

Right to Equality : Doctrine of Reasonable classification and the Principle of absence of arbitrariness.

Before getting into the right to equality, we should know the types of equality to get an idea of what it is. It has been mentioned in our Preamble. The types of equality are namely:

1. **Natural Rights** : Natural rights are basic rights that include the right to life, liberty, and the pursuit of happiness. Every citizen is entitled to these rights and they are to be protected from encroachment by the government or society. It is both illegal and morally wrong for a person to be denied natural rights.
2. **Social & Economic Rights** : Socio-economic rights provide protection for the dignity, freedom and well-being of individuals by guaranteeing state-supported entitlements to education, public health care, housing, a living wage, decent working conditions and other social goods.
3. **Civil & Political Rights** : Civil rights exist to protect individuals from actions by the government, organizations, or other persons. Political rights allow individuals to participate freely in the political system. This includes voting and holding public office.
4. **Legal Rights**: A legal right is an interest accepted and protected by law. Any degradation of any legal right is punishable by law. Legal rights affect every citizen. Legal rights are equally available to all the citizens without the discrimination of caste, creed & sex.

ARTICLE 14- EQUALITY BEFORE LAW :

Article 14 of the Constitution guarantee the right to equality to every citizen of India . It embodies the general principles of equality before law and prohibits unreasonable discrimination between persons. Article 14 embodies the idea of equality expressed in preamble. It declares that 'the State shall not deny to any person equality before the law or equal protection of law within the territory of India.'. Thus article 14 uses the two expressions "equality before law" and "equal protection of law". The phrase "equality before law" find a place in almost all written constitution that guarantees fundamental right. Both these expression aim at establishing, what is called "equality of status". While both the expression are kind of identical but they don't give similar meaning. It is somehow negative concept and aims at implying the absence of any special privilege by reason of birth, sex, religion etc in favor of individuals and the equal subject of all the classes to the ordinary law.

EQUAL PROTECTION OF LAW :It is a positive concept and aims at equality of treatment in equal circumstances. It means whether someone is P.M. or President, he should be dealt with same law as normal being deals with.

RULE OF LAW : It simply means that no man is above the law and that every person whatever be his rank or condition is subject to the jurisdiction of ordinary courts. Rule of law require that no person shall be subjected to harsh, uncivilized or discriminatory treatment even when the object is the securing of the paramount exigencies of law and order.

Professor Dicey gave three meanings of the Rule of Law;

1. **Absence of arbitrary power or supremacy of the law**: It means the absolute supremacy of law

as opposed to the arbitrary power of the Government. In other words-a man may be punished for a breach of law, but he can't be punished for anything else.

2. **Equality before law:** It means subjection of all classes to the ordinary law of land administered by ordinary law courts. This means that no one is above law all are equal in eyes of law

3. **Absence of individual liberty :** There are various constitution that provide individual liberty but not provide method It means that the source of the right of individuals is not the written constitution.

Rule of Law In India

1. **Supremacy of Law:** The First meaning of the Rule of Law is that 'no man is punishable or can lawfully be made to suffer in body or goods except for a distinct breach of law established in the ordinary legal manner before the ordinary courts of the land. It implies that a man may be punished for a breach of law but cannot be punished for anything else. No man can be punished except for a breach of law. An alleged offence is required to be proved before the ordinary courts in accordance with the ordinary procedure.

2. **Equality before Law:-**The Second meaning of the Rule of Law is that no man is above law. Every man whatever be his rank or condition is subject to the ordinary law of the realm and amenable to the jurisdiction of the ordinary tribunals. Everybody under Article 14 is equal before law and have equal protection.

3. **Individual Liberty:** A lot of individual liberty is mentioned in Article 21- protection of life and personal liberty, article 19- Right to freedom etc. and courts are there to protect individual liberty. The first and second aspect apply to Indian system but the third aspect of the Diceys rule of law does not apply to Indian system as the source of right of individuals is the constitution of India. The constitution is the supreme law of the land and all laws passed by the legislature must be consistent with provisions of the constitution. The rule of law impose a duty upon state to take special measure to prevent and punish brutality by police methodology. The rule of law embodied in Article 14 is the basic feature of the Indian constitution and hence it can't be destroyed even by an amendment of the constitution under article 368 of the constitution.

Exception To Rule of Law : The above rule of equality is however not an absolute rule and there are number exception to it:

- Equality of Law does not mean the power of the private citizens are the same as the power of the public officials. Thus a police officer has the power to arrest you while no other private person has this power. This is not violation of rule of law. But rule of law does require that these powers should be clearly defined by law and that abuse of authority by public officers must be punished by ordinary courts.
- The rule of law does not prevent certain class of persons being subject to special rules. Thus members of armed forces are controlled by military rules. Similarly medical practitioners are controlled by medical council of India.
- Certain members of society are governed by special rules in their profession i.e. lawyers, doctors, nurses, members of armed forces and police. Such classes of people are treated differently from ordinary citizens.

Article 14 Permits Classification But Prohibits Class Legislation (Doctrine of Reasonable Classification)

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 attainment or circumstances in the same position. The varying needs of different classes of persons often requires separate treatment. From the very nature of society there should be different laws in different places and the legitimate 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 only not permitted but is necessary if society is to progress. Thus what Article 14 forbids is class-legislation but it does not forbid reasonable classification. The classification however must not be "arbitrary, artificial or evasive" but must be based on some real and substantial bearing a just and reasonable relation to the object sought to be achieved by the legislation. Article 14 applies where equals are treated differently without any reasonable basis. But where equals and unequals are treated differently, Article 14 does not apply. Class legislation is that which makes an improper discrimination by conferring particular privileges upon a class of persons arbitrarily selected from a large number of persons all of whom stand in the same relation to the privilege granted that between whom and the persons not so favored no reasonable distinction or substantial difference can be found justifying the inclusion of one and the exclusion of the other from such privilege.

The best way to know that whether the action taken by the State was against the Article-14 or not is to do the test of reasonable classification. In this test, the main thing which is been tested is that are the citizens of the state are treated equally or not and if not, then why are they not treated equally? This principle revolves around the concept that all the people should be treated equally which must be looked after by the state.

While Article 14 forbids class legislation, it does not forbid reasonable classification of persons, objects, and transactions by the legislature for the purpose of achieving specific ends. But classification must not be "arbitrary, artificial or evasive". It must always rest upon some real upon some real and substantial distinction bearing a just and reasonable relation to the object sought to be achieved by the legislation. Classification to be reasonable must fulfill the following two conditions:

Firstly, the classification must be founded on the intelligible differentia which distinguishes persons or thing that are grouped together from others left out of the group

Secondly, the differentia must have a rational relation to the object sought to be achieved by the act.

The differentia which is the basis of the classification and the object of the act are two distinct things. What is necessary is that there must be nexus between the basis of classification and the object of the act which makes the classification. It is only when there is no reasonable basis for a classification that legislation making such classification may be declared discriminatory. Thus the legislature may fix the age at which persons shall be deemed competent to contract between themselves but no one will claim that competency. No contract can be made to depend upon the stature or colour of the hair. Such a classification will be arbitrary.

The Doctrine of Non-Arbitrariness or absence of arbitrariness: A new doctrine

It is said that the relationship between the doctrine of non-arbitrariness and article-14 is one part which comes under the test of reasonable classification. Application of the doctrine of non-arbitrariness is regarded as an executive action which is still ambiguous. Beginning with the text of Article 14 is both logical and intuitive. "*The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India*". It is widely accepted that the first portion of the article which speaks of equality is a guarantee that no individual is above the law. This guarantee is affected by its analogy in the second portion which provides equal protection of the legislation to individuals.

The presumption that individuals are essentially equal is a powerful moral principle that is the anchor of this equality comprehension. However, it also includes a rule of rationality in relation to this moral principle. **Any exception to equality is only permissible if the State has reasonable**

grounds for different treatment of individuals. Therefore, the validity of state action relies on an assessment of the reasons for state action. This is an important connection in Article 14 between equality and rationality.

As stated above there are many cases in which the reasonable classification test was used to test whether the legislation is violating Article 14. But in the case of ***E.P Royappa v. State of Tamil Nadu***, the traditional concept of equality i.e. reasonable classification was challenged in the Supreme Court and a new concept was laid down in the judgment. Bhagwati J. delivered the judgment on behalf of himself, Chandrachud and Krishna Iyer JJ introduced a new concept of equality. It was stated that equality is a dynamic concept with many aspects and dimensions and it cannot be cribbed, cabined, and confined with traditional doctrinaire limits. Equality is antithetic to arbitrariness. Equality and arbitrariness are sworn, enemies. It is implicit in that it is unequal both according to political, logic, and Constitutional law and is therefore violative of Article 14. The same judgment was used in another landmark judgment of ***Maneka Gandhi v. Union of India***. Also, in the case of ***R.D Shetty v. International Airport Authority***, Bhagwati J. reiterated the same principle stating that Article 14 strikes arbitrariness because any arbitrary actions must necessarily involve negation of equality.

Article 14 guarantees the fundamental right to equality to every citizen in the country. It is one of the most important provisions of the Constitution. It provides equality to all the people irrespective of their caste, religion, race, sex, place of birth. There are two aspects under the Article i.e. equality before the law and equal protection of the law. Earlier, there was a test to test the constitutionality known as the reasonable classification test under which it was tested whether there is reasonable classification in the legislation. Later, a whole new test was announced to test whether it was violating Article 14 and it was known as the arbitrariness test. There was much criticism on this new doctrine and many legal pieces of literature did not agree with the new doctrine. Though the reasonable classification test was rejected today also in some cases it is being used.

The true meaning and scope of Article 14 have been explained in a number of cases by the Supreme Court. In view of this the propositions laid down in Dalmia case still hold good governing a valid classification and are as follows:-

1. A law may be constitutional even though it relates to a single individual if on account of some special circumstances or reasons applicable to him and not applicable to others, that single individual may be treated as a class by itself .
2. There is always presumption in favour of the constitutionality of a statute and the burden is upon him who attacks it to show that there has been a clear transgression of constitutional principles.
3. The presumption may be rebutted in certain cases by showing that on the fact of the statute, there is no classification and no difference peculiar to any individual or class and not applicable to any other individual or class, and yet the law hits only a particular individual or class
4. It must be assumed that Legislature correctly understand and appreciates the need of its own people that its law are directed to problem made manifest by experience and that its discrimination are based on adequate grounds
5. In order to sustain the presumption of constitutionality the court may take into consideration matters of common knowledge, matters of report, the history of the times and may assume every state of facts which can be conceived existing at the time of the legislation.

6. Thus the legislation is free to recognize degrees of harm and may confine its restriction to those cases where the need is deemed to be the clearest.

7. While good faith and knowledge of the existing conditions on the part of a legislature are to be presumed, if there is nothing on the face of the law or the surrounding circumstances brought to the notice of the court on which the classification may reasonably be regarded as based, the presumption of constitutionality cannot be carried to extent always that there must be some undisclosed and unknown reason for subjecting certain individuals or corporation to be hostile or discriminating legislation

8. The classification may be made on different bases e.g. geographical or according to object or occupation or the like.

9. The classification made by the legislature need not be scientifically perfect or logically complete. Mathematical nicety and perfect equality are not required.

Equality before the law does not require mathematical equality of all persons in all circumstances. Equal treatment does not mean identical treatment. Similarly not identity of treatment is enough.

10. There can be discrimination both in the substantive as well as the procedural law. Article 14 applies to both. If the classification satisfies the test laid down in the above propositions, the law will be declared constitutional. The question whether a classification is reasonable and proper and not must however, be judged more on commonsense than on legal subtleties.

A classification shall be based on smart differences which means that a group of persons or things make a properly defined, distinct class which may be exceptional from those who are left out of the group. In addition to that, this basis of classification must have a rational nexus to the object that the legislation in question looks forward to achieving.

In the case of *State of West Bengal v. Anwar Ali Sarkar*, the Honorable Apex Court contended the differentia which is the basis of classification and the object of the Act are two different things. It is necessary that there must be a connection between the basis of classification and the object of the Act.

Reasonable Classification as laid by the Honorable Apex Court has two conditions as contended in the case of *Saurabh Chaudhari v. Union of India* :

(i)- The classification MUST be founded on intelligible differentia, distinctly grouped together persons or goods from the left out ones of the group.

(ii)- The differential must be in a rational relation with the looked for object that is to be achieved by the act. The object of the act and differential on the basis of classification are two separate things. It is essential that there must be the presence of nexus between the object of the act and the basis of classification. When a reasonable basis is not present for classification then such classification made by the legislature must be declared discriminatory.

Cases

1 ***D.S. Nakara v. Union Of India***: The Government issued an office memorandum announcing a liberalized pension scheme for retired government servants but made it applicable to those who had retired after 31 March 1979. The supreme court held that the fixing of the cut off date to be discriminatory as violating Article 14. The division of pensioners into two classes on the basis of the date of retirement was not based on any rational principle because a difference of two days in the matter of retirement could have a traumatic effect on the pensioner. Such a classification held to be arbitrary and unprincipled as there was no acceptable or persuasive reason in its favour. The said

classification had no rational nexus with the object sought to be achieved.

2. **Madhu Limaye v. Supdt. Tihar Jail Delhi**: There were Indian and European Prisoners. Both were treated differently. European gets better diet. Court held that difference between Indian and European prisoners in the matter of treatment and diet violates right to equality under Article 14 of Indian Constitution. They all are prisoners they must be treated equally.

3. **Sanaboina Satyanarayan v. Govt. of A.P** : In Andhra Pradesh. They formulated a scheme for prevention of crime against women. In prisons also prisoners were classified into two categories first, prisoners guilty of crime against women and second prisoners who are not guilty of crime against women. Prisoners who are guilty of crime against women challenge the court saying that their right to equality is deprived. Court held that there is reasonable classification to achieve some objective.

4. **Tamil Nadu Electricity Board v R. Veeraswamy** : The employees were governed by the contributory provident fund scheme. With effect from 1-7-1986 a scheme was introduced. The question was whether the pension scheme ought to be applied to those who had already retired before the introduction of the pension scheme the supreme court rejected the claim. As per the rules prevalent at the time the retirees had received all their retirement benefits. If the pension scheme was made applicable to all past retirees, the resulting financial burden would be Rs200 crore which would be beyond the capacity of employer. The reason given for introducing the scheme was financial constraint- a valid ground. The court held that retired employees and those who were in employment on 1-7-1986 can't be treated alike as they do not belong to one class. The workmen who had retired and received all the benefits under the contributory provident fund scheme cease to be employees of the appellant board w.e.f. the date of their retirement. They form a separate class. Thus there was no illegality in introducing the pension scheme and not making it applicable retrospectively to those who had retired before the date.

The concept of Article-14 and the doctrine of non-arbitrariness are two separate concepts that cannot be clubbed together. Article-14 rejects the concept of class legislation whereas, on the other hand, the concept of arbitrariness occurs when a classification is made without stating any particular reason or cause or not treating people equally and any classification is made by the article-14 then it will be regarded as discriminatory and will go against our Constitution. However, if enforcement of law within a class and it is violating certain rights of an individual then that person has a right to approach either to High Court (under article-226 of Constitution) or to Supreme Court (under article-32) for the enforcement of such rights.

What article 14 forbids is discrimination by law that is treating persons similarly circumstanced differently and treating those not similarly circumstanced in the same way or in the simple words, treating equals as unequals and unequals as equals. Article 14 prohibits hostile classification by law and is directed against discriminatory class legislation. A legislature for the purpose of dealing with the complex problem that arise out of an infinite variety of human relations cannot but proceed on some sort of selection or classification of persons upon whom the legislation is to operate. It is well settled that Article 14 forbids classification for the purpose of legislation. It is equally well settled that in order to meet the test of Article 14:- (i) classification must be based on intelligible differentia which distinguishes persons or things that are grouped together from those that are left out of group and (ii) the differentia must have a rational nexus to the objects sought to be achieved by the executive or legislative action under challenge.