
Right to Equality: An Assessment

Dr. Somesh Malviya,
dr.someshmalviya@gmail.com

Social justice is the foundation of the Indian Constitution. The framers of this Constitution, created in the middle of the 20th century, were fully aware of the application and limitations of various principles of justice. In the Indian Constitution, the concept of social justice is found to be the most useful principle. In the special circumstances of Indian society, along with economic inequalities, social inequalities based on caste and community-based superiority and inferiority demand a uniform solution. The ideal of the Indian Constitution lies in providing every person the right to dignity and equality of opportunity. Through Articles 14 to 18 of the Constitution, every person has been given the right to equality for the achievement of this objective. The ideal of equality envisaged in the Preamble of the Constitution is embodied in Article 14. Article 14 provides that: *“The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.”*

The expression “equality before law” has been taken from the British Constitution, which, according to Professor Dicey, is called the “Rule of Law.” The second expression has been borrowed from the Constitution of the United States. The objective of both these expressions is to establish the level of equality envisaged in the Preamble of the Indian Constitution.

Although two expressions are used in Article 14, both have the same objective, and that is – the establishment of equal justice.

In *State of West Bengal v. Anwar Ali Sarkar (1952)*, Chief Justice Patanjali Shastri said that equal protection of laws is a sub-principle of equality before law, because it is difficult to imagine circumstances where the right to equality before law can be maintained without the equal protection of laws. Thus, in fact, both the terms have the same meaning. In principle, there may be a difference between the two expressions, but in practice there is no difference between them.

Equality before law does not mean absolute equality among individuals, which is practically impossible. According to Aristotle, distributing the same things among equals and different things among unequals is a part of justice. Dr. Jennings has said that equality before law means that the same law should exist between persons in the same circumstances, and it should be applied equally, and persons of the same kind should be treated in the same way.

Equality before law is similar to what Prof. Dicey calls the Rule of Law in England. The Rule of Law means –

- No one is above the law.
- Every person, whatever his rank or status may be, is subject to the ordinary law of the land and within the jurisdiction of ordinary courts.
- Every citizen, whether he is the Prime Minister or an ordinary farmer, if he does any act without legal justification, will be equally liable for that act. In this regard, there is no distinction between officials and private citizens.

Legal persons are also included under Article 14:

In *Chiranjit Lal v. Union of India (1951)*, the Supreme Court determined that the term "person" used in Article 14 also includes a legal person. Therefore, a corporation, which is a legal person, also has the right to equality before law.

Equality before law does not mean that every law must be general in nature and that one and the same law can be equally applied to all persons. According to Aristotle's principle of equality, equality before law means equal justice among equals, i.e., due to the different needs of different classes of persons, there arises a need for different and separate treatment among them. For this reason, individuals can be classified into different groups according to their needs. This ideal of equality is enshrined in Article 14 of the Constitution. The legislature determines and regulates those policies and bases according to which classification can be made. Such laws are made keeping in mind the maximum interest of society and the security of the nation.

In the Supreme Court, it was said that Article 14 places only one restriction on the power of the State to classify persons and objects, and that is that the classification must not be unreasonable or arbitrary. For the classification to be reasonable, the following two conditions must be fulfilled –

1. The classification must be based on an intelligible differentia which distinguishes persons and objects that are grouped together from those left out of the group.
2. There must be a rational nexus between the differentia and the object sought to be achieved by the Act in question.

A single person can be considered as a class in himself –

An Act which makes a reasonable classification does not become invalid merely because the class to which it applies consists of only one person. If, due to special circumstances, it applies only to one person and not to others, then that one person can be considered as a class in himself. For example:

1. In *Chiranjit Lal v. Union of India (1951)*, the Sholapur Company was considered as a class.
2. In *Aziz Basha v. Union of India (1968)*, Aligarh University was considered as a class.
3. In *P.V. Shastri v. Union of India (1974)*, it was said that the Prime Minister is a class in himself.
4. In *Veer Kishore Dev v. State of Orissa (1978)*, the Jagannath Temple of Puri was considered as a class in itself.

In *E.P. Royappa v. State of Tamil Nadu (1974)*, the Supreme Court refused to accept the traditional concept of equality which was based on reasonable classification and adopted a new approach. Justice Bhagwati (here written as "Mamvati") expressed the opinion that: "Equality is a dynamic concept with many aspects and dimensions and it cannot be imprisoned within traditional and doctrinaire limits. From a positivist point of view, equality is antithetic to arbitrariness. In fact, equality and arbitrariness are sworn enemies. One belongs to the Rule of Law in a republic, while the other belongs to the whim and caprice of an absolute regime. The very essence of arbitrariness is that political logic and constitutional law are mismatched, and therefore it is a violation of Article 14."

Later decisions:

In *Maneka Gandhi v. Union of India (1978)* and *R.D. Shetty v. International Airport Authority (1979)*, Justice Bhagwati's approach became even clearer, and the Constitutional Bench of the Court approved it in the following words –

“It must now be taken to be well settled that what Article 14 strikes at is arbitrariness, because wherever there is arbitrariness, there is bound to be inequality. The principle of classification which has been evolved by the courts is not the paraphrase of Article 14 nor is it the end in itself. It is only a judicial formula for determining whether the legislative or executive action in question is arbitrary and therefore violative of Article 14. If the classification is unreasonable and does not satisfy the two conditions, then the proposed legislation or action under it will be in violation of the guarantee of equality under Article 14. Therefore, wherever there is arbitrariness in State action, whether legislative or executive, Article 14 immediately springs into action and strikes down such State action.”

Thus, if the action of the State is arbitrary, it cannot be said to be in consonance with equality. The Court has not abandoned the doctrine of classification but has expanded its scope by adopting the principle of arbitrariness.

But Shri Seervai criticized this new principle and supported the old doctrine. He said that it is not correct to say that whatever is against equality is arbitrary. Since human beings are by birth and occupation different from each other, classification is necessary to apply laws to them. The same law cannot be applied to all. If classification is made according to the two tests, then the law will not be discriminatory and arbitrary, and it will be valid. According to him, the new doctrine restricts the scope of equality.

In *Javed v. State of Haryana (2003)*, the Supreme Court upheld the provision under the Haryana Panchayati Raj Act which disqualified persons having more than two children from holding the office of Sarpanch or Up-Sarpanch, in order to promote the family planning programme.

In *Vijay Lakshmi v. Punjab University (2003)*, the Supreme Court held that the appointment of only women as Principals in women's colleges was not violative of Articles 14 or 16.

References:

1. www.google.com
2. <http://www.indiankanoon.org>
3. J.N. Pandey, *Bharat ka Samvidhan*, 43rd Edition, 2006
4. Kailash Rai, *Bharat ka Samvidhan*, 12th Edition, 2005
5. M.P. Jain, *Indian Constitutional Law*, 5th Edition, 2005
6. Baj Kishore Sharma, *Bharat ka Samvidhan: Ek Parichay*, 2nd Edition, 2008
7. Dr. Anirudh Prasad, *Vidhik Mool Siddhant*, 30th Edition, 2004
8. Acharya Dr. Durga Das Basu, *Bharat ka Samvidhan: Ek Parichay*, 8th Edition, 2002, reprint 2005