

ANALYSIS OF THE FUNDAMENTAL RIGHT TO EQUALITY BEFORE LAW

*Madhuparna Ray

Abstract

Human beings, by birth, crave to be treated like their fellow beings. This is an inherent desire. It makes one feel worthy and wanted in society. Hence, such an essential element of humanity is enshrined in Article 14 under Part III of the Indian Constitution. As per Article 14 of our Indian Constitution, 1950, "The State shall not deny to any person equality before law or the equal protection of the laws within the territory of India¹". This provision encapsulates two broad concepts; i.e. 'equality before the law' which is a negative concept in the sense that no special favor shall be given to anyone on anything but is not absolute as it has certain exceptions and 'equal protection of laws' which is a positive concept in the sense that people in similar circumstances concerning privileges enjoyed and liabilities imposed shall be treated alike which is based on the doctrine of reasonable classification, wherein, empowered by The Constitution of India, the Parliament is permitted to discriminate though in a positive sense keeping in mind the circumstances in which people belong in society.

The points of research present in this paper would include

- 1. Analyzing Article 14 from a Historical Perspective*
- 2. Analyzing Article 14 from a Conceptual Perspective*
- 3. Analyzing Article 14 from a Constitutional Perspective*
- 4. Analyzing Article 14 from a Judicial Perspective*

These research points will be supported with illustrations, statutory provisions, and case laws that define a foundation for this concept under the Constitutional Law of India. This paper would also trace the changes brought under the meaning of this Article from 1950 to the present legal scenario.

* GITAM School of Law, Vizag

¹ Constitution of India 1950, Art.14.

Introduction

The idea of being considered equal is an inherent desire that all human beings cherish more than life itself. Each one of us long for equal respect, equal opportunities, equal treatment and above all equal dignity. This is because even though we come from different starting points in life like from different countries, cultures, traditions, habits, languages, religions, caste, creed, trade, race, we are, at the end of the day connected by a common thread, the common link of being born as human beings. If an in-depth analysis is done in this regard, then the final conclusion ought to be that the mere fact of being born as humans give us the right to be treated with equal dignity which is a basic pre-requisite for our very existence.

Hence, it is established that right to equality is of great essence, hence, such an essential element of humanity is enshrined in Article 14 under Part III of the Indian Constitution. As per Article 14 of our Constitution, "The State shall not deny to any person equality before law or the equal protection of the laws within the territory of India²". This provision encapsulates two broad concepts; i.e. 'equality before the law' which is a negative concept in the sense that no special favor shall be given to anyone on anything but is not absolute as it has certain exceptions and 'equal protection of laws' which is a positive concept in the sense that people in similar circumstances concerning privileges enjoyed and liabilities imposed shall be treated alike which is based on the doctrine of reasonable classification, wherein, empowered by The Constitution of India, the Parliament is permitted to discriminate though in a positive sense keeping in mind the circumstances in which people belong in society.

Historical Perspective

The concept of equality before law arose as early as 431 BCE in the backdrop of the historical Peloponnesian War amongst free men of the Athenian Democracy³. Thereafter we witness that the concept of equality gained prominence around the world and the same can be construed by reading and analyzing Constitutions from different countries around the globe. When we look at the Constitution of The United States of America, we see that it is the concept of equality in the form of equal protection of laws is explicitly mentioned. According to section 1 of the 14th amendment to the Constitution, "No State shall deny any person

² Supra note 1

³ Richard Crawley, "The History of the Peloponnesian War" (1874), Project Gutenberg

within the ambit of its jurisdiction the equal protection of laws"⁴ As per article 14, the concept of equality has two facets namely, equality before law and equal protection of laws.

The background of the concept of equality before laws lies with the English law. Prof. Dicey, an eminent British jurist and scholar called this concept as the 'rule of law'⁵. This concept as described by Prof. Dicey mainly means that no one amongst us is above law and that each and every person whatever be his rank, status, social standing, financial capabilities be, is subject to the jurisdiction of Courts of Law. This concept practically shows and law is supreme and above all of us⁶. In the case of *Rubinder Singh v. Union of India*, it was opined by the Hon'ble Apex Court of India that, "Rule of law requires that no one shall be subjected to unreasonably harsh, uncivilized or discriminatory treatment even when the aim is the securing of the paramount exigencies of law and order."⁷ As for the concept of equal protection of laws, it has its origin from The Constitution of America that is embodied in it by its 14th Amendment⁸. This concept has been interpreted by many cases down the ages. In the case of *Lindsley v. Natural Carbonic Gas Co.*, it was opined by the Hon'ble Court that equal protection of laws refers to being subjected to equal law, applying to all in the same circumstances⁹. Hence, this concept basically means that like should be treated alike and not that unlike should be treated alike¹⁰. In the historical decision of *Indira Nehru Gandhi v. Raj Narain*, it was held by the Hon'ble Supreme Court of India that 'The Rule of Law enshrined in Article 14 of the Indian Constitution is a "Basic Feature" of the our Constitution and therefore it can not be destroyed even with the help of an amendment of the constitution under Article 368 of the Constitution¹¹.

Conceptual Perspective

It is pertinent to understand that the concept of the 'equality before law' is not absolute but has certain exceptions. Hence, we can infer that the 'rule of law' is not an absolute rule but is

⁴ The *Fourteenth Amendment* (Amendment XIV) to the *United States Constitution*, § 1 (<https://constitution.congress.gov/browse/amendment-14/section-1/#:~:text=No%20State%20shall%20make%20or,equal%20protection%20of%20the%20laws.>) Accessed on 25 November 2020

⁵ Dr. Pandey J.N., "Constitutional Law of India", p 79, Central Law Agency, 57th Ed. (2020)

⁶ Dicey, Law of Constitution, pp 202-3, 10th Ed.

⁷ *Rubinder Singh v. Union of India*, AIR 1983 SC 65

⁸ *Supra* note 3

⁹ *Lindsley v. Natural Carbonic Gas Co.*, (1910) 220 US 61

¹⁰ Dr. V.N. Shukla "Constitution of India", p 27, (5th Ed.)

¹¹ *Indira Nehru Gandhi v. Raj Narain*, AIR 1975 SC 2299

subject to certain restrictions. Firstly, it is important to comprehend that the powers conferred to public officials is not same as that of private persons. Thus, we can understand this with an example, that a police officer is empowered to arrest as per his official capacity whereas no private person has this power. This is not a violation of the 'rule of law'. But at the same time, no police officer can abuse the power that is given to him. Secondly, certain persons enjoy certain degrees of immunity in law. For example, in article 361 of the Indian Constitution, immunity is given to The President of India and the State Governors as no criminal proceedings can be continued against them nor can they be arrested or imprisoned during the term of their office. Thirdly, some statutes provide wide discretionary powers to certain ministers which is not provided to common public and fourthly, in the case of certain classes of persons, special laws prevail over general laws. For example, in the case of persons employed in the armed forces, military laws apply while medical professional are subject to the rules and regulations laid down by the Medical Council of India.

It is also very important to comprehend and realise that the scope and ambit of article 14 is limited by the presence of certain restrictions in the Constitution itself. Firstly, by the 42nd Amendment Act¹², a new section, 31 C was added in 1976 which provided that 'laws made by the State for implementing directive principles in clause (b) or (c) of Article 39 cannot be challenged on ground that they are violative of Article 14¹³.' In the case of *Sanjeev Coke Mfg. Co. v. Bharat Cooking Coal Ltd.*, it was opined by the Hon'ble Supreme Court that "Where Article 31C comes in Article 14 goes out."¹⁴ Secondly, if Emergency is in operation in the country, then the President of India may suspend the enforcement of Article 14 during which the proclamation of emergency is in force in the country. Thirdly, as per the dicta of International Law, foreign sovereign and ambassadors enjoy immunity from judicial process in India. This is also valid for alien enemies for acts of war¹⁵.

The concept of equality is intertwined with the tenets that lead to access to justice. Article 14 and Article 21 of our country's Constitution helps in facilitating access to justice. There are

¹² The Constitution (Forty-Second Amendment Act), 1976

¹³ Constitution of India 1950, Art.31C

¹⁴ *Sanjeev Coke Mfg. Co. v. Bharat Cooking Coal Ltd.*, (1983) 1 SCC 147

¹⁵ *Supra* note 4

four tenets that ensure access to justice which was held in the case of *Anita Kushwaha v. Pushap Sudan*¹⁶. They are¹⁷:

1. The state must provide for an effective system of adjudicatory mechanism
2. It must be reasonably accessible
3. It must be speedy or expeditious in nature
4. It must be affordable to the litigant

The ambit of article 14 is wide in the sense that its application is not restricted to citizens but to each and every person due to the presence of the phrase 'any person'¹⁸. But there were questions as to who all are include under the umbrella phrase of 'any person'. This question was answered to a great extent in the case of *National Legal Services Authority v. Union of India*¹⁹. In this landmark judgment, the Hon'ble Supreme Court of India held that the meaning of the word 'person' is not restrictive is nature and it merely does not mean male or female. It was opined by the Hon'ble Court transgenders come under the ambit of the term 'any person' too. Hence, they are equally entitled to legal protection in all arenas like healthcare, employment, education just like all the other persons. Hence, Article is a gender-neutral section.

With regard to equal protection of laws, it is necessary to understand that all persons do not come from the same position in life. Hence, discrimination in laws is necessary to bring everyone under the same umbrella in the society. In the case of *Chiranjit Lal v. Union of India*²⁰, it was held by the Honourable Apex Court of India that 'the varying needs of different classes of persons often require separate treatment'²¹. In the case of *Abdul Rehman v. Pinto*, it was stated by the Hon'ble Court that 'identical treatment in unequal circumstances would amount to inequality.'²² In the case of *Jagjit Singh v. State*, it was held that 'reasonable classification is not only permitted but is a subject of utmost necessity if the society is to

¹⁶ Anita Kushwaha v. Pushap Sudan, AIR 2016 SC 3506

¹⁷ Ibid

¹⁸ Supra note 1

¹⁹ National Legal Services Authority v. Union of India, AIR 2014 SC 1863

²⁰ Chiranjit Lal v. Union of India, AIR 1951 SC 41

²¹ Ibid

²² Abdul Rehman v. Pinto, AIR 1951 Hyd 11

progress²³. Hence, it is an established fact that Article 14 promotes positive discrimination to ensure overall equality.

Constitutional Perspective

The concept of reasonable classification is of great importance when it comes to understanding and interpreting Article 14 of the Indian Constitution. In the landmark judgment of *RC Cooper v. Union of India*, it was opined by the Hon'ble Supreme Court that a classification is essential to correctly interpret Article 14 of the Constitution but it being rational is mandatory. So, such a classification must be based on real and substantial distinction and must not be arbitrary, artificial or evasive in nature²⁴. This was reiterated by the case of *Air India v. Nargesh Meerza*²⁵. To qualify as a valid reasonable classification, it must satisfy a two-fold test. First and foremost, the classification must be based on an 'intelligible differentia' which basically means likes should be grouped together leaving out the unlike and there must exist a 'rational nexus' so that the differentia achieves the object sought by the law. This test was held in the case of *State of Bombay v. FN Balasara*²⁶. This was again reiterated in the case of *State of West Bengal v. Anwar Ali Sarkar*²⁷. However, that was a question regarding the extent of this classification. This was answered by the case of *Kedar Nath v. State of West Bengal*²⁸ in which it was held by the Hon'ble Supreme Court that the classification need not be scientifically perfect. In the case of *Kameshwar Singh v. State of Bihar*²⁹, it was held that mathematical perfection is not required. In the historically important decision of *State of Bombay v. FN Balasara*³⁰, it was held that 'equal treatment does not mean identical treatment.' In the landmark decision of *State of West Bengal v. Anwar Ali Sarkar*³¹, it was opined that 'there can be no discrimination both in the substantive as well as the procedural law. Article 14 applies to both of these.'

Judicial Perspective

²³ Jagjit Singh v. State, AIR 1954 Hyd 28

²⁴ RC Cooper v. Union of India, AIR 1970 SC 564

²⁵ Air India v. Nargesh Meerza, AIR 1981 SC 1829

²⁶ State of Bombay v. FN Balasara, AIR 1951 SC 318

²⁷ State of WB v. Anwar Ali Sarkar, AIR 1952 SC 75

²⁸ Kedarnath v. State of West Bengal, AIR 1953 SC 404

²⁹ Kameshwar Singh v. State of Bihar, AIR 1951 Pat 91

³⁰ Supra note 25

³¹ Supra note 26

There have been several landmark judgments down the ages defining the meaning and essence of Article 14 of the Indian Constitution.

In the case of *EP Royappa v State of Tamil Nadu*, the Hon'ble Justice of Supreme Court of India, Justice Bhagwati stated that "Equality is a dynamic concept with many aspects and dimensions which cannot be 'cribbed, cabined and confined' within traditional and doctrinaire limits³²."

In the case of *Maneka Gandhi v. Union of India*, Justice Bhagwati once again quoted in the same lines as that of the *EP Royappa case* while adding that 'principle of reasonableness, which legally as well as philosophically, is an essential element of equality or non-arbitrariness, that pervades Article 14 like a brooding omnipresence³³.' In the case of *RD Shetty v International Airport Authority of India*³⁴, Justice Bhagwati reiterated the same principle. Hence, from these landmark judgments, it is clear that equality is a dynamic concept.

The relationship between the concepts of equality before law and equal protection of laws is well explained in the landmark judgment of *State of West Bengal v. Anwar Ali Sarkar*³⁵ where it was held that 'equal protection of laws is a corollary of the expression is equality before law.

Doctrine of reasonable classification forms the core of Article 14 and those that are against this are held arbitrary and hence unconstitutional. This can be understood from the case of *Air India v. Nargesh Meerza*³⁶. In this case, as per the regulations 46 and 47 of Air India, airhostesses would be terminated if they attain the age of 35 years, or on first pregnancy or on marriage within the initial four years of her service whichever occurred earlier. It was opined by the Hon'ble Supreme Court that this is not a reasonable classification and hence was struck down due to its arbitrary nature and held unconstitutional.

³² EP Royappa v State of Tamil Nadu, AIR 1974 SC 555

³³ Maneka Gandhi v. Union of India, AIR 1978 SC 597

³⁴ RD Shetty v International Airport Authority of India, AIR 1979 SC 1628

³⁵ Supra note 26

³⁶ Supra note 24

In the case of *Maneka Gandhi and Union of India*³⁷, it was held that 'reasonableness' is the key and the common thread that binds Article 14, 19 and 21 with each other. Hence these three were referred to as the '*Golden Triangle*.'

Conclusion

Equality is not a luxury, it's a necessity. The agenda of any law in place is to ensure societal peace and harmony, Equality is a tool that helps in achieving the same. For any society to grow and develop, equality is required. It ensures progress of the society by ensuring peace amongst its residents. Hence, it is a concept that needs to be construed and analyzed intricately. Following all the essential requisites of equality would ensure a society that is healthy, happy and prosperous.



³⁷ Supra note 32