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ARTICLE 14: THE PROTECTOR OF EQUALITY IN INDIA

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ABSTRACT

Art. 14 states that- "The state shall not deny any person the equal protection of laws and equality before law within the territory of India." This provision is not as simple as it seems. It has many aspects. Here, 'Equality' co-exists with 'Arbitrariness' in an inverse relationship, i.e. where 'Rule of law' exist as a pre-requisite of Equality, then Equality is enforced; but where rule of law don't exist, 'Rule of discretion' comes into existence, that enforces Arbitrariness. So, Art.14 strikes at Arbitrariness. Moreover, where natural inequalities exist and there is need for an exceptional or special treatment, then the test of 'Reasonable Classification' or the 'Theory of Nexus' is applied by the Courts in such circumstances. This is also a facet of Art.14.

Equality is a dynamic concept and so much fundamental as a right for our dignified living. Thus, its protection is necessary. Hence in this Article, I will deal with the conventional & contemporary aspects of Art 14, and examine that how "Article 14 of the Constitution of India has been the protector of Equality throughout, after 1950 in India."

Keywords- Article 14, constitution, arbitrariness, equality before law, reasonable classification, theory of nexus, fundamental right.

INTRODUCTION

Aristotle has said that:

"The worst form of inequality is to try to make unequal things equal."

Article 14 of the constitution states that: "The state shall not deny any person the equal protection of laws and equality before law within the territory of India." This means that, in an egalitarian society or country there should be rule of law in such a manner that the law protect every citizen and their rights equally. But it is a universal truth that everybody is not equal. There are natural inequalities in human beings on the basis of age, experience, nature,

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size and shape, talent etc. It is also said in the case of **State of West Bengal v. Anwar Ali Sarkar**[2]: *"Like should be treated alike and not that unlike should be treated alike."* Through this philosophy the Judiciary came with the Doctrine of Reasonable Classification which classifies alike group of citizens from the unlike group on reasonable grounds. This doctrine is dependent on the fulfilment of some pre-requisites, i.e.:

(1) Intelligible Differentia (a reasonable ground for classification)

(2) Objective/Intent behind the classification

(3) Rational nexus or relation between the intelligible differentia & the objective sought. But, this was a conventional method or doctrine which restricted the concept of equality in certain parameters. Since, equality is a dynamic concept, new concept of equality came which stated that "Article 14 strikes at the arbitrary action of the state."[3] It means that where there is no equality, there is no rule of law because equality is an essential of rule of law, so when there is no rule of law, there exist arbitrariness. This arbitrariness is void under Article 14 of the Constitution of India. This is a much wider concept and doctrine than the 'Theory of Nexus'.[4] So, in this article, we will know about the Philosophy of Article 14 of the Constitution; that how it stands as the Protector of equality and Striker of arbitrariness in India.

ARTICLE 14 AS GENERAL EQUALITY & ITS ESSENTIALS

Right to equality is a fundamental right guaranteed to us by the Indian Constitution in Part-III from Art.14 to Art.18. Article 14 talks about the general concept of equality and protects the citizens' right to equal treatment in a generic sense and not in a special sense. So, Art.14 is treated as the provision of 'General Equality' and further Art.15, 16, 17 & 18 deals with the concept of Specific Equality, provisions and scope for reservation and all.

As far as we are concerned with Art. 14 i.e. the General Equality, let's see its essentials as follows:

STATE shall not deny

What is state here? As per the Article 12 of the Constitution of India, definition of STATE includes:

- the Government and Parliament of India
- the Government and the Legislature of each of the States

[2] *State of West Bengal v. Anwar Ali Sarkar (AIR 1952 SC 75).*
[3] *Maneka Gandhi v. Union of India (AIR 1978 SC 597).*
[4] i.e. Theory of Reasonable Classification.

- all Local authorities or
- Other authorities;

within the territory of India or under the control of the Government of India.

Here, 'Local authorities' means municipalities, village panchayats, district boards and other local administrative authorities under Government of India. Moreover, 'Other authorities' denotes "all authorities created by the constitution or statute on whom powers are conferred by law. Such statutory authority need not be engaged in performing government or sovereign functions."[5] When read under Article 12, the word authority means the power to make and enforce laws (or orders, regulations, bye-laws, notification etc.) which have the force of law. For instance, State includes- Universities, ONGC, Electricity boards, LIC, etc.

Article 14 implies an obligation on the State u/a 12 to provide an equal or egalitarian system of law in which every person is protected and seen equally. State shall not deny such equality to any person.

Any PERSON

'Person' in law means Natural person (human being), Juristic person (legal entity), or body of persons, or corporation, recognized by law. Moreover, such person shall have some rights and duties. Persons have rights to be protected and have duties to be performed. Thus, they can sue and can be sued.

The right to equality under Art.14 is available to any person, including- the citizens of India (without regard to the religion, race, colour etc.), foreign personalities, any corporation, or any juristic entities.

Equal Protection of Laws

The concept of 'Equal Protection of Laws' in Indian Constitution derives its origin from the 14th Amendment to the Constitution of United States of America that says- "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 process of law; nor deny to any person within its jurisdiction the **Equal protection of the laws**."

This has been interpreted to mean subjection to equal law, applying to all in the same circumstances. It only means that all persons similarly circumstanced shall be treated alike

[5] *Rajasthan Electricity Board v. Mohan Lal (AIR 1967 SC 1857)*.

both in the privileges conferred and liabilities imposed by the laws. Equal law should be applied to all in the same situation, and there should be no discrimination between one person and another.[6] Indian interpretation to this is also similar as SC made the rule that- "Like should be treated alike and not that unlike should be treated alike."[7]

Equality before law

The concept of 'equality before law' has its origin from England. In English law, *Equality before law is believed as an integral aspect of the 'Rule of Law'*. Thus, equality before law can be originally infers as "the subjection of all classes to the ordinary law of the land that means that no one is above law. Every person whether he is an official of the state or private individual is bound to obey the same law."[8]

Prof. A.V. Dicey, a renowned English scholar proposed three aspects of Rule of Law, i.e.:

- Absence of Arbitrary Power or Supremacy of Law
- Equality before Law
- Predominance of Legal spirit

Rule of Law is a pre-requisite for a democratic and egalitarian state. Because where there is no rule of law, there is rule of man which is prejudicial to the interests of whole public. So, Equality being an essential of Rule of Law shall be preserved to maintain such state.

Moreover, Dr. Jennings, another English scholar enlightened another aspect of equality. He believed that *Equality has an inverse relationship with Arbitrariness*. This means that if equality would not be followed, then rule of law would not be there and Rule of Discretion comes into light, which leads to Arbitrary action. Thus, Jennings proposed that *Equality before law promotes Rule of Law and prohibits Arbitrariness or Discrimination.*

Territory of India

'Indian Territory' includes the area of all the 28 States and 8 Union Territories[9] which makes INDIA- a 'Union of States'. The areas where the Constitution and other laws of India are applicable and obligated, are comprised of the 'Territory of India'. Right to equality,

[6] Dr. J.N. Pandey, Constitutional Law of India, Central, 84 (Central Law Agency, Prayagraj, 59th Edition, 2022).
[7] Supra note at 1.
[8] Supra note at 5, p. 83.
[9] **28 States:** Andhra Pradesh, Arunachal Pradesh, Assam, Bihar, Chhattisgarh, Goa, Gujarat, Haryana, Himachal Pradesh, Jharkhand, Karnataka, Kerala, Madhya Pradesh, Maharashtra, Manipur, Meghalaya, Mizoram, Nagaland, Odisha, Punjab, Rajasthan, Sikkim, Tamil Nadu, Telangana, Tripura, Uttar Pradesh, Uttarakhand, West Bengal.
8 Union Territories: Andaman & Nicobar Islands, Chandigarh, Dadra & Nagar Haveli and Daman & Diu, Delhi, Jammu & Kashmir, Lakshadweep Islands, Puducherry, Ladakh.

guaranteed under the Art.14 of the Constitution, is exercisable by any person only within the 'territory of India'. This constitutional provision is not enforceable beyond the boundaries of India.

EXCLUSIVE DIMENSIONS OF RIGHT TO EQUALITY

Doctrine of Reasonable Classification/Theory of Nexus

Right to Equality under Art.14 of the Constitution is not an absolute right because achieving absolute equality in all human beings is practically impossible. It is a right that guarantees 'absence of any special treatment in favour of any individual on the unreasonable grounds such as- caste, creed, reason of birth, race, etc.' "Equality before the law means that among equals the law should be equal and should be equally administered, that like should be treated alike. The right to sue and be sued, to prosecute and be prosecuted for the same kind of action should be same for all citizens of full age and understanding without distinctions of race, religion, wealth, social status or political influence".[10]

The equal protection of laws guaranteed by Article 14 does not mean that all laws must be general in character. It does not mean that the same laws should apply to all persons. It does not mean that every law must have universal application. All persons are not, by nature, attainment or circumstances in the same position. The varying needs of different classes of persons often require separate treatment. From the very nature of society, there should be different laws in different places and the Legislature controls the policy and enacts laws in the best interest of the safety and security of the State. In fact, identical treatment in unequal circumstances would amount to inequality. So, a reasonable classification is not only permitted but is necessary if society is to progress.[11]

But this Reasonable Classification must have rational ground and objective. It shall not be arbitrary, manipulative or inconsistent with the basic concept of equality, otherwise it leads to class legislation, and Article 14 permits reasonable classification but prohibits class legislation.

There are certain criteria of making a reasonable classification. Supreme Court in the **Anwar Ali Sarkar Case** *(supra)* proposed the following essentials to be fulfilled for justifying a classification as a reasonable one:

- There shall be an *intelligible differentia,* i.e. a reasonable and natural ground.

[10] Dr. Iver Jennings, Law and the Constitution, 49 (University of London Press, 3rd Edition, 1946).
[11] Supra note at 5, p. 87.

- The objective sought for such legislation must not be unlawful or arbitrary.
- There shall be a rational relation or *nexus* between the intelligible differentia and the objective sought.

Let's see some intelligible differentia (basis/grounds) recognized under the doctrine of reasonable classification by the Supreme Court in India:

1) Geographical Basis

The words "within the territory of India" used in Article 14 do not mean that there must be a uniform law throughout the country. A State may be divided into several geographical regions and a law may be applicable to one and not to others depending upon the specific or exceptional circumstances. In **Krishna Singh v. State of Rajasthan**[12], the validity of Marwar Land Revenue Act, 1949, was challenged on the ground that it applied only to Marwar portion of the State of Rajasthan and not to the whole of the State. The Supreme Court held the law not to be violative of Article 14 as the exceptional and particular conditions of Marwar portion of the State required a special law to be applied there.

Similarly, in **Ram Chandra v. State of Orissa**[13], two Acts were passed to nationalise road transport. One Act was applied to one part of the State and the other to other part of the State because the conditions differed materially in the two parts. The Acts were held constitutionally valid and not violative of Art.14 by the Supreme Court.

2) Education

Educational qualifications, Academic Excellence and like categories also forms valid intelligible differentia under the doctrine of reasonable classification.

In the case of **State of Bihar v. Bihar 10+2 Lecturers Associations**[14], the issue was related with the unequal pay scales of the trained and untrained teachers/lecturers. The Court held that there is clear distinction between a trained teacher and untrained teacher. This distinction is reasonable and is based on intelligible differentia which distinguishes one class (trained) and the other class (untrained) which is left out. Such classification or differentia has a rational nexus or reasonable relation to the object sought to be achieved viz, imparting education to students. Therefore, prescribing different pay scales cannot be held illegal,

[12] AIR 1955 SC 795.
[13] AIR 2007 SC 1948.
[14] AIR 1956 SC 298.

improper or unreasonable infringing Article 14 of the Constitution. Thus, Article 14 forbids discrimination not classification on the basis of education.

3) Special Courts & Special Procedure

In the case of **Kathi Raning v. State of Saurashtra**[15], the validity of Sections- 9, 10 & 11(which gave Saurashtra (now, Gujarat) the power to constitute and administer the special courts through a notification in the official gazette) of the Saurashtra State public Safety Measures Ordinance, 1948[16] was upheld on the ground that it had laid down proper guidelines for the exercise of discretion by the executive to refer cases to Special Courts for trial. The object as mentioned in the Ordinance was to provide for "public safety, public order and preservation of peace and tranquillity" in the State of Saurashtra. It thus referred to four distinct categories of 'offences' or cases which could be directed by the Government to be tried by the Special Courts established under the Ordinance. The Supreme Court held that the Act was not violative of Article 14 of the Constitution and it was valid under the doctrine of reasonable classification.

Therefore, classification on the grounds of special procedure and courts can be made but the mere condition is that it must be on some reasonable criteria on basis as specified in the above case.

4) Single individual Classification

A single person, juristic entity, or corporation may constitute a class on which intelligible differentia can be applicable. Special treatment or legislation to such class is not violative of Article 14.

Below are some SC rulings related to single individual classification:

In the case of **Chiranjit Lal v. Union of India**[17] owing to mismanagement in Sholapur Spinning and Weaving Company Limited, the management threatened to close down the Mill. The Government of India passed the Sholapur Spinning and Weaving Co. (Emergency Provision) Act empowering the Government to take over the control and management of the company and its properties by appointing their own Directors. The Act was challenged on the ground that a single company and its share-holders were being denied equality before the law. The Act had taken away from them the right to manage their own affairs but the same

[15] AIR 1952 SC 123.
[16] BareLawIndia, Case Brief on Kathi Raning Rawat v. the State of Saurashtra, May 7, 2022, Available at: www.barelaw.in (Last visited at 5th May 2023, 07:30 pm).
[17] AIR 1951 SC 41.

treatment had not been meted out to all other companies and their share-holders in an identical manner.

The Supreme Court held the Act is valid. It said that a law may be constitutional even though it applies to a single individual, on account of some special circumstances or reasons applicable to him and not applicable to others, he may be treated as a class itself, unless it is shown that there are others who are similarly circumstanced. The presumption is always in the favour of the enactment and the burden is on the petitioner who attacks the validity of the legislation to place all materials before the Court which would show that the selection is arbitrary and unreasonable. The Legislature is free to recognise the degree of harm and it may confine its restrictions to those cases where the need is deemed to be the clearest. In the present case the Sholapur Company formed a class by itself because the mismanagement of the Company's affairs prejudicially affected the production of an essential commodity and had caused a serious unemployment amongst labourers.

On the contrary, if the intelligible differentia is unreasonable or arbitrary, the single individual classification would be void. Like in **Ram Prasad v. State of Bihar**[18], the appellants were granted a land lease. There was an agitation by the tenants of the locality against the lease and matter was referred to the Congress Working Committee. The Congress Committee took the view that the settlement was illegal and accordingly the lessees were asked to vacate the land. The lessees refused to vacate the land there upon the Bihar Legislature passed the impugned Act, i.e. the Bihar Sathi Land (Restoration) Act, 1950. By the Act, the appellant's lease was cancelled. The Supreme Court held the Act unconstitutional on the ground that the dispute was a legal dispute between two private parties and it was a matter for determination by duly constituted courts in accordance with normal procedure. The Legislature singled out certain individuals and deprived them of the right possessed by every Indian citizen to have his rights adjudicated upon by a court of law according to law applicable to him. This act of the state violated Article 14 herewith.

5) Juveniles

In the case of **Subramanian Swamy v. Raju, Through Member, Juvenile Justice Board**,[19] the Supreme Court held- The Juvenile Justice Act which puts all persons below age of 18 to provide a separate scheme of investigation, trial and punishment for offences committed by them is a class of persons sought to be created for different treatment. So long as the broad

[18] AIR 1953 SC 215.
[19] AIR 2014 SC 1649.

features of the categorization are identifiable and distinguishable and the categorization made is reasonably connected with the object targeted, Article 14 will not forbid such a course of action. Article 14 will tolerate the said position. Here, the intelligible differentia is age, mental ability, experience and so on, and it is reasonable, hence the classification of Juveniles from other criminals is permitted u/a 14 of the constitution.[20]

In addition to the above intelligible differentia, many more exist as ruled out by SC on the basis of the three-fold criteria under the doctrine of reasonable classification, such as- classification of newspapers[21], taxation related classification[22], Special provisions for women, backward classes and children[23] etc.

DOCTRINE OF ARBITRARINESS

Doctrine of Arbitrariness is a contemporary lens of Courts to examine the cases relating to Article 14 i.e. Right to equality. Around 1970s, Doctrine of Reasonable Classification seemed conventional and restrictive method to the progressive judges of India for dealing with the petitions of Art.14. So, they came up with a fresh-new, simpler and effective approach to figure out the violation of Art.14 in the impunged cases, i.e. the Doctrine of Arbitrariness.

Originally, Dr. Iver Jennings pointed out the relationship between Arbitrariness & Equality, i.e. where there is no equality in a state, there is no rule of law, and where there is no rule of law, there exists 'Arbitrariness'.

So, in 1970s, P.N. Bhagwati, J. interpreted the dynamic concept of equality in his several rulings, and came up with the doctrine of arbitrariness, which states that "Article 14 strikes at arbitrary and unreasonable state action." This also came to be said as 'New Concept of Equality'. Let's see some of the Supreme Court cases on this new concept of equality:

(1) E.P. Royappa v. State of Tamil Nadu[24]

In this case, Bhagwati J., delivering the judgment on behalf of himself, Chandrachud and Krishna Iyer, JJ. observed that:

"Equality is a dynamic concept with many aspects and dimensions and it cannot be 'cribbed, cabined and confined within traditional and doctrinaire limits. From a positivistic point of

[20] Supra note at 5, p. 140.
[21] *Indian Express Newspapers v. Union of India, (1985) 1 SCC 641*.
[22] *Venkateshwara Theatre v. State of Andhra Pradesh, AIR 1993 SC 1947; Kerala Hotel & Restaurant Association v. State of Kerala, (1990) 2 SCC 502*.
[23] *Dattatraya v. State, AIR 1953 Bom 311; State of Madras v. Champakam Dorairajan, AIR 1951 SC 226*.
[24] AIR 1974 SC 555.

view, equality is antithesis to arbitrariness. In fact, equality and arbitrariness are sworn enemies; one belong to the rule of law in a republic while the other, to the whim and caprice of an absolute monarch. Where an act is arbitrary, it is implicit in it that it is unequal both according to political logic and constitutional law and is therefore violative of Article 14."

(2) Maneka Gandhi v. Union of India[25]

In this case, Bhagwati, J., again quoted with approval the aforesaid concept of equality and held-

"Equality is a dynamic concept with many aspects and dimensions and it cannot be imprisoned within traditional and doctrinaire limits. Article 14 strikes at arbitrariness in State action and ensures fairness and equality of treatment. The principle of reasonableness, which legally as well as philosophically, is an essential element of equality or non-arbitrariness, pervades Article 14 like a brooding omnipresence".

(3) Ajay Hasia v. Khalid Mujib Sehravardy[26]

In this case, a Regional Engineering College made admissions of candidates on the basis of oral interview after a written test. A large number of candidates were admitted on the basis of high marks gained in interview although they had obtained low marks at the written test. The test of oral interview was challenged on the ground that it was arbitrary. The Court while striking down the rule prescribing allocation of one-third of total marks for oral interview for being plainly arbitrary, unreasonable and violative of Article 14 of the Constitution held-The oral interview test cannot be regarded a very satisfactory test for assessing and evaluating the capacity and caliber of candidates as it is subjective and based on first impression and its result is influenced by many uncertain factors and it is capable of abuse. It cannot be the exclusive test. It should be resorted to only as an additional or supplementary test and must be conducted by persons of high integrity, caliber and qualification. The allocation of 33.3% of the total marks for oral interview infected the admission procedure with arbitrariness.[27] Hence, SC held that the allocation of more than 15 per cent marks to interview would be arbitrary and unreasonable and would be violative of Article 14 of the Constitution.

(4) Air India v. Nargesh Meerza[28]

[25] AIR 1978 SC 597.
[26] AIR 1981 SC 487.
[27] Supra note at 5, p. 93.
[28] AIR 1981 SC 1829.

In this case, there were certain regulations providing that an air hostess would retire from the service of the corporation upon attaining the age of 35 years, or on marriage, if it took place within four years of service or on first pregnancy, whichever occurred earlier. Moreover, the Managing Director had the discretion to extend the age of retirement by one year at a time beyond the age of retirement upto the age of 45 years if an air hostess was found medically fit. And if an Air Hostess after having fulfilled the first condition became pregnant, there was no reason why pregnancy should stand in the way of her continuing in service. The Supreme Court struck down the Air India and Indian Airline Regulations on the age of retirement and pregnancy bar on the services of air hostesses as unconstitutional on the ground that the conditions laid down therein were manifestly unreasonable and arbitrary and clearly violative of Article 14 of the Constitution. Having taken in service and after having utilised her services for four years to terminate her service if she becames pregnant amounted to compelling the poor Air Hostess not to have any children and thus interfered with and divert the ordinary course of human nature. The termination of services of Air Hostesses in such circumstances was not only a callous and cruel act but an open insult to Indian womanhood. The provision for extension of service of Air Hostess "at the option" of the Managing Director which conferred a discretionary power without laying down any guidelines or principles was discriminatory and excessive delegation of powers liable to be struck down as unconstitutional.[29] Hence, Art.14 & 21 was violated in this case by the Air India.

(5) Mithu Singh v. State of Punjab[30]

In this case, the Court struck down Section 303 of Indian Penal Code[31] as unconstitutional on the ground that the classification between persons who commit murders whilst under the sentence of life imprisonment and those who commit murders whilst not under the sentence of life imprisonment for the purpose of making the sentence of death mandatory in the case of the former class and optional in the latter class was not based on any rational principle. Section 303 prescribes that if a person under a sentence of life imprisonment in jail commits murder, he must be awarded sentence of death. But under Section 302, if a person commits murder he may be awarded either the sentence of death or the sentence of life imprisonment. The discretion as to which sentence is to be awarded is to be exercised by the courts which will determine the matter on the nature of offences committed by accused. This judicial

[29] Supra note at 5, p. 95.
[30] AIR 1983 SC 473.
[31] Indian Penal Code, 1860 (Act No. 45 of 1860).

discretion is not available to a life convict under Section 303.[32] Hence, it is an arbitrary and unreasonable classification and action by the state, violative of Article 14.

There are many more cases in which SC examined through the lens of doctrine of arbitrariness which is evidently much convenient and dynamic.

CONCLUSION

In the light of the above cases and doctrines explained, it is evident that Article 14 has been the Protector of Equality and Striker of Arbitrariness in India throughout, after the enactment of the Constitution of India.

India is a democratic country and Equality is a major essential of Democracy. Without equal protection of citizens by the rule of law, no democracy shall be maintained in any state. Hence, our forefathers- the framers of this Constitution envisaged Article 14 as an umbrella provision for guaranteeing the Right to Equality to not only the citizens of India but also to any person residing in the territory of India.

But as we know, that attaining absolute equality among all human beings is pragmatically not possible, hence Article 14 encompasses two doctrines as discussed above in detail- Doctrine of Reasonable Classification & Doctrine of Arbitrariness/Discrimination. Both these doctrine are applied by the High Courts and Supreme Courts while dealing with the Constitutional questions relating to Article 14. The difference between the both is that the former one is conventional & restrictive in nature as it allows reasonable classification for special treatment on a certain three-fold criteria. It makes the concept of equality little complex, rigid & static. On the other hand, the latter one is the contemporary method to examine the violation of Art.14. This doctrine examines any classification done by the state through the lens of arbitrariness. It gives autonomy to the state to classify any class for special treatment, but at the corresponding, keeps reserve the right to examine its constitutional validity u/a 14 through the doctrine of arbitrariness. So, both the doctrines are constitutionally valid and can be applied by the Courts, depending upon the facts and circumstances of each case.

The Constitution of India is the suprema lex i.e. supreme law of the land, guaranteeing the basic fundamental rights to its citizens. Equality is one of the most important of such rights which is protected by the Article 14 of the Constitution. This provision of the Constitution is

[32] Supra note at 5, p. 104.

one of the Superhero which ensures Equality and prohibition of Discrimination or Arbitrariness in India.

It has been rightly said that:

“Equality is not in regarding different things similarly; Equality is in regarding different things differently.”