<sup>47</sup>

- **State of West Bengal v. Anwar Ali:** In this case, the Supreme Court held that Section 5(1) of the West Bengal Special Courts Act, 1950 was unconstitutional as it conferred arbitrary power upon the Government to classify cases. The section was said to lack a nexus between the reasonable classification and the object of the Act.
- **Indira Gandhi v. Raj Narayan:** SC held that the rule of law embodied in Article 14 is a basic feature of the Constitution and it cannot be destroyed by an amendment.
- **RK Garge v. Union of India:** In this case the Supreme Court held that Article 14 forbids class legislation but it doesn't prohibit reasonable classification.
- **DS Nakara v. Union of India:** In this case, pensioners had been excluded from additional benefits received by other pensioners due to the date of their retirement. The petitioners challenged the validity of Central Civil Services (Pension) Rules, 1972. The Apex Court held that the selection of the date for the scheme was arbitrary and without any rational nexus.
- **Manenka Gandhi v. Union of India:** In this case, it was laid down that Article 14 strikes at the arbitrariness in state actions and ensures equality of treatment. It also laid down that article 14 forbids class legislation but does not forbid reasonable classification for the purpose of legislation.

India has derived the concept of \_equal protection of the law<sup>48</sup> from the US through Article 14 of the Indian Constitution. Right to equality was considered one of the fundamental features of the Indian Constitution in the case of Indra Sawhney v. Union of

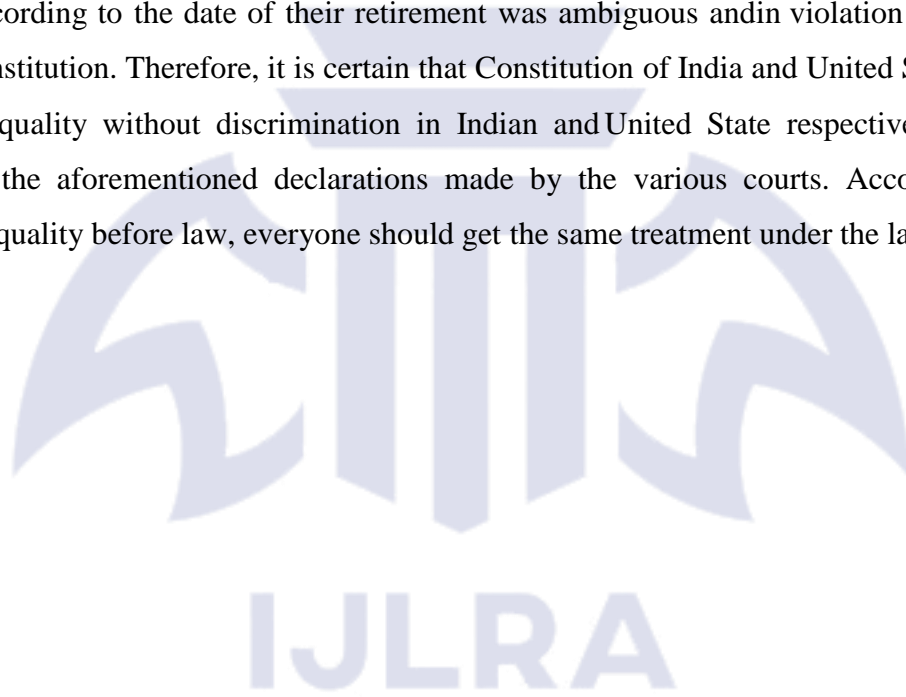
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<sup>47</sup> <https://lawctopus.com/clatalogue/clat-pg/article-14-under-the-indian-constitution/> Last seen on 28/03/2024

<sup>48</sup> <https://lexpeeps.in/right-to-equality-in-usa-and-india/> Last seen on 28/03/2024

India<sup>49</sup>. This provision applies to every individual who comes under the definition of a person, even if it is a corporation, and all people within the boundaries of India, irrespective of citizenship. Equal justice is the motive behind the concepts of equality before the law and equal protection of the law was stated in the case of Ramesh Prasad v. State of Bihar<sup>50</sup>. The Constitution of India also provides provisions to make reservations for women and children in the country; nothing shall prevent them from doing so. This was to ensure the upliftment of underprivileged groups. This was stated in the case of Choki v. State of Rajasthan<sup>51</sup>. On the basis that it makes particular provision for women and is thus protected by article. The Constitution (First Amendment) Act of 1951 added article 15(4).

In this case of D.S. Nakara v. Union of India, the Supreme Court declared Rule 34 of the Central Services (Pension) Rules, 1972 to be unconstitutional on the grounds that its distinction between pensioners according to the date of their retirement was ambiguous and in violation of Article 14 of the Indian Constitution. Therefore, it is certain that Constitution of India and United States guarantee the right to equality without discrimination in Indian and United State respectively, taking into consideration the aforementioned declarations made by the various courts. Accordingly, to the definition of equality before law, everyone should get the same treatment under the law.



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<sup>49</sup> Indra Sawhney v. Union of India MANU/SC/0104/1993. <sup>50</sup> Ramesh Prasad v. State of Bihar MANU/SC/0329/1977 <sup>51</sup> Choki v. State of Rajasthan MANU/RH/0004/1957

## CONCLUSION & SUGGESTION

The right to equality is enshrined in the Indian Constitution, and we all must understand what this means for each of us. In Part III of our series on Fundamental Rights, we looked at Articles 14 which deals with the right to equality. These articles prohibit discrimination on grounds such as religion, caste, sex, or place of birth. They also guarantee equal access to public places and services and the right to education. Every Indian must understand these rights and work towards ensuring that everyone enjoys them equally.

India considered equality as a core subject on the other hand the US developed the concepts according to the needs of the society. But the US system and the Indian system are not different. Regarding constitutional law, India shares similarities with the United States more than any other country. Both countries give core values to the Constitution with a strong procedure for judicial review, to strike down inconsistent laws.

India's approach is to attain equality in society and protect the rights of individuals whereas, in America, it is more of an individual approach. In India, the society's mind set should be changed while the government promotes affirmative action. The authorities can initiate a moral approach. There are still barriers to full equality for people belonging to disabled sections, women, economically weaker sections, etc. Government should frame policies to uplift these groups in particular by addressing their needs. In the US, more attention should be given to providing opportunities to attain equal success for individuals, by removing the unequal effects in social groups.

At last, I would like to conclude that as our country is democratic we have been provided certain fundamental rights to every citizen and ensure that these rights should not be infringed by anyone i.e. even by the state. Right to Equality which is provided by our constitution is not actually being properly enforced even after so much legal obligation related to it has been put forward by our judicial system. Our judiciary along with the other two organs of state are working very hard to maintain equality among all the citizens of our country then also until the citizens are not aware of their rights it becomes very difficult to eradicate inequality. The role of the citizens became very vital for the protection of their own rights. Right to equality needed to be applied in a practical sense so that no one is deprived of their rights. From Mahatma Gandhi to Bhim Rao Ambedkar everyone dream of the country where there is no place of discrimination.

**BIBLIOGRAPHY AND WEBLIOGRAPHY**

**BIBLIOGRAPHY**

- 1) The Constitution of India.
- 2) The Constitution of United State of America.
- 3) Federalism (1788) a book-form Publication of 77 of 85 federalists essay.
- 4) Introduction to Bill of Rights.
- 5) Maier. Pauline (2010) Ratification- The People debate of Constitution.
- 6) Basu Durga (1993) Introduction of Constitution of India 15<sup>th</sup> edition.
- 7) Basu Durga (2003) Shorter Constitution of India 13<sup>th</sup> edition.

**WEBLIOGRAPHY**

- 1) [WWW.LAWCTOPUS.COM](http://WWW.LAWCTOPUS.COM)
- 2) [WWW.LEXPPEEPS.IN](http://WWW.LEXPPEEPS.IN)
- 3) [WWW.BRITANNICA.COM](http://WWW.BRITANNICA.COM)
- 4) [WWW.ARCHIVES.GOV.IN](http://WWW.ARCHIVES.GOV.IN)
- 5) [WWW.ACADEMY.COM](http://WWW.ACADEMY.COM)
- 6) [WWW.PWONLYIAS.COM](http://WWW.PWONLYIAS.COM)
- 7) [WWW.EDUKEMY.COM](http://WWW.EDUKEMY.COM)
- 8) [WWW.WIKIPEDIA.COM](http://WWW.WIKIPEDIA.COM)
- 9) [WWW.BLOG.PLEADERS.IN](http://WWW.BLOG.PLEADERS.IN)
- 10) [WWW.CENTURLAWFIRM.IN](http://WWW.CENTURLAWFIRM.IN)