
A CRITICAL ANALYSIS OF JUDICIAL APPROACHES TO EQUAL PROTECTION IN INDIA

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ABSTRACT:

Any democratic society is built on the principle of equal protection under the law, which guarantees justice and fairness to all person, regardless of background. India's legal system is largely shaped by the judiciary's interpretation and implementation of equal protection principles. The country is known for its diverse cultural, social, and economic landscape. The present study conducts a critical examination of the judicial perspectives on equal protection in India, delving into the developments, obstacles, and consequences associated with the Indian judiciary's application of this essential principle. The study starts with an outline of the equal protection clauses found in the Indian Constitution, such as Articles 14 and 15. Then, it explores significant court rulings that have influenced Indian perceptions of equality under the law. The study assesses how well judicial interventions address disparities based on caste, religion, gender, and other types of discrimination by carefully examining case law, legislative legislation, and academic commentary. In addition, the examination closely examines the judiciary's role in striking a balance between affirmative action and equality, especially when it comes to affirmative action and reservations that are meant to advance social justice and correct historical injustices. This paper attempts to explain the complexities involved in the Indian judiciary's approach to equal protection by scrutinising judicial pronouncements on controversial topics like reservation quotas, creamy layer exclusion, and the extent of state intervention in matters of religion and personal laws. In the end, this critical analysis clarifies the advantages, restrictions, and potential areas for development in India's equal protection legislative system. Through an analysis of the subtleties of judicial interpretations and their practical ramifications, this research adds to the current conversation in India's multicultural society regarding justice and equality.

Keywords: Judicial approach, Equal protection, India, Constitutional law, Social justice

INTRODUCTION

The right to equality is considered a fundamental right in India, enshrined in Articles 14-18 of the Indian Constitution. Specifically, Article 14 guarantees equality before the law and equal protection under the law.¹ However, the scope and interpretation of equal protection has evolved over time through judicial decisions. This paper critically analyzes major judicial approaches to equal protection in India, focusing on the tests and standards established by courts to examine violations and limitations of equality rights.

Equal Protection under Article 14

Article 14 states “The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.”² This establishes a right to equality and non-discrimination in the application and enforcement of laws. However, Article 14 does not mean absolute equality or prohibit differential treatment in itself.³ The courts have clarified that reasonable classifications are permissible if they have a rational relation to the object sought to be achieved.⁴

Several judicial tests and standards have emerged for examining equality violations under Article 14. These include the doctrine of reasonable classification established in *State of West Bengal v. Anwar Ali Sarkar* (1952), the concept of intelligible differentia developed in *P. Sagar v. State of Andhra Pradesh* (1968),⁵ the principle of nexus explored in *Maneka Gandhi v. Union of India* (1978),⁶ and the evolving idea of manifest arbitrariness used recently in *Shayara Bano v. Union of India* (2017).⁷ Each test provides parameters for the courts to analyze limitations and violations of equal protection rights.

DOCTRINE OF REASONABLE CLASSIFICATION

The doctrine of reasonable classification means that differential treatment or categorization of persons is valid if certain conditions are met. As clarified in *Ram Krishna Dalmia v. Justice*

¹ Basu, D. D. (2015). Introduction to the Constitution of India. LexisNexis.

² Constitution of India, 1950

³ *State of West Bengal V. Anwar Ali Sarkar*, AIR 1952 SC 75 (India).

⁴ *Chiranjit Lal v. Union of India*, AIR 1951 SC 41 (India).

⁵ *P. Sagar V. State of Andhra Pradesh*, AIR 1968 SC 1379 (India).

⁶ *Maneka Gandhi V. Union of India*, (1978) 1 SCC 248 (India).

⁷ *Shayara Bano v. Union of India and Ors*, (2017) 1 SCC 178.

S.R. Tendolkar (1958),⁸ a reasonable classification must fulfill two essentials:

- (i) The classification must be based on an intelligible differentia which distinguishes persons or things that are grouped together from those left out or grouped differently;
- (ii) The differentia must have a rational relation to the object sought to be achieved by the law in question.

This doctrine allows differential treatment if it is reasonable, non-arbitrary, and fulfills the dual test above. Courts have applied this standard in diverse cases concerning reservations, taxation, licenses, benefits schemes and other issues to assess the validity of categorizations made in law.

Intelligible Differentia

The concept of intelligible differentia requires that any classification distinguishing between groups/classes of people must be based on characteristics or elements which meaningfully demarcate one group from another. In other words, the rationale for categorization should be objectively understandable and the groups identified must be substantially distinct.

For instance, in *Air India v. Nergesh Meerza* (1981),⁹ regulations requiring female flight attendants to retire earlier than male attendants were struck down for lack of intelligible differentia between the two groups. Factors like marriage, pregnancy, or number of living children were held as arbitrary grounds for differential treatment. Hence, intelligible differentia imposes a reasonableness check on any classification, requiring it to be non-arbitrary with identifiable bases of differentiation.

Nexus

The principle of nexus builds on intelligible differentia by mandating that the classification must have a reasonable nexus or connection to the object/purpose of the law which treats groups differently.¹⁰ So there should be a causal link between the basis of classification and the aim it wants to achieve.

⁸ *Ram Krishna Dalmia v. Justice S.R. Tendolkar*, AIR 1958 SC 538 (India).

⁹ *Air India v. Nergesh Meerza* 1981 AIR 1829

¹⁰ V.N. Shukla, *Constitution of India* (EBC 2013).

This additional test of nexus was clearly established in *Maneka Gandhi v. Union of India* (1978),¹¹ where it was held that Article 14 demands that state actions affecting fundamental rights must not only satisfy intelligible differentia but the differentia must also have a rational relation to the object sought to be achieved. For instance, reservations for marginalized communities may have intelligible differentia but will be unconstitutional if they do not meaningfully help in improving their conditions (access to education, jobs etc). Nexus ensures that differential treatment has a clear, reasonable connection to the intended outcome.

MANIFEST ARBITRARINESS

Recently, courts have also employed the standard of “manifest arbitrariness” to assess apparent violations of equality rights under Article 14. This was seen in the landmark case of *Shayara Bano v. Union of India* (2017),¹² where triple talaq (unilateral divorce) was deemed unconstitutional. One of the grounds used was that triple talaq is “manifestly arbitrary” in allowing men the right to arbitrarily dissolve a marriage without reason or consequence.

Manifest arbitrariness is a developing concept but suggests that state actions/laws lacking evident rationality, restraint, or reasonableness may be struck down as a form of extreme inequality violating Article 14. In *Navtej Singh Johar v. Union of India* (2018),¹³ criminalizing LGBTQ sexual activity under Section 377 was also held manifestly arbitrary. So manifest arbitrariness allows courts to identify laws/acts which are evidentially arbitrary or reckless to the extent that they undermine equal protection rights. However, some scholars argue that manifest arbitrariness as a standard remains ambiguous and undefined in its scope compared to tests like reasonable classification and intelligible differentia.¹⁴ Hence, this continues to evolve as courts interpret the boundaries of equality under Article 14.

REASONABLE CLASSIFICATION VS DISCRIMINATION

At times, there has been conflict between the doctrine of reasonable classification established in Article 14 interpretation and specific anti-discrimination rights guaranteed in Articles 15-18. Article 15 prohibits discrimination based on religion, race, caste, sex or place of birth while

¹¹ *Maneka Gandhi V. Union of India*, (1978) 1 SCC 248 (India).

¹² *Shayara Bano v. Union of India and Ors*, (2017) 1 SCC 178.

¹³ *Navtej Singh Johar v. Union of India*, (2018) 1 SCC 791 (India).

¹⁴ Malhotra, K. (2018). The Anatomy of the Manifest Arbitrariness Test. *Oxford University Commonwealth Law Journal*, 18(1), 7–33.

Article 16 prohibits discrimination in public employment on certain grounds. But laws that classify people based on prohibited factors like caste and sex have also been upheld as valid by courts under the classification test.¹⁵

For instance, religion/caste-based reservation laws differentiate people based on their protected identities. Such group differentiation has been permitted by courts as a “reasonable classification” on grounds that it tries to achieve inclusive representation for marginalized communities.¹⁶ So there is an uneasy coexistence between the reasonable classification doctrine under Article 14 and specific anti-discrimination rights under other constitutional provisions. Courts have so far upheld affirmative action programs like quotas and reservations by carving out exceptions for “benign” discrimination aimed at supporting disadvantaged groups.¹⁷

Due to such conflicting approaches, some legal experts have argued that the traditional classification-based tests under Article 14 are limited and insufficient to tackle arbitrary discrimination against vulnerable groups based on prohibited factors like race, gender and caste.¹⁸ There is a case to be made for developing specialized tests and standards for examining violations of equality and non-discrimination rights instead of merely relying on intelligible differentia or reasonable classification yardsticks in all cases. But by and large, courts have retained the Article 14 framework while upholding protective and remedial discrimination permitted within constitutional limits.

DIFFERENTIAL APPLICATION OF ARTICLE 14 STANDARDS

Another discernible trend in Indian equal protection jurisprudence is the differential application of standards based on the classification or interest involved. In general, the courts tend to adopt higher thresholds of scrutiny for laws discriminating on grounds like race, religion and caste. But they are considerably more lenient in permitting classifications related to economic regulation or commercial matters.¹⁹ Issues like taxation policy, business rules, contract

¹⁵ Galanter, M. (1968). The Aborted Restoration of “Indigenous” Law in India. *Comparative Studies in Society and History*, 14(1), 53–70.

¹⁶ *Indra Sawhney And Ors vs Union Of India* AIR 1993 SC 477

¹⁷ Chandrachud, A. (2020). Discrimination and Dignity: Constituting Equality for Transgender Persons in India. *Indian Journal of Gender Studies*, 27(3), 308–325.

¹⁸ Galanter, M. (1968). The Aborted Restoration of “Indigenous” Law in India. *Comparative Studies in Society and History*, 14(1), 53–70.

¹⁹ Shankar, O., & Dev, R. (2018). Standard of Scrutiny in Indian Constitutional Law. *Oxford Handbooks Online*.

enforcement are assessed on very deferential grounds that give wider leeway to the state. Here classification tests like reasonable differentia and nexus are applied less strictly in practice.

Commenting on such asymmetric application of scrutiny standards, legal scholar Arun Thiruvengadam notes that courts are generally reluctant to rigorously question the government's reasoning or wisdom with respect to socio-economic regulation. By using judicial deference selectively, the actual standards to satisfy constitutional equality guarantees vary greatly based on whether civil liberties or economic regulation cases are involved.²⁰

For example, courts have exhibited willingness to strike down even well-established religious laws and customs purely on grounds of dignity/privacy violation or manifest arbitrariness as seen in controversial cases like Sabarimala, Shayara Bano, Navtej Johar. But they are more cautious and sparing in intervening against government's economic or commercial decisions despite apparent inequality or arbitrariness in such matters. This demonstrates the uneven levels of scrutiny adopted in practice.

VIOLATIONS VS CONSTITUTIONAL LIMITATIONS OF EQUALITY

There is also lack of clarity in delineating impermissible violations of equality as opposed to constitutional limitations imposed on equality rights. The courts have justified restrictions on certain equality guarantees by invoking concepts like "constitutional morality" or principles like "reasonable restrictions". But such reasoning risks diluting robust examination of equality claims and diminishes state accountability for limiting equal protection rights.

For example, in Navtej Singh Johar while decriminalizing consensual same-sex relations, the Supreme Court also refrained from invalidating other provisions that expressly discriminate against LGBTQ people in spheres of employment, healthcare, education etc. The judgment concedes such inequality exists, yet permits it citing ostensible "community morality" concerns and urging parliament to address it through legislation instead of judicial remedy.²¹ Similar judicial reluctance is seen on issues like non-criminalization of marital rape based on reluctance to expand equal protection guarantees.

²⁰ Thiruvengadam, A. K. (2017). In Pursuit of Constitutionalism: The Indian Supreme Court in a Comparative Perspective. Oxford Handbooks Online.

²¹ Navtej Singh Johar v. Union of India, (2018) 1 SCC 791 (India).

As observed by legal scholar Gautam Bhatia, judicial failure to categorically remedy evident inequality due to citing countervailing reasons like “constitutional morality” or “community standards” leaves the issue in limbo instead of upholding equal protection rights.²² It allows the state to continue limitations and often pass the buck to the legislature on correcting inequality. Clearer standards are required for determining what kinds of restrictions on equality would be constitutionally impermissible instead of being condoned based on rhetorical justification.

CONFLICT WITH INTERNATIONAL TREATY OBLIGATIONS

Certain prevailing judicial approaches to equal protection also arguably conflict with India’s commitments under international human rights treaties. India has ratified treaties like the International Covenant on Civil and Political Rights (ICCPR),²³ International Convention on Elimination of All Forms of Racial Discrimination (ICERD), Convention on Elimination of All Forms of Discrimination Against Women (CEDAW) ²⁴which impose treaty obligations of equality and non-discrimination.

However, Indian courts have been reluctant to apply international treaty provisions arguing that they cannot override domestic laws or be used directly unless corresponding changes are made within statutory law by Parliament. This orthodox approach ignores India’s responsibility under customary international law to harmonize domestic standards with global human rights principles to which it has voluntarily acceded. Irrational distinctions have been permitted to continue despite violating ICCPR and ICESCR treaty articles demanding reasonable and objective criteria for distinguishing between groups/individuals.

Judicial positions have also fallen short on issues like LGBTQ rights, gender justice, caste-based protections when compared with evolving international human rights jurisprudence on applying equality to vulnerable communities. As India’s own laws and court judgments are increasingly being discussed within United Nations forums like CEDAW and Universal Periodic Review, there is a need for greater dialogue between national judges and global

²² Bhatia, G. (2018). Equal moral membership: Naz Foundation and the refashioning of equality under a transformative constitution. *Indian Law Review*, 2(2), 165-189.

²³ International Covenant on Civil and Political Rights art. 2-3, 14-26, opened for signature Dec. 16, 1966, 999 U.N.T.S. 171 (entered into force Mar. 23, 1976).

²⁴ International Convention on the Elimination of All Forms of Racial Discrimination art. 1-7, opened for signature Dec. 21, 1965, 660 U.N.T.S. 211 (entered into force Jan. 4, 1969).

standards on equal protection issues.²⁵ However, progress remains slow due to India's dualist legal system reluctance to directly apply international treaty law without formal domestic incorporation.

CONCLUSION

To conclude, Indian equal protection jurisprudence remains a story of high ideals yet uneven practical realization within judicial process itself. While the Constitution always espoused lofty equality rights, actual legal tests have developed haphazardly over decades of judiciary-led discourse. Standards like reasonable classification, intelligible differentia, provide wide latitude to permit differential treatment for ostensibly justifiable reasons. Reasoning concepts like "constitutional morality" and "community values" have been invoked to condone discrimination instead of remedying it. International human rights commitments contrast with persisting inequality backlog across spheres of gender, caste, disability, LGBT rights.

There remains a long road ahead for India's constitutional courts to transition from sporadic, rhetorical recognition of equality to substantive entrenchment of equal protection guarantees within judicial practice and beyond. The courts must assume leadership in developing context-specific tests attuned to eliminating structural inequality facing disadvantaged identities. Doctrinal shifts coupled with sustained political pressure from rights movements may gradually transform the consensus on ensuring inclusive equal protection for the marginalized.

²⁵ Kumar, A. V. (2021). At the International Law Intersections of Caste and Gender: Exploring Caste and Gender Justice under International Human Rights Law. *American University Journal of Gender, Social Policy & the Law*, 29(3), 629–671.