
**THE INTERPLAY OF RIGHT TO EQUALITY AND
REASONABLE CLASSIFICATION UNDER ARTICLE 14:
DECODING ARTICLE 14 BEYOND FORMAL EQUALITY
WITH SPECIAL REFERENCE TO RULE OF LAW IN INDIA**

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ABSTRACT

The Constitution of India guarantees the Right to Equality through Articles 14 to 18. The Preamble to the Constitution of India speaks of equality of status and opportunity and Article 14 gives effect to it. Article 14 guarantees equality before the law and equal protection of the laws. Article 15 prohibits discrimination on the grounds of religion, race, caste, sex or place of birth. Article 16 guarantees equality of opportunity in matters of public employment. Article 17 abolishes untouchability in the country. Article 18 abolishes titles other than military or academic distinctions. Even in situations which are not covered by articles 15 to 18, the general principle of equality incorporated in article 14 is attracted whenever discrimination is alleged.

1. Introduction:

Article 14 outlaws discrimination in a general way and guarantees equality before law to all persons. Equality forbids inequalities, unfairness and arbitrariness. The constitutional and legal articulation of equality prohibits the state from denying equality to all men. As mentioned above articles 14 to 18 deal with equality before law in India however, in this series of constitutional provisions, Article 14 is the most significant and it has been given a highly activist magnitude in recent years by the judiciary. Honourable Justice THOMMEN in *Indra Sawhney v. Union of India*¹ has observed that “equality is one of the magnificent cornerstones of Indian democracy.” It is worth mentioning over here that the right to equality has been declared as one of the basic features of our Constitution by the Supreme Court. It means that even a constitutional amendment offending the right to equality will be declared invalid. Neither Parliament nor any state legislature can transgress the principle of equality.² The Supreme Court in *M.G. Badappanavar v. State of Karnataka*,³ observed that- “equality is a basic feature of the Constitution of India and any treatment of equals unequally or unequals as equals will be violation of basic structure of the Constitution of India.”

2. Who may claim protection under Article 14: the obligation imposed on the state by article 14 is for the benefit of all persons, within the territory of India. The benefit of article 14 is, therefore, not limited to citizens. Every person whether natural or artificial, whether he is a citizen, or an alien, is entitled to the protection of article 14.⁴ In *National Legal Services Authority v. Union of India*,⁵ it was held that the word person in article 14 is not restricted to male and female, but includes even Hijras or Transgender persons. Such persons, who are neither male or female, are also entitled to equal protection of laws and equality in all spheres.

3. Meaning of the Expressions: Equality before the Law and Equal Protection of the Laws:

3.1. Equality before the Law: Article 14 uses, two expressions, “equality before the law” and “equal protection of the laws”. The expression “equality before the law” is found in almost all

¹ AIR 1993 SC 477

² Kesavananda Bharati v. State of Kerala, AIR 1973 SC 1461

³ AIR 2001 SC 260

⁴ National Human Rights Commission v. State of Arunachal Pradesh, AIR, 1996 SC1234.

⁵ AIR 2014 SC1863

those written constitutions which guarantee fundamental rights. For example,⁶ Section 13 of the Constitution of Burma says, “all citizens, irrespective of birth, religion, sex, or race are equal before law; that is to say, there shall not be any arbitrary discrimination between one citizen or class of citizens and another.” Article 10 of the Constitution of Chile says, “all inhabitants of the republic are assured equality before the law.” Article 7 of the Universal Declaration of Human Rights provides that “all are equal before the law and are entitled without any discrimination to equal protection of the law.”

The word ‘law’ in the formal expression has been used in a generic sense. Whereas the word ‘laws’ in the latter expression denotes specific laws.⁷ The expression equality before the law is of English origin, it is equivalent to the second element of Sir AV Dicey’s concept of Rule of Law, explaining this concept, Dicey opined “with us, every official, from the Prime Minister, down to a Constable, or a Collector of taxes, is under the same responsibility for every act, done without any legal justification, as any other citizen”.⁸ In *Maya Devi v. Raj Kumari Batra*,⁹ the Supreme Court observed that, in a system governed by the rule of law, there is nothing like absolute or unbridled power exercisable at the whims and fancies of the repository of such power. Highlighting the role of independent judiciary in maintaining equality and the rule of law, the Supreme Court in *Dr Subramanian Swamy v. Dr Manmohan Singh*¹⁰ observed that, an independent judiciary has to play a role in maintaining the rule of law and common man’s faith in the justice delivery system. Both the rule of law and equality before law are cardinal principles in constitutional law as also in international law, and in this context, the rule of the judiciary is very vital.

The second expression has been taken from the American Constitution. Both these expressions aim at establishing, what is called equality of status in the preamble of the Constitution. While both the expressions may seem to be identical, but they do not convey the same meaning. While equality before the law is somewhat negative concept implying the absence of any special privilege in favour of individuals, and equal subject of all classes to the ordinary law and no person whatever be his rank or position, is above the law. This, however, is not an absolute rule, there are many exceptions to it. For example, foreign diplomats enjoy immunity from the

⁶ J.N. Pandey, *The Constitutional Law of India*, (48th Edn. 2011), Central Law Agency Allahabad, p. 77

⁷ *Sri Srinivasa Theatre v. State of T.N.* (1992) 2 SCC 643

⁸ AV Dicey, *Law of the Constitution*, Macmillan & Co. Ltd. London, 1994, 193.

⁹ (2010) 9 SCC 486

¹⁰ (2012) 3 SCC 64

country's the judicial process; Article 361 of our Constitution also extends immunity to the President of India and State Governors.

3.2. Equal Protection of the Laws: It is a more positive concept, implying equality of treatment in equal circumstances. The phrase "equal protection of the laws" has been taken from 14th Amendment to the American Constitution. Section 1 of the 14th amendment¹¹ to the Constitution of USA says, "nor shall any State- deny to any person within its jurisdiction the equal protection of laws." Equal protection of the laws does not mean that the same law should be applicable to all persons or that every law should have a universal application within the country without considering the differences of circumstances. Equal protection of the laws, postulates equality of treatment in equal circumstances. It provides that among the equals law should be equal and equally administered i.e. like should be treated alike. In *Indra Sawhney v. Union of India*,¹² the Supreme Court observed that, it requires alternative action to ensure "equality in equal circumstances" i.e. "like should be treated alike". In *Kerala State Electricity Board v. Saratchandran*,¹³ SC held that, Article 14 is a positive concept. It applies only where the parties are similarly situated.

3.3. Aim of the Expressions: In the beginning there has been some controversy over the scope of two phrases. In *Sheosankar v. State Government of Madhya Pradesh*,¹⁴ it was observed that while both the expressions aim at establishing what may be regarded as equality of legal status for all, there is some difference between those expressions. The former expression is somewhat a negative concept implying the absence of any special privilege in favour of an individual, while the latter is more positive concept implying equality of treatment in equal circumstances. It was held that aim of both the concepts of equality before law and equal protection of the laws is equal justice. In *Suriya Pal Singh v. UP Government*¹⁵, the Allahabad High Court also held that equality before law has not the same meaning as equal protection of laws. According to Allahabad High Court also, the former may be defined as equal protection of all persons to the ordinary law of the land, while the latter has equal protection of laws. Para change it is now settled that though the two expressions may be capable of difference in meaning both of them AM at the same object that is equal justice. Honourable Chief Justice Patanjali Sastri in *State*

¹¹ Adopted on July 28, 1868

¹² AIR 1993 SC 477

¹³ AIR 2009 SC 191

¹⁴ Bom 1951 CriLJ 1140

¹⁵ AIR 1951 All 674 [Quoted by Prof GS Pandey in *Constitutional Law of India*, (14th Edn. 2019) Universal Book House, Jaipur, p. 128]

*of West Bengal v. Anwar Ali Sarkar*¹⁶ observed that actually equal protection of the laws is corollary of the equality before law. It is difficult to imagine that equality before law can be maintained without maintaining equal protection of the laws.

It was held in *re Special Reference No.1 of 2012*¹⁷ that the object of Article 14 is to secure to all persons, citizens and non-citizens, equality of status and opportunity referred to in the Preamble. Balancing of individual rights with societal or collective rights is a part of the mandate under Article 14. In a maturing society, individual rights and collective rights have to be balanced. The true effect of article 14 is ensure that a few individuals do not enrich themselves at the cost of all others, which would amount to the deprivation to the plurality, i.e. the nation itself.

4. Article 14 prohibits Class Legislation but it permits Reasonable Classification:

Class Legislation: Article 14 prohibits 'class legislation'. 'Class legislation' means legislation, different differentiating between the same class of persons. When persons belonging to the same class or that they are equal among themselves in certain respects, they have to be treated equally in such matters. Law would be violative of article 14 if it treats these persons differently. It is also said to be "similarly situated test." For instance, in *DS Nakara v. Union of India*,¹⁸ the Supreme Court struck down as violative of Article 14 a Pension Rule classifying between government pensioners retiring before March 31, 1979, and those retiring on or after that date, since they belonged to the same class for the purpose of computation of their pension. Reiterating and relying upon *DS Nakara v. Union of India*, a division bench of the Supreme Court in *All Manipur Pensioners Association v. State of Manipur*¹⁹ observed that creation of two classes for grant of revised pension without any nexus with the object and purpose of grant of revised pension amounts to violation of article 14. In *Hiral, P Harsora v. Kusum Narottamdas Harsora*,²⁰ the court struck down section 2(q) of the Domestic Violence Act, 2005, which enabled the victim of the offence to complain only against male adult person and not against any female member of the household.

The Domestic Violence Act, 2005, was enacted with the object to extend maximum protection

¹⁶ AIR 1952 SC 75

¹⁷ (2012) 10 SCC 1

¹⁸ AIR, 198 3 SC 130

¹⁹ AIR, 2019 SC 3338

²⁰ (2016) 10 SCC 165

to a woman from domestic violence, from both, male and female members, of the shared household. An aggrieved wife or live-in partner could file a complaint against the relative of the husband or the male partner. The Supreme Court observed that that the microscopic difference between male and female, adult and non-adult..... is neither a real nor substantial, nor does it have any rational relation to the object of the legislation. The SC held that the expression “adult male person” in section 2(q) be read as “adult person “

4.1. Test of Reasonable Classification: In order to be reasonable, the classification must be based on the following tests:

A] Intelligible differentia: The classification is founded on an intelligible differentia which distinguished persons or things that are grouped together from others left out of the group.

B] Rational nexus: The differentia must have a rational nexus (relation) to the object sought to be achieved by the Act.

4.2. Examples of Grounds of Reasonable Classification: The Supreme Court²¹ warned that *the doctrine of classification should not be carried to a point which instead of being a useful servant, it becomes a dangerous master*. Grounds of reasonable classification can be summarized as under:

4.2.1. Age: Classification can be based on ‘age’ of a person for example, under Section 11 of the Contract Act, 1872 only a person who has attained the age of majority is competent to contract. Motor Vehicles Rules also require certain age for issuing driving licence.

4.2.2. Sex: Article 15 clause (1) as a general rule, provides that the State shall not discriminate among the citizens only on the grounds of religion, race, caste, sex or place of birth but under clause (3) it provides that special laws can be made for the protection of women and children.

Under Section 497, IPC only the male partner could be punished for the offence of adultery. Its validity was challenged in *Yusuf Abdul Aziz v. State of Bombay*,²² but it was held to be valid.

4.2.3. Geographical or Territorial Basis: A law may be made applicable to one state and not to other state or states. A state may be divided into several regions and a particular law may be

²¹ Mohd. Sujat Ali v. Union of India, AIR 1974 SC 1631

²² AIR 1954 SC 321

made applicable to a particular region and not to other regions. In *Kishan Singh v. State of Rajasthan*,²³ Marwar Land Revenue Act, 1949 was challenged on the ground that the law was not made applicable to other regions of Rajasthan, the Court held it valid. It was observed that conditions of tenants might vary from locality to locality necessitating special laws for a particular area. In *Ram Chandra v. State of Orissa*,²⁴ the State enacted two Acts for nationalization of road transport business. One of the Acts applied to the part of the State which was previously a part of British India and the other Act applied to that part of the State which was previously a Princely State. As the conditions in those two parts of the State were materially different, the Acts were held to be valid and not violative of Article 14.

4.2.4. Nature of Business or Profession: Special law can be made for professionals like advocates, doctors etc. In *Amar Chandra v. Excise Collector*,²⁵ a law passed to impose special restriction on liquor business was held to be valid.

4.2.5. Nature of Source of Authority: In *State of M.P. v. GC Mandawar*,²⁶ different scales of Dearness Allowance for State Government Employees and Union Government Employees was held to be not against Article 14 of the Constitution.

4.2.6. Nature of Offences or Offenders: In re Special Courts Bill, 1978 it was held that Special Courts for the trial of certain offences are not against Article 14 of the Constitution. However, establishment of Special Courts can be challenged if uncontrolled and unguided discretion is given to the Government (*State of West Bengal v. Anwar Ali Sarkar*,²⁷).

4.2.7. Single individual or body can also constitute a class: In *Chiranjit Lal v. Union of India*,²⁸ it was held that a law is constitutional even if it applies to one person or one class of persons, if there is sufficient basis or reason for it. In this case, the Governor-General of India promulgated the *Sholapur Spinning & Weaving Company (Emergency Provisions) Ordinance, 1950*, empowering the Central Government to take over the management and administration of the Sholapur Spinning & Weaving Company Ltd. which was closed down due to disputes between the management and the employees. The Ordinance was subsequently replaced by an

²³ AIR 1955 SC 759

²⁴ AIR 1956 SC 298

²⁵ AIR 1972 SC 1863

²⁶ AIR 1954 SC 493

²⁷ AIR 1952 SC 75

²⁸ AIR 1961 SC 41

Act of Parliament, containing similar provisions. The Supreme Court upheld the constitutionality of the impugned Act and the action taken against the company. The Supreme Court held that there was no infringement of Article 14 even though the Legislature had proceeded against one company only.

In *P.V. Shastri v. Union of India*,²⁹ it was held that the Prime Minister constitutes a class by himself and is allowed to the aircraft of Indian Air Force for non-official purpose including election and other political parties are not allowed to enjoy the same facility. Held that, there is no violation of Article 14

5. Article 14 is an Anti-thesis of Arbitrariness: Over the years, Article 14 has been interpreted liberally the by the Supreme Court and its ambit has also been expanded through a creative approach of the court. In *E.P. Royappa v. State of Tamil Nadu*,³⁰ the Supreme Court has given a dynamic meaning to the equalizing principle enunciated in Article 14 as a “founding faith, a way of life” and for that reason it must not be subjected to “a narrow pedantic or lexicographic approach.” Hon’ble Justice BHAGWATI speaking for himself, CHANDRACHUD and KRISHNA IYER, J.J., propounded the new concept of equality from a positivistic point of view and observed:

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 view, equality is anti-thesis of arbitrariness. In fact, equality and arbitrariness are sworn enemies; one belongs 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 therefore, violative of Article 14.

In *Maneka Gandhi v. Union of India*,³¹ the above view was reiterated by the Supreme Court and it was held that equality is a dynamic concept with many aspects and dimensions and it cannot be imprisoned within traditional and doctrinaire limits. In *Ajay Hasia v. Khalid Mujib Sehravardi*,³² the Supreme Court struck down the allocation of as high a percentage as 33 one-third of the total marks for the oral interview for admission to the Engineering College as

²⁹ AIR 1974 Del 1

³⁰ AIR 1974 SC 555

³¹ AIR 1978 SC 597

³² AIR 1981 SC 487

invalid and unconstitutional and declared it as “infecting the admission procedure with the vice of arbitrariness.”

In *D.S. Nakara v. Union of India*,³³ the Supreme Court struck down Rule 34 of the Central Civil Services (Pension) Rules, 1979 as unconstitutional on the ground that it was arbitrary and discriminatory and hence violative of Article 14. In *Mithu v. State of Punjab*,³⁴ the Supreme Court struck down Section 303 of the Indian Penal Code, 1860 as unconstitutional on the ground of violation of Article 14. This section provided for mandatory death penalty for murder committed by a life convict while Section 302, IPC conferred a discretion on the court to impose life imprisonment or death penalty for the murder committed by a free person.

6. The Principle of Reasonableness and Article 14: The concept of reasonableness is very much inherent in the concept of law and has been expressly applied in many of its spheres. All State action has to qualify the principle of reasonableness. In *Ajay Hasia v. Khjalid Mujib Sehravardi*,³⁵ it was held that “the concept of reasonableness and non-arbitrariness pervades the entire constitutional scheme and is a golden thread which runs through the whole of the fabric of the Constitution.” Accordingly, every State-action whether it be of the legislature or of the executive or of an ‘authority’ under Article 12 shall be struck down by the court if it does not comply with the requirement of reasonableness.

In *Air India v. Nargesh Meerza*,³⁶ the validity of a service regulation framed by Air India, providing for the termination of services of an air hostess on her first pregnancy was challenged. Regulation Number 46 framed by Air India provided that service of an air hostess could be terminated if she got married within first four years of our service or on first pregnancy. Hon’ble Supreme Court observed that Regulation Number 46, as far as he provided for termination of service on first pregnancy was extremely arbitrary and unreasonable. Holding such a regulation an open insult to Indian Womanhood SC held that pregnancy is not a disability but one of the natural consequences of marriage and immutable characteristic of married life.

³³ AIR 1983 SC 130

³⁴ AIR 1983 SC 473

³⁵ (1981) 1 SCC 722

³⁶ AIR 1981 SC 1829 (Air Hostess Case)

7. Article 14 and Rule of Law: Chief Justice Sir Edward Coke during the reign of King James I is said to be originator of the concept of Rule of Law. In a battle against the King Sir Edward Coke succeeded in maintaining that the King must be under the God and the law and thus expressed the supremacy of the law against the executive. Sir AV Dicey further developed this doctrine of Sir Edward Coke and systematically formulated the elements of rule of law in his classic work "*The Law of the Constitution*" published in the year 1885. Sir AV Dicey attributed three meanings to the concept of rule of law in England namely,

- 1. Supremacy of the law:** Expounding the first element, Dicey states that rule of law means the absolute supremacy of regular law as opposed to the influence of arbitrary or wide discretionary power. It excludes the existence of arbitrariness or even wide discretionary power on the part of the Executive. He asserted that the Englishmen were ruled by the law and by the law alone.
- 2. Equality before the law:** Explaining the second postulate of rule of law, Dicey observes that there must be equality before the law or the equal subjection of all classes to the ordinary law of the land administered by the ordinary law courts. Dicey says in England, all persons are subject to one and the same law.
- 3. Pre dominance of legal spirit or Constitution as the result of judicial decisions:** Elaborating the third principle of rule of law Dicey says that the general principles of the Constitution are the result of judicial decisions of the courts in England. In many countries rights are guaranteed by a written Constitution; in England it not so. Dicey apprehended that if the source of fundamental rights of the people is any written Constitution, the rights can be abrogated at any time by amending the Constitution. This is how rule of law postulates judicial supremacy.

Indian Position: In India, application of the doctrine of rule of law can be summarized as under:

- 1. Supremacy of the Constitution:** Sir AV Dicey's concept of rule of law has been accepted and incorporated in the Constitution of India. The Preamble to the Constitution of India embodies the ideals of JUSTICE, LIBERTY and EQUALITY. These ideals or principles are enshrined in Part III as fundamental rights and are made enforceable

under Articles 32 and 226. In *Kesavananda Bharati v. State of Kerala*,³⁷ the Supreme Court observed that the Constitution is supreme and all the three organs of the government, i.e. legislature, executive and judiciary are subordinate to and have to act in accordance with it.

The doctrine of Judicial Review and Articles like 13(2), 32, 226, 227, 136, 310 guarantee the supremacy of the Constitution of India.

- 2. The Principle of Equality before the Law:** Sir AV Dicey's second element of rule of law i.e. equality before the law has been accepted and embodied under Article 14 of the Constitution. Articles 14 to 18 deal with various aspects of equality before of the law in India. The government and public authorities are subject to the jurisdiction of ordinary courts of law. Suits for breach of contract and torts committed by the public authorities can be filed in the ordinary courts and damages can be claimed under articles 299 and 300 respectively.
- 3. Pre dominance of legal spirit or Constitution as the result of judicial decisions:** So far Sir AV Dicey's third element of rule of law is concerned it is partially applicable in India because primarily we have a written Constitution and it was deliberately framed by the Constituent Assembly. So, our Constitution is not a judge made Constitution or the result of judicial decisions but our fundamental rights are being broadly interpreted by the judiciary and judiciary in India is undoubtedly adding new dimensions to our originally adopted fundamental rights. Article 141 of the Constitution says that the law declared by the Supreme Court shall be binding on all courts within the territory of India that is to say, the interpreted version of the original fundamental rights is very much a part of the Constitutional law in India. This is how the Constitutional law of India is the result of judicial decisions as well along with being a deliberately framed one.

Conclusion:

Right to equality under Article 14 with all its interpreted aspects has been functioning like a bulwark of our democracy. Responding effectively and meaningfully to the ideals of "EQUALITY of status and opportunity" enshrined in the Preamble Article 14 acts like a

³⁷ AIR 1973 SC 1461

watchdog and eliminates all forms of arbitrariness and unreasonableness from the society ensuring equality of status and equal opportunity for all. Sir AV Dicey's doctrine of rule of law had its own merits and values. The concept of rule of law as embodied and applied in India has proved to be a potent instrument in controlling the executive or administrative authorities within their limits. It works as the yardstick or a touchstone to test the validity of administrative actions. For a democratic government, the rule of law is a basic requirement. Rule of law pervades the entire field of administration and regulates every organ of the State. In a number of important and path breaking judgments the Supreme Court has also highlighted the importance of the doctrine of rule of law. In *AK Kraipak v. Union of India*,³⁸ it was observed that the concept of rule of law would lose its vitality if the instrumentalities of the State are not charged with duty of discharging their function in a fair and just manner. In *Indira Nehru Gandhi v. Raj Narain*,³⁹ it was observed that rule of law is a basic feature of our Constitution and cannot be taken away even by an amendment of the Constitution.

³⁸ AIR 1970 SC 150

³⁹ AIR 1975 SC 2299