EQUALITY PROVISIONS AND THEIR HISTORICAL BACKGROUND

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INTRODUCTION

There are multiple articles under the constitution which together are made to achieve the concept of equality, example- article 14-18. One of the important facets of equality is the principle of non-discrimination. In this paper, we will discuss various fields such as discrimination based on caste, religion, race, etc. This paper also explains the various articles relating to discrimination in various fields in a simplified manner. There are also multiple case laws relating to those articles that have been mentioned to help readers understand how these articles are applied.

WHAT IS DISCRIMINATION, AND IN WHAT WAYS CAN IT MANIFEST ITSELF?

A- our reliance on bill of rights while framing part 3 of our constitution, so fundamental rights have been borrowed from bill of rights. The U.S. society had made their constitution in such early time. Courts over there got earlier opportunity as compared to Indian courts to develop a jurisprudence on their fundamental rights and because our fundamental rights are similar, we tend to look up to their jurisprudence in interpreting our fundamental rights. There is a strong drawn relationship between India and U.S. when it comes to jurisprudence revolving around fundamental rights.

We know that U.S. has a federal constitution and states in U.S. were independent earlier, with passage of time they understood the difficulty in staying independent, the difficulty in protecting their territory and that's why they decided to come together and formed a confederation. This later on developed into a federation. The status was so independent, that most of the time they would want to protect their autonomy from any infringement by the confederation. There is a difference between northern states and southern states of U.S.

Northern states had an earlier exposure towards development and they happen to be a little

more developed when compared to southern states. Southern states are mostly agricultural states and relied on earning their livelihood through agriculture. Northern states were the first to stop the practice of slavery whereas southern states had more concentration of slaves as these states were formally the colony of Britishers. Southern states relied heavily on slaves for agriculture and this idea of abolishment of slavery wasn't welcome. This led to an all-out civil war. The then president Abraham Lincoln came up with the emancipation proclamation. By the 13th amendment slavery was abolished in 1868 and by the 14th amendment equal protection of law clause came to be inducted in the bill of rights in 1868. By the 15th amendment right to vote was granted to African-American in 1870. Sadly, their ideology didn't go away and they were not in a place to acknowledge the African-American as their equal. After this legislation, the "Jim crow" era came.

Jim crow--> this name was given a character that was part of some musical plays that came to be organized by white Americans, in which they would dress up and try to imitate the blacks. This depiction was demeaning to black people. The mindset was of white supremacy and they covered themselves in black polish instead of letting a black person play the role. Number of laws that came to be made in southern states which were called Jim crow legislation because their legislation provided a separation/segregation of blacks and the whites. One of the laws, was the law which provided for segregation in the railroad car. Separate sitting arrangements for blacks and whites was made and this law was made by Florida and passed in 1890. Other states followed.

Example- Homer Plessy who was an African-American wanted to travel from Louisiana to New Orleans. He had booked a ticket at Louisiana and sat in the white compartment. Conductor and other passengers asked him to vacate the seat but he knew the 14th amendment gave him equal rights. He refused to get up and later he was arrested and jailed. He decided to challenge this law at the district level. Name of the judge was Judge john Ferguson against whom the appeal went.

He said such a segregation is in violation of article 14 and he should be set free. District court did not agree and it did not give and relief. The case then went before facilities. In 1896, supreme court held 'separate but equal facilities' as constitutional. As long as the facilities are being given equally to both blacks and whites as such there is no violation of 14th amendment, the supreme court pointed out that the 14th amendment is applicable only to civil and political

rights and not to social rights, it doesn't apply to social rights. Due to this segregation got constitutional protection because supreme court ended up interpreting it in such a way. It continued on hotels, schools, bases, theaters, restaurants, etc.

BROWN V. BOARD OF EDUCATION

In 1954 there were separate school for whites and black. Oliver brown (Black) wanted to allow his children to seek elementary education and he decides to enroll his daughter in a public school. That school in the area of Kansas where he was staying, was meant for whites. His daughter (Linda Brown) was denied admission. She was forced to travel a long distance to go to a school meant for blacks. Over time facilities that were provided started to be varied. Oliver brown challenges the action of school saying it is violative of his constitutional rights. He then filed a class-action suit at the district level against the board of education.

The U.S. district court was sympathetic to the idea of racial segregation. It understood racial segregation should not be done. However, when it came to strike it down, it did nothing. They upheld the racial segregation instead. Oliver Brown filed an appeal before the U.S. supreme court and the lawyer for the plaintiff before the supreme court was Thergood Marshall. He was the first African-American who went on to become the justice of U.S. supreme court. The supreme court for the first time understood racial segregation was unconstitutional. It went against the principles of 14th constitutional amendment. Supreme court struck down racial segregation and separate but equal clause as unconstitutional. Even after the 14th amendment, segregation was constitutional from 1896 to 1954!

ARTICLE 14

Ancient Indian society was caste based. Class or classes of people are placed horizontally, I.e., one below the other. People are born into one particular cast which happens to be at the bottom of the system or at the top or middle. Because of the fact that they are born into these casts, certain jobs came to be associated with these castes. The jobs were made so specific for a caste, that the people belonging to the other caste would not take up such an occupation. That was the level of specificity. They were kept limited in their resources, understanding of the society, ability to educate themselves, etc.

People belonging to the scheduled caste, particularly the details were associated with performing only 1 activity, that is manual scavenging. It has taken a very long-time for the people to be ready to accept the fact that women can be educated. They were not thought fit to pursue education they were only expected to take care of household and rear children. In recent times, this policy of educating women gained ground in India and gradually people have started educating women. After 26/1/1950, constitution says everybody will be treated equally. Initial caste system which discriminated will not be valid. Gender discrimination too will not be valid. It says that everybody will get equal opportunity in cases of public employment (Art. 16).

People who had been marginalized on the basis of caste, they will also get an equal opportunity with the forward sections of society when it comes to public employment, women too. Backward classes and women were uneducated. The provision of providing an equal employment opportunity is just an empty promise. Remedy lies in substantive equality and not in formal equality. Formal equality bases itself on the side that for all purposes, all the people are to be consistently treated, irrespective of gender at all time. It means neglecting traits like physical handicap, biological traits of men and women. These differences are immaterial or irrelevant. Everyone is subject to same rules and regulations in social aspect, political aspect, economic aspect or any other aspect of life. No privilege is to be given to any specific section of people of society.

Formal equality is set to assume that there is a "universal individual" in existence. That means universal individual is the benchmark to understand that how a particular individual is to look like. The problem arises in understanding the characteristics of the universal individual. It believes that there is an "ideal individual". When we give attributes to an ideal individual and compare him with others, the problem arises right from the fact that what is the ideal individual.

Characteristics of ideal individual according to scholars in U.K. are-

1) White

2) Male

3) Catholic

4) Able-bodied

5) Heterosexual

Any person who would want to say that there is discrimination will have to compare himself/herself with the universal individual. Answer lies in substantive equality; it says or it bases itself on redistributive justice. It means that the marginalization of the people is to be taken into account. We need to understand how discrimination has been perpetrated and efforts should be made to rectify that discrimination. If we follow formal equality, we will end up leaving these marginalized sections of people at different starting points. Article 14 to 18 are equality provisions and article 14 is treated as an umbrella provision in the sense that certain things can come inside the umbrella and it is worded most generously. Article 14 is applied to everyone, India follows the concept of rule of law, we will be abiding with the provisions of equality.

Essential attributes of equality are that there shouldn't be any discrimination so as to undo that discrimination and try to achieve equality. That's the basic principle article 14 talks about. We are not talking about a blanket eventuality as the idea under article 14 is those people with similar circumstances, those are to be treated similarly, whereas the people who are on a different pedestal are to be treated differently. Article 14 says that equals cannot be treated unequally. The intention of incorporating article 14 is that it should not be discriminatory between the people who are similarly placed. Negation of equality would mean that when we end up treating unequals equally. Article 14 strikes at 2 things- discriminatory action of the law or the legislative action or the discriminatory administrative action and It's the state which has been addressed under article 14. 'state' would mean the branches of the government. It includes the central government and the parliament, the state government at the state legislature. One branch of the government performs the legislative work and the other performs the administrative work.

1) 'Equality before law'- taken from Dicey's theory of the rule of law.

2) 'Equal protection of law'- taken from 14th amendment of U.S. constitution

'Equality before law' prohibits the state to discriminate among people. It stops the state from treating people differently. It is because of this prohibition it is said to have a negative notion. 'Equal protection of law' puts a positive obligation on the state wherein it says that the state has to ensure that there is equal protection of law for everybody. Since when earlier time when

article 14 was interpreted, the court has been restricting itself to the test of reasonable classification. It was only later with E.P. Royappa's case that the court has come up with a new test, that is called as the test of arbitrariness or 'doctrine of arbitrariness'. This has been laid down by the supreme court in this case. Article 14 says reasonable classification is permissible but it does not prohibit classification. The purpose that article 14 is trying to serve is to treat equals unequally, but how to identify the people who are to be treated equally? For that purpose, we will have to take recourse to reasonable classification. There are 2 tests to determine whether a test is reasonable or irresponsible-

I) the reasonable classification should be based on an intelligible differentia, I.e., some real and substantial distinction, which distinguishes persons or things grouped together in one class from the others left out of it.

II) this differentia which is adopted as a basis/means of classification must have a rational or reasonable nexus with the object that is to be achieved by the statute in question.

CHIRANJIT LAL CHOWDHURI V. UNION OF INDIA

The government is empowered to take over certain enterprises and it has done so in the earlier times as well in the wave of nationalization, because of the certain agendas state had wanted to meet because the social equality that the state had wanted to pursue. It is not only industries which were taken over, the banks were also taken over and most of them came to be centralized, to be absolutely controlled by the state to the exclusion of private individual or private enterprises. In this case, we had a company and under the aegis of the company there was a mill named Sholapur spinning and weaving company which was being operated. The mill is engaged into production of an essential commodity, I.e., cloth.

The central parliament has legislated a law which is called 'the essential commodities act'. There are certain identifiable commodities which can be said to be essential commodity. State has to take care, there should be proper availability and equitable distribution of these commodities between the people so no one is deprived of an essential commodity. This act provides for the state to take efforts to control the hoarding of these commodities. Sholapur is an area in the state of Maharashtra and it's known for producing a specific kind of bedsheet. It had provided employment to a very large number of people belonging to that area. Many people of that area were earning their livelihood beyond of this employment. With the passage of time,

there was some mismanagement and the management of company went to such state that because of this improper handling of so many issues, the mill was going to shut down. It led to a very big apprehension for 2 reasons. First is that the production of essential commodities will be suffered, and second, such a large labor force will be put out of employment.

The government decides to legislate and to take over the company. The parliament ended up passing a legislation and the name of legislation was "scholarship spinning and weaving company (emergency provisions) act". The parliament gave the power to the central government to take certain steps to ensure that mismanagement is taken care of. The act gave the powers to the government to appoint its own directors for the company. Because the government was going to replace the existing directors with its own directors, some of the rights of the shareholders also came to be affected because of this legislation. Because of this drastic effect, one of the shareholders Chiranjit Lal Chaudhary challenged this legislation on the ground that only one company has been signed out. He said this would amount to picking and choosing only one and giving a differential treatment only to this company. Because the shareholder was deprived of their right, they were deprived to hold the property, because of the law. On these grounds, the shareholder challenged it saying many companies were not taken over by central government only one was taken over to the detrimental of the director and already existing shareholders. This is how the question reached before the supreme court.

The supreme court upheld the validity of the legislation. Parliament is entitled to pass a law where it can take over the administration of one company. The supreme court noted that the mismanagement of the company's affairs was much more on a larger scale as compared to the other companies which was in existence at the time. There were 2 important factors which wayed greatly in the mind of supreme court. Had this mil been shut down because of mismanagement of the company, the first Casuality would be the hampering of proper supply of the essential commodity. Secondly, the large-scale employment that was being provided would stop. Because of these characteristics of the company, the supreme court came to a conclusion that this company falls on a different stand/pedestal when compared to other companies. Because of these features, it came to be treated as a class in itself. That's why the supreme court permitted the parliament to upheld the law where only one company came to be dealed by a specific legislation. For the first time, the supreme court so exhaustingly laid down in this case that if a person/body/artificial person would have extraordinary characteristics, then it can be treated as a class in itself.

STATE OF WEST BENGAL V. ANWAR ALI SARKAR

In this case, a state legislation was I question. The state legislature of the state of West Bengal had made a law which provided for the establishment of special courts. Because special courts came to be especially established, that would mean that they are something different from the regular courts. Regular courts were already in existence. The law also provided that these special courts would be established for speedy trials. Regular courts took a lot of time and the state government decided to establish special courts. Special courts can be established by the state or central government. Its legally permissible and apart from regular hierarchy, they can also establish special courts. When special courts are established, either a new person is appointed to deal with the matters in that law, or already existing judge is given an additional responsibility to deal with special matters.

The state government says that certain cases are to be given to the special courts, but the problem lies in the manner in which the cases are identified. For such offences or classes of offences as the state government may direct by general or special order will be given to the special court for speedier trial. The procedure which is to be followed by the special court was less advantageous. In fact, it was disadvantageous as to the procedure that was followed in regular courts.

There was a wide power given to the state government which would enable the state government to pick and choose one case because the guidelines which said such cases will be given to the special courts were very vague. The wording of the act was not specific. The court realized that the act should be held invalid because of the ground that there is no reasonable classification. There is no yardstick which came to be laid down on the basis of which the government would classify. On the grounds of the lack of reasonable classification, the supreme court said that it amounts to giving an absolute uncontrolled power to the government and because of this, the government can discriminate on the basis of the same offences. Therefore, this legislation came to be struck down by courts viz-a-viz article 14. It was Dicey's idea to say discriminatory powers should not be given because whenever there’s room for discretion there is arbitrariness.

ARTICLE 15

Article 15 is applicable to all the citizens of India as it is an extension of article 14. Article 14

says discrimination will not be permissible if the discrimination is based on certain specific grounds. These grounds have been mentioned under article 15. Article 15 (1) and (2) mentions grounds of discrimination which are the same. Since the beginning of the constitution, article 15 has always been interpreted so as to deal with discrimination based on only 1 ground at a time. The new development of intersectionality says that we should be open to this kind of a fact where a same person faces discrimination on multiple fronts. It's fairly new to the Indian judiciary and that's why it has not gained enough ground in the study of anti-discrimination law in India. When we are talking about a classification being done and the people challenge classification on a ground that is not mentioned in article 15, so how do the courts deal with such a situation?

D.P. JOSHI V. MADHYA BHARAT

This case happened prior to states recognition, that's why the name is *Madhya Bharat.* States have state-run medical colleges and hospitals. State undertakes the responsibility of maintaining them to their optimism level. It is through these colleges that the people will gain their degree of MBBS and that's a reason why they have to be maintained. State government will also have to incur expenditure for doing that. There were some resident students of the state of *Madhya Bharat*, when they were applying admission to the state medical college, the resident students were exempted from the payment of capitation fee, but the same fee was imposed on the non-resident students who were taking admission in the state medical college.

Non- resident students filed a petition challenging this imposition of fee discriminatory viz-a-viz article 15(1). The classification that the state has done for the purpose of imposing capitation fee is on the basis of residence. Supreme court said that residence is not a prohibited ground of discrimination under article 15, the prohibited ground of discrimination is place of birth and not residence. Court said 'place of birth' and 'residence' cannot be compared. The idea is completely different both are not interchangeable. The petition could not be entertained as the ground of discrimination is not prohibited. Had one of the grounds of discrimination mentioned in article 15 been the grounds of discrimination, then remedy could have been provided. The residents' students, in all likelihood after completion of their education and after obtaining their degree are more likely to serve the state by remaining in the same state. That's why they were given exemption of capitation fee, whereas the non-residents students after

obtaining their degree are more likely to go back to their native place where they will end up serving that state. Keeping this in mind, they had to pay capitation fee.

STATE OF RAJASTHAN V. PRATAP SINGH

In this case the residents of certain villages of the state of Rajasthan were harboring dacoits. These allegations were made by other villages. A complaint came to be made to the state government on the basis of some preliminary inquiry it was found that there's a chance that these villages are harboring dacoits. The state government of Rajasthan sanctioned the deployment of additional police force for protection of villagers.

The complaint did not originate from the state, but the villagers. Therefore, the state said that the expenses were to be borne by the villagers themselves for additional deployment, however, the harijans and Muslim inhabitants of the village were exempted from this liability. It came to be challenged before the court and discrimination on the basis of caste and religion are clearly mentioned under article 15 (1). Therefore, the court struck down such a decision of the state government of Rajasthan on the grounds that it clearly falls within the prohibited grounds of discrimination of caste and religion. Their action was eventually quashed.

DANIAL LATIFI V. UNION OF INDIA

Danial Latifi was the lawyer for shah Bano. He challenged the provision of the act before supreme court. When we compare these 2 laws, it can be seen that the maintenance given to a woman belonging to any other religion under section 125 Crpc is on a different pedestal whereas the maintenance that is to be made available to a Muslim woman under this law is on a different pedestal. There's a huge difference. The grant of maintenance is very discriminatory towards Muslim woman as compared to granting of maintenance to woman belonging to any other religion. Religion was taken as a ground for the discriminatory treatment being given to Muslim women. it's a prohibited ground of discrimination under article 15(1).

The court said that the provision of the Muslim woman (protection of rights on divorce) act, how that provision is to be interpreted. Court tried to balance this issue by upholding the rights of Muslim woman on divorce without touching upon the constitutionality of religious based discrimination under personal law. The court did say that if at all the Muslim divorces are getting an unequal right in their law as compared to the secular law of section 125 of Crpc,

definitely the act will be unconstitutional, but the court did not hold the act to be unconstitutional on the grounds that it is discriminatory.

Court interpreted section 3(1)(A) in different manner. that's how court addressed this issue. The court said section 3(1)(A) says that "a reasonable and fair provision and maintenance to be made and paid to her within the iddat period by her former husband". Supreme court in this case interpreted the word "within" the iddat period, by saying that it is not to be limited to the period of iddat but will extend to the entire life until she re-marries.

Sex is a prohibited ground of discrimination. Its prohibited so that the ideals of achieving equality on the basis of opportunity and status, both can be achieved. Article 15(3) entitles the state to make special provisions for women and children. In 55'or 56', the supreme court said that this protection to women can be justified because article 15(3) allows the state to make special provisions for women and children. Any other kind of executive action can also be taken by the state wherein some special provisions is being made for women and children. The word "special provision" will extend to both these concepts. Special provision by law made by the parliament or state legislature, and any other provision by way of an executive action can also be taken by the state wherein it is trying to give some special protection for women and children. Article 15(3) is treated as an exception to clause 1 and 2 of article 15.

Artice 15(4) is treated as an exception to clause 1 and 2 of article 15. It carves out an exception from the general rule of equality/non-discriminatory nature between the sexes. From this general rule, there's a desperate/ an exception that has carved out from clause 1 and 2 and therefore, clause 3 and 4 can feature as a part of article 15. Traditionally, clause 3 and 4 were treated as an exception, but in recent times they are treated as a facet of clause 1 and 2 of article 15. Clause 1 says that state shall not discriminate on grounds of sex. Clause 2 more specifically says that on the grounds of sex, discrimination shall not be done when it comes to access to roads, shops, temple, etc. Wherein public can frequent. Prohibition of discrimination is made so that all the genders are to be treated equally. That's the underlying notion of article 15(1).

Throughout history, traditionally there have been many incidents which can explain this concept that women as a section of the society have been largely socially backward because women as a gender was prohibited in multiple ways in social interaction. They were also educationally handicapped. It's taken a very long time for women to be liberated/emancipated and to be allowed to take or pursue education. Women as a specific gender has been relegated

to an inferior position, has been subjected to discrimination at the social level, educational level, levels of having equal opportunity in case of employment. If we want to give this gender a level playing field with the other gender of society, then we need to eliminate the backwardness.

HOW TO BRING ABOUT THE EQUALITY MENTIONED IN ARTICLE 15(1)?

Ans.- the answer lies in substantive equality. By making special provision wherein some special advantage can be given to this sex so that they can be brought to the level playing field as the other sex. Clause (3) has been added to article 15 because in some special provision by virtue of law or by other executive action, they can give some relaxation, privilege treatment, protection to this sex so that they can overcome the earlier backwardness/handicap. Today article 15 (3) is treated as a facet because for achieving equality between different genders of society, it is important that we recognize that there was another gender of society which was handicapped for a very long time. Article 15(3) is so broadly worded by using the generally words of special provision. It's so broadly worded that it will cover almost entire state activity, there is no specific area in which some special provision can be made. This special provision can be made in almost every area of state activity is what we understand from article 15 (3).

Under article 15 (3), a special provision for women can also be made by giving some privilege treatment when it comes to seeking employment in the state. By giving a preferential treatment/ outlook to the sex of women when it comes to securing public employment, this can be treated as a special provision under article 15(3). Article 15 nowhere talks about employment. It's talked about in article 16. Provisions of article 15 and 16 cannot be understood in isolation. Article 16 talks about no discrimination when it comes to the services under the state/ public employment. It further talks about the requirement of domicile. Article 16(4) particularly talks about reservation in public employment that is to be made for the backward classes. This power to make certain provision for reservation of post in public services, this can be done by the state by exercising its power under article 15(3).

GOVERNMENT OF ANDHRA PRADESH V. PB VIJAY KUMAR

Here, we are talking about an action taken by the government of Andhra Pradesh by which a special provision has been made for women in case of public employment. In this case, the government of Andhra Pradesh has made a special provision wherein a preference will be given

to female candidates for securing a particular job in public services in the state of Andhra Pradesh. The government says that a preferential treatment will be given when everything else is the same or everything else is equal. For application to any post, certain basic qualification will be required for that post. When the government is ascertaining certain basic qualification, male members of society can also apply for that post as well as females under the government of Andhra Pradesh.

When it comes to a choice to be made between 2 candidates, preferential treatment will be given to females. 30% of the post will be reserved for women. These were the 2 aspects that came to be provided by the government of Andhra Pradesh. These came to be challenged on the ground that provision for reservation of post for women cannot be made under article 15 and if at all some reservation in public employment is to be made, that will have to be made under article 16. If at all the reservation is to be made under article 16 as well, article 16 allows reservation to be made only for backward sections of society who are underrepresented and for SC (scheduled caste) and ST (scheduled tribe). Women is not talked about under article 16.

PB Vijay Kumar also pointed out that if any reservation is made in public employment for women, that will be unconstitutional because article 16(1) prohibits discrimination on grounds of sex in cases of public employment. Here the court interpreted clause 15(3). The court said that article 15(3) is so wide so as to include every aspect of the state activity. Therefore, article 15(3) can be interpreted to include the power of the state to make reservation for women in cases of public employment. This is what the supreme court said. The basic idea for including clause 3 under article 15 is to bring in equality between the genders. Article 15(3) cannot be whittled down or restricted because of operation of article 16. Both are to be harmoniously interpreted, not in isolation. The original article 15 ended at clause 3. clause 4 and 5 were added by way of amendment.

STATE OF MADRAS V. CHAMPAKAM DORAIRAJAN

In this case, the state of Madras decided to provide reservation for students who are seeking admission under the state colleges of engineering and medical courses. This government order provided the seats to be reserved on the basis of caste and religion. Out of every 14 seats:

I) 6 seats were reserved for non-Brahmin (Hindus)

II) 2 seats were reserved for backward Hindus

III) 2 seats were reserved for Brahmins

IV) 2 seats were reserved for Harijans

V) 1 seat was reserved for Anglo-Indian and Indian Christian

VI) 1 seat was reserved for Muslim

This came to be challenged before the court and at that time only article 15 clause 1-3 existed. Article 15(1) stands infringed over there. The state of Madras tries to defend its stand and communal order by saying that it is obligated to make some special provision for securing the educational interest of the backward classes by virtue of article 46 of the constitution. Article 46 talks about promotion of educational and economic interest of the weaker section of the people and in particular SC and ST so as to protect them from social injustice and other forms of exploitation. The court says that it's the fundamental rights which will prevail over the directive principles. The court struck down such a communal order on the ground that it infringed the fundamental rights.

No action can be upheld if it goes against the fundamental rights and such a government order which was communal in nature came to be struck down by the court. Due to this case, the first constitutional amendment came to be made. By the 1st amendment, clause 4 came to be added to article 15 and the power has been given to the state that it can make special provision for the protection of backward sections, including SC and ST. This is the background of how clause 4 came to be added. Now the state is empowered to constitutionally make some special provision because clause 4 allows them to do that. It's been left to individual states to make policies for socially backward classes, like SC and ST. It's been left to the state because state will be the best judge of the prevailing circumstances under the state. Conditions will vary from state to state. States have the freedom to come up with a criterion to determine backwardness. If the states get the freedom to fix the backwardness, ascertain the backward classes in that state, still the judiciary can look into it to find out whether the criterion is reasonable or not.

PRADEEP JAIN (DR.) V. UNION OF INDIA

It is in this case that the court has said that making a quota wherein residence is required, this

can be understood for the undergraduate courses, but when we come to post-graduate courses, this kind of quota on the basis of residence should not be promoted for the reason that when we promote the requirement of residence, we might individually end up saying that the person is stagnated at one position. This case deals with the requirement of residence in cases of medical institutions. The court said in this case that residence should not be one of the criteria in post-graduate medical courses particularly and it could be continued to be a valid criterion for giving a quota for the undergraduate courses. As we climb up the ladder of education, the person is said to be advanced and that's why the reservation should go down.

This case had two issues:

I) the rule that was made had a provision for requirement of residence. The students who are seeking admission in PG courses, there was a quota which was made for the residents of the particular state so that when the students are seeking admission in MD course, there will be certain quota that will be reserved wherein the students who are residents of the state will be eligible to take/procure the admission in that quota.

II) along with this requirement of residence, the rule also provided for institutional preference. When this is being done, institutional preference is legitimate and it also has been recognized but the fact will be that it must be reasonable, because it should not be such that so huge number of seats are reserved that all the people who have graduated from the same university end up securing admission to the PG course in the same university. That will mean that people from other universities will be ousted from taking admission in the PG course in this university.

The court tries to bifurcate between the requirement of residents of UG course and it understands that that's the first time that a student is graduating and therefore the requirement or the quota of residence could be implemented in an UG course but the same thing should not be continued in a PG course. The court said that institutional preference should not be so large so as to exclude the other students from other universities. Supreme court said it should be there but should not exceed 50% of the total seats.

ARTICLE 15(5)- parliament through exercising constitutional amendments to the constitution kept on emphasizing its absolute power to amend the constitution, whereas these amendments came to be struck down when they were challenged before the courts on the ground that parliament does not have unfetered power to amend the constitution. To add clause 5, the

reason was to find out a way because the supreme court gave decisions in such a manner to restrict the power of the state, again, to provide for the advancement of socially, educationally backward classes for scheduled caste and scheduled tribe. There's a great disparity between the number of educational institutions that are state operated and owned, and the number of private educational institutions.

The state will be able to implement its reservation/quota policy definitely on the state educational institutions, it could also be implemented on the colleges which are private but are receiving aid from the state. There were other institutions which are private in nature and are non-aided, there were huge number of such institute. When the state was trying to implement this quota for SC, ST and other backward classes, it was feeling handicapped because of the reason that the institutions were very few and there was a tendency, general practice that the state government started to impose a concept of seat-sharing between otherwise private independent educational institutions. It tried to impose its reservation policy by saying that in a private educational institution also, which is unaided, almost 60% of the seats will be filled in by the students who have cleared the state entrance examination and rest 40% are to be left free to be filled in according to the management of that private unaided educational institution. The private unaided educational institutions which were also minority educational institutions, they were not so happy with such a kind of practice being done by the state government of the different states. They will fell that they also have their fundamental rights under constitution under article 30 which gives the private minority educational institutions to administer their educational institutions in the manner that they want rather than being forced to share the seat with the state.

Because of this discord between number of states, so the minority educational institutions had filed a different writ petition in different courts. In the case of TMA foundation v. state of Karnataka and Ors., supreme court decided that even if it's not minority educational institution, still the state would enforce that compulsorily certain seats in a private unaided educational institution should be given to the students who are clearing the state conducted entrance examination. It was not going to be accepted by supreme court for the reason that article 30 really did provide the authority to the minority educational institutions at least to administer their educational institution in the manner that they want. It upheld the rights of minority educational institutions, that they do possess the right under article 30. The same 11 judge

bench also said that for the non-minority also who are not necessarily administering a minority educational institution.

Providing education came to be treated as an occupation within meaning of article 19 (1) (G). It's not a business according to the supreme court. Therefore, profiteering was not the motive even when we are taking about private unaided educational institutions. Supreme court said such a seat-sharing can't be imposed by the government on a non-minority unaided education institution or on a minority unaided education institution.

ARTICLES 25 AND 26

State not having its own religion does not mean that its irreligion. It means that the state equally respects the all the different religions and it believes in religion, just that it does not has its own religion. That's what the meaning of secularism is in our country. Even when the word 'secular' was not added to the constitution, still the provision of the constitution was indicative of the secular nature. Article 25 and 26 indicates that each and every religion will have its own standing in the country and the state is not going to discriminate against any religion, neither favour any religion. State is going to adopt a non-discriminatory approach when treating different religions. Adding the word 'secular' didn't make any change, but it did amplify the preamble.

When a person looked at preamble, it would become clear that the provisions which are given inside the constitution indicate its secular nature. With those objectives, the word 'secular' came to be added. Supreme court elevated secularism as a concept to say that it is a part of basic structure. When a feature becomes a part of basic structure, it would mean that it occupies transiently position and it will not be in the parliament's capacity to change that. When we look at article 25 and 26, religious freedom or articles relating to religious freedom can be categorized as saying that the articles provide for individual and group right. Article 25 talks about individual right because it gives the individual the opportunity to practice his religion of his own choice. Article 26 talks about religious denomination, that is why article 26 is said to be a group right.

Each person will have the freedom of conscience and right to freely practice the religion of his choice. Religious denomination is right of a religious sect. That's why this kind of right, article 26 is called as group right. just like any other fundamental rights under the constitution, though

the restrictions are there in article 25 and 26, it is not an unfettered right because there are restrictions mentioned under article 25 which says that this right of religion is subject to public order, health and morality and other provisions relating to fundamental rights. Article 25 or religious right is the only fundamental right which has been made subject to other fundamental right of this part. Supreme court clarified that what different aspects would come within the religious freedom in the cases that it decided.

COMMISSIONER, HINDU RELIGIOUS ENDOWMENTS, MADRAS V. SRI LAKSHMINDAR THIRTHA SWAMIAR OF SHRI SHIRUR MUTT

This case is a landmark decision not only for the incorporation of essential religious practices, but also for other purposes. Different aspects of this right of religious freedom came to be discussed by the supreme court. Supreme court says in this case that the right of religious freedom would not be limited to the fact that a person gets the choice to entertain the beliefs which according to him are part of his religion. It's not only limited to this. A person gets a choice to practice certain beliefs to entertain certain beliefs according to his own judgement, own consciences, but it also includes the right to exhibit his beliefs and cases. There's a difference between these 2 ideas.

To have certain beliefs in your mind and to practice those beliefs is another matter, but to exhibit those beliefs is an altogether different thing. Supreme court says that not only a person has the right to entertain his beliefs which according to his own judgement he forms or which according to his conscience he forms, but this right of religious freedom would also include his right to exhibit his belief and ideas in such overt or outward acts and practices as are sanctioned or enjoyed by his religion. Supreme court says that this right of religious freedom is also extended to propagation dissemination of religious beliefs, ideas and views for the benefit and edification of others. In this case, supreme court has tried to explain the length and breadth of religious freedom given under article 25. We see that the court is more liberal interpretation.

JAVED V. STATE OF HARYANA

This is a landmark case. It put a restriction on the freedom of religion, the decision of supreme court in this case had been upheld recently by the supreme court in case of Khursheed Ahmed khan v. state of U.P. The 3rd tier of the government came to be added by an amendment.

Originally the constitution prescribed the central government and the state government, the 3rd one, local government came to be added later on.

Both types of local government (urban and rural local government) will always come within the control of the state government. For the purposes of administering the rural and urban local government, the administration rests with the state. The Haryana state legislature made a law which prescribed for eligibility condition for being appointed as a sarpanch and panch of the gram panchayat. A person will not be eligible if he has more than 2 children. This came to be challenged on the ground that this requirement / regulation is violative of the personal law of the religious freedom of the Muslim community for the reason that polygamy is allowed, so there are people with more than 2 children.

Having such a legislation directly affects the religious right of polygamy and thereby having more than 2 children. It was violative of article 25. Supreme court said that the freedom of religion is not absolute and it's made so specifically subject to health also. The idea for passing such a legislation was that the efforts of introducing family planning was being adopted at the national level as well as the state level. To give a boost to these efforts of family planning, such a law came to be made wherein this kind of disqualification came to be incorporated.

The court says that the freedom of religion guaranteed under article 25 is not absolute, it is made subject to health and therefore on this ground of health the state is capable of interfering in this freedom of religion because it's not absolute, so the restriction that could be imposed on the grounds of health on the freedom of religion. These kinds of laws which are made for social welfare, which are made under the backdrop of proporting the health of the community, promoting the notions of family planning. The validity of this Haryana legislation was upheld in this case.

ARTICLE 26- Article 26 talks about certain rights being given, different kinds of rights being given to a religious denomination. For an association for the people of the community of a particular religion, they should have a common faith between them, following common religious tenets between themselves which are different from people who are not part of that group. Even if they meet this criterion, they still cannot be called a religious denomination.

The members of the community should be bound by religious tenets, there should be a common organization of this community. This religious sect should also have a distinct name for itself.

If all these things are present, then only we can say that a particular religious sect can be called as a religious denomination. They don't have to be present in each and every situation. The court says that the right to administer the educational institution or religious or charitable institution will be available to the religious denomination cannot claim a right to administer an institution which it has not established.

The 1st right is to "establish and maintain" and 2nd right available to the religious denomination is the right to acquire and manage property, movable as well as immovable. Both 1st and 2nd rights are connected. They acquire property to establish institutions for religious or for charitable purposes. It's not an unfettered right, State can impose restrictions. The way the state can compulsorily acquire the property belonging to a private individual, in the same manner the state can also acquire the property belonging to a religious denomination. There should be restrictions on the power of the state to acquire the property belonging to the religious denomination. The property of the religious denomination should be acquired only in exceptional and extraordinary circumstances. If the demand is for securing the larger national interest or the larger interest of the public, if that is to be secured and that and that can be done only by acquiring the property belonging to a religious denomination, then only for serving the larger public interest can the property be acquired. Otherwise, it should not be acquired.

With this acquisition of property is being done, the acquisition should not be done in such a way that its extents the right of practicing a particular religion of the religious denomination. That care is to be taken by the state.

ARTICLE 29 AND 30

The Constitution doesn't really define the terms "minority" or provide sufficient criteria for determining whether a group is indeed a minority. Encountered, perhaps, with the fact that the concept of minority, and hence its difficulty, was ambiguous, the framers make no effort to define it. Despite reservations about the wisdom of leaving vague justiciable rights to undefined minorities, members of the Constituent Assembly made no attempt to define the term while deliberating article 23 of the Draft Constitution, which corresponds to existing articles 29 and 30, and presumably left it to the discernment of the courts to fill the vacuum.

1) A 'minority' is defined as a non-documented group of people who have and strive to preserve stable ethnic, religious, or linguistic traditions or traits that are distinguishable from those of

the rest of society.

2) Such minorities should adequately include a considerable number of people to sustain such traditions or characteristics according to their own; and

3) Minorities ought to be loyal to the government of the country in which they inhabit.

In another sense, a minority group seems to have a feeling of belongingness to one common unit, an understanding of kinship or community that distinguishes them from the rest of the population. They are a "group bound together by similar ancestry, language, or religious faith and feeling dissimilar in these aspects from the majority of the population of the given political unit." Others define minority in terms of the relationship between the dominant and minority populations.

ARTICLE 29

The protection of minorities' interests is enshrined in Section 29 of India's Constitution: -

1) Any sector of the citizenry existing in India's territory or any part of it with a separate language, script, or culture has the right to preserve it.

2) No citizen should be denied entrance to any educational establishment sponsored by the state and receiving state funds strictly on the grounds of religion, race, caste, or language, or any combination of these elements.

Article 29(1)- Clause (1) protects people who speak different languages, write in a different script, or have a different culture by safeguarding their right to preserve it. The state would not stand in the way of such a group's wish to preserve its own language and culture. A minority community's language, script, or culture can be effectively maintained through educational institutions, which is an essential corollary to the right to maintain its distinctive language, script, or culture, which is given on all minorities by article 30. (1). Article 29(1), on the other side, neither governs nor is governed by article 30(1).

The scope of each is distinct. Article 29(1) does not apply only to minorities; it applies to all citizens. Similarly, article 30(1) applies to all religious and linguistic minorities, not only those who have a "distinct language, script, or culture." Furthermore, article 30(1) only allows

minorities the right to create and govern academic institutions of their liking, whereas article 29(1) grants a broad right to "conserve" a language, script, or culture. As a result, the right conferred by article 30(1) does not have to be used in order to protect language, script, or tradition.

Article 29(2)- Clause (2) concerns admittance to educational institutions sponsored or helped by public funds. No citizen shall be denied entrance to such institutions primarily because of their religion, race, caste, or language, or any combination of these elements. Article 15 prohibits discrimination against citizens on the basis of religion or other factors, however the scope of the two articles differs. To commence with, article 15(1) defends all citizens from the state, whereas article 29(2) extends protection to the state or anyone who denies the right conferred by it.

The right to admission to an academic institution is a right that an individual citizen, not a group or class of individuals, has as a citizen. As a consequence, a minority-run school that obtains state subsidies cannot restrict admittance to children from other communities. However, even if the school receives state subsidies, the minority community may reserve up to 50% of the seats in an academic institution established and managed by it for members of its own community.

However, the state cannot compel minority academic institutions to admit only individuals of their own groups. Article 29(2), on the other hand, does not allow members of other communities the legal right to openly profess, exercise, and disseminate their belief within the confines of a university controlled by a minority community. When a student is refused admission because he lacks the qualifications needed, or when a student is excluded from an institution for acts of indiscipline, Article 29(2) cannot be invoked.

To end the dispute with articles 15 and 29, the Constitution (First Amendment) Act of 1951 added clause (4) to article 15, declaring that nothing in articles 15 and 29(2) forbids the nation from making special provisions for the development of any socially and educationally backward classes of citizens, as well as the schedule castes and tribes. The state does have the responsibility to establish aside places in state colleges for citizens from socially and educationally underprivileged backgrounds, as well as for SC and ST citizens.

ARTICLE 30

Article 30 of India's Constitution defines minority's rights to construct and manage educational institutions as described in the following: -

1) All religious and linguistic minorities shall have the right to establish and administer academic institutions of their preference.

2) The State shall not interfere against any academic institution that is managed by a minority, either based on religion or language, when granting assistance to academic institutions.

Article 30(1)- Clause (1) grants all religious or ethnic minorities the right to establish and run educational institutions of their choice. Whenever Articles 29 and 30 are coupled, it will be unjust to limit the rights of minorities to establish and run academic institutions that deal with their language script and culture. The following are the reasons: To start with, article 29 grants fundamental human rights to any segment of the citizenry, including the majority, while article 30(1) provides all rights across all minorities.

Second, article 29(1) is concerned with language, script, or culture, whereas article 30(1) is concerned with religious or linguistic minorities. Lastly, article 29(1) emphasizes the right to maintain language, script, or culture, and article 30(1) covers the right to develop and govern academic institutions for minorities of their selection. The term 'minority' in Article 30 is undefined, though the court has said that it refers to any community that is numerically less than 50% of the population of a state as a whole while a law in which the issue of minority rights is to be determined as a state law is being evaluated. A minority could not be expressed in terms of the nation's entire population. Minorities must be acknowledged in relation to the state if it is a state law.

However, the usage of the term "minority" in article 30(1), as contrasted to "Any section of citizen" in article 29(1), supports the notion that article 30(1) deals with national minorities or minorities recognized in the context of the entire nation. However, even if the national majority is a minority in any specific state, such as Hindus in Punjab or Jammu & Kashmir, article 30(1) would then become utterly irrelevant to them.

Regardless of the fact that article 30(1) does not specify citizens, the minority qualified to invoke the security of that article must be a gathering of persons residing in India. 'Those who

farm a distinct and identifiable group of citizens in India must necessarily be deemed a minority under article 30.' Foreign nationals who are not Indian residents would not have the right to set up academic institutions of their discretion under Article 30(1). Minorities have the right to set up academic institutions of their choosing. It does not state that religious minorities should establish academic institutions solely to teach their own vernacular.

Article30(2)- Clause (2) is merely a phase of the constitution's non-discrimination clause, and therefore does not overrule provisions made in clause 1. (1). The clause is written in negative terms: the state is forbidden from discriminating in offering aid to educational institutions based purely on the fact that the institutions' administration is in the hands of a minority, religious, or linguistic group. The phrase does not imply that the state does have the authority to discriminate in other ways, such as curtailing minorities' ability to establish and administer educational institutions. The rights established by article 30 (1) are meant to be a legitimate right for minorities to be safeguarded when it comes to setting up an educational institute of their preference.

CONCLUSION

The right to equality is a fundamental feature of the Indian Constitution, and it plays a critical role in achieving social and economic equality in our society, where the upliftment of certain classes is seen as essential for the prosperity of a nation. It emphasizes on people' intrinsic unity through equal opportunity and treatment for everyone. The right to equality is the foundation for all other benefits and liberties. It gives all of the ingredients necessary for the development of each individual's personality in the country. As a consequence, courts that are seen to be the guardians of the Constitution ensure that the right to equality is interpreted widely in order to achieve the goals set forth by the Constitution's architects.

The principle of equality is a requirement for everybody living in a democratic country. Due to significant economic, social, and political disparities in countries such as India, equality is essential. Nobody is born mentally or physically equal, and some people are much better than others. If there is fairness in society, barriers can be resolved. Prejudice must be eliminated in order to attain equality in practice.