



RIGHT TO EQUALITY

Aswini Addagarla

5th year BBA LLB, K.L (DEEMED TO BE)

UNIVERSITY, VADDESWAREM, ANDHRA PRADESH, INDIA

ABSTRACT :

Right to equality given under Article-14 of Indian Law. It is one of the Fundamental Right. It ensures the guarantees to every person the right to equality before law and equal protection of state shall not deny to any person equality before the law or the equal protection of the laws within the territory of india ".Article- 14 defines no one is above the law and all are equal in the eye of law. The word Right to Equality need no explanation because it is its meaning itself and it is one the our Fundamental Right.

The Constitution of India guarantees the Right to Equality through Article 14 to 18. "Equality is one of the magnificent corner stone of Indian democracy" . The general principle of "Right to Equality" needs no explanation as it defines itself .

"Right to Equality" is given under Article 14 of Indian law. It is one of the Fundamental Right. It ensures the guarantees to every person the Right to Equality before law and Equal Protection of the laws. The Doctrine of Equality before law is necessary corollary of "RULE OF LAW" which pervades the Indian constitution . The underlying object of Article 14 is to Secure all persons, citizens or non-citizens, the equality of status and opportunity referers Preamble to our constitution.

The Right to Equality means every person, who lives within territory of india, has the equal right before the law. The meaning of this all are equal in same order. No discrimination based on religion, race, caste, sex and place of birth. It means that all are treated as Equal and no discrimination made based on lower or higher class. According to Dicey the concept of legal equality as it operated in England, quoted "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. Article – 14 of the constitution embodies the principles of "Non-Discrimination". However, it It is not a free standing provision. Article- 7 of Universal Declaration of Human Ritght, 1948 declares that all are equal before the law and are entitled without any discrimination to the equal protection of laws.

INTRODUCTION :

The Constitution of India codifies the fundamental rights- the basic human rights of its citizens which are defined in Part III of the Constitution. Right to equality given under Article-14 of Indian Law. It is one of the Fundamental Right. It ensures the guarantees to every person the right to equality before law and equal protection of law. It is not only right of Indian citizens but also right of non-citizens. Article-14 says " The state shall not deny to any person equality before the law or the equal protection of the laws within the territory of india ".

Article- 14 defines no one is above the law and all are equal in the eye of law. The word Right to Equality need no explanation because it is its meaning itself and it is one the our Fundamental Right.

This means that every person, who lives within territory of India, has the equal right before the law. That equals will be treated equally.

This article constitutes of 2 parts, being:

1. Equality before law and
2. Equal protection of the laws.

Although both sound similar, they don't mean the same. The word "Law" in the former expression is used in a genuine sense – a philosophical sense, whereas the word "Laws" in the latter expression denotes specific laws in force.

Equality before the law talks about equal subjection of all citizens (rich or poor, high or low, official or non-official) to the ordinary law of the land administered by the ordinary law courts and is a negative concept as implies the absence of any privilege in favor of any individual and equal subjection of all classes to the ordinary law. Whereas, equal protection of the laws is a Positive Concept as it implies equality of treatment in equal circumstances both in privileges conferred and liabilities imposed. So, all the persons must be treated alike on reasonable classification. Among equals law should be equal and equally administered. The guarantee of equal protection applies against substantive as well as procedural laws.

Right to equality is one of the six fundamental rights in the Indian constitution. It includes equality before law, prohibition of discrimination on grounds of race, religion, gender, and caste or birth place. It also includes equality of opportunity in matters of employment, abolition of untouchability and titles. In simple words we can say it is the right to live with equal opportunities. It simply treat all people to be same and nobody can get a special privilege which will dishonour any individual or group. As per Article no 14 of our constitution, it guarantees that all people shall be equally protected by the laws of the country. The State will treat people in the same circumstances alike. Right to equality not only applies to the citizens of India but also to all the people within the territory of India. Every citizen, from Prime Minister to an ordinary individual, is subjected to the same laws. All citizens have access to public places like shops, restaurants, hotels, multiplexes. Similarly, no restriction with regards to use of well, bathing ghats, roads, playgrounds and places of public resort maintained by government. It is not 'a rule of men', but a measure of liberty enjoyed by the people. Law should neither be arbitrary nor should it guarantee privilege. We should always treat rich and poor, high and low equal before the law. But the judiciary must be independent and impartial if the Rule of Law can mean anything real.

Democracy can only thrive and flourish where the individuals in the society are treated equally and without discrimination. Thus, it was felt by the framers of the Constitution to incorporate such provision to remove the hurdle of existing social and economical inequalities and enable the diverse communities of the country to enjoy the rights and liberties guaranteed under the constitution. It was believed to be essential to remove inequalities based on religion, social norms, age-old traditions practiced in parts of India, like untouchability, casteism, race discrimination, etc.

- The Right to equality means the absence of legal discrimination only on grounds of caste, race, religion, sex, and place of birth and ensures equal rights to all citizens.
- It is considered basic feature of the Indian Constitution.
- The Right to equality is both a positive equality as well as a negative right.

Under the Indian Constitution, Right to equality is divided under the following subheadings:

1. Equality before law (Article 14)
2. Prohibition of discrimination on grounds of religion, caste, race, sex or place of birth (Article 15)
3. Equality of opportunity in matters of public employment (Article 16)
4. Abolition of untouchability (Article 17)
5. Abolition of titles (Article 18)

Under the Right to Equality, Article 14 provides a general application whereas Art. 15, Art. 16,

Art. 17 and Art. 18 have a specific application.

- Article 14 tries to achieve 'equality of status' for all people.
- It aims at establishing the 'rule of law' in India.
- This guarantee available to both citizens and non- citizens.
- It applies to all persons, natural as well as juristic

Equality before law

- It is taken from English Common law.
- This implies the absence of any special privileges in any person.
- Implies no discrimination before the law on inapposite grounds like rank, office, etc.
- It means that "the law should be equal and should be equally administered, that like should be treated alike." (JENNINGS)
- States that every individual is subject to the jurisdiction of ordinary courts irrespective of their rank or position.

Equal protection of the laws

- It is corollary from equality before the law.
- It is based on the last clause of the first section of the 14th Amendment of the US Constitution.
- It directs that equal protection should be secured to all persons within the territorial jurisdiction.
- This implies that such protection should be without any favor and discrimination.
- This implies equal treatment in similar circumstances, both in the privileges and liabilities imposed by the law.
- It is a positive obligation of the state which it should achieve by bringing about necessary social and economic changes, to ensure every person enjoys such equal protection.

Rule of law

The principle of Article 14, 'equality before the law' to a large extent based on the concept of Rule of law as coined by **A. V. Dicey**. It states that all individuals, government and other institutions should obey and be governed by law and not by any arbitrary action by an individual or group of individuals. Whatever be the rank or position of a person, he should come under the jurisdiction of ordinary courts and not of any special courts. It also states that governmental decisions should be based on legal and moral principles embedded in the supreme law, in the case of India, the Indian Constitution. This theory of Dicey has three pillars, they are:

1. Supremacy of law

There should be an absence of arbitrary power and that no person should be punished except for a breach of law. An offense should be proved by the authorities of the country before the ordinary courts to punish him according to legal procedure.

2. Equality before law

All individuals, irrespective of their rank or position (poor or rich, officials or non-officials, etc.) should be subjected to ordinary law of land which is administered by ordinary courts. It seeks to ensure that law is administered and enforced in a just and fair manner. It has also been embedded in Preamble and Article 7 of the Universal Declaration of Human Rights. It implies 'law gives equal justice to all'.

3. The Predominance of legal spirit

Dicey believed that there should be an enforcing authority to enforce effectively the above two principles. According to him, such enforcing authority should be 'courts'.

CONCLUSION:

In its struggle for social and political freedom mankind has always tried to move towards the ideal of equality for all. The urge for equality and liberty has been the motive force of many revolutions. The Charter of the United Nations records the determination of the member nations to reaffirms their faith in the equal rights of men and women. Indeed, real and effective democracy cannot be achieved unless equality in all spheres is realized in full measures. However, complete equality among men and women in all spheres of life is a distant ideal to be realized only by the march of humanity along the long and difficult path of economic, social and political progress. The Constitution and laws of a country can at best assure to its citizens only limited measures of Equality. The framers of the Indian Constitution were fully conscious of this. This is why while they give political and legal equality the status of a fundamental right, economic and social equality was largely left within the scope of Directive Principle of State Policy. The Right to Equality affords protection not only against discriminatory laws passed by the legislatures but also prevents arbitrary discretion being vested in the executive. In the modern state, the executive is armed with vast powers in the matters of enforcing by-laws, rules and regulations as well as in the performance of a number of other functions. The equality clause prevents such power being exercised in a discriminatory manner.

Article-14 prevents discriminatory practices only by the state and not by individuals. For instance, if a private employer like the owner of a private business concern discriminates in choosing his employees or treats his employees unequally, the person discriminated against will have no judicial remedy. One might ask here, why the Constitution should not extend the scope of these right to private individuals also. There is good reason for not doing so. For such extension to individuals action may result in serious interference with the liberty of the individuals and in the process, fundamental right themselves may become meaningless.

After all, real Democracy can be achieved only by a proper balance between the freedom of the individuals and the restrictions imposed on him in the interests of the community.

Yet, even individual action in certain spheres has been restricted by the Constitution, as for example, the abolition of un-touchability and its practice in any form by any one being made an offence. Altogether, Article-14 lays down an important fundamental right which has to be closely and vigilantly guarded. The right to equality and equal protection of laws loses its reality if all citizens do not have equal facilities of access to the courts for the protection of their fundamental rights. The fact that these rights are guaranteed in the Constitution does not make them real unless legal assistance is available for all on reasonable terms. There cannot be any real equality in the right "To sue and be sued" unless the poorer sections of the community have equal access to courts as the richer section. There is a evidence that this point is widely appreciated in the country as a whole and the government of India in particular and that is why steps are now being taken to establish a system of legal aid to those who cannot afford the prohibitive legal cost that prevails in all parts of the country.

Right to equality is a Fundamental Right. It can be enforced in High Court under Article 226 and in Supreme Court under Article 32. Fundamental Rights can be enforced only if the state violates it. Right to Equality is considered as basic feature of the Indian Constitution. Right to Equality under Art.14 is vested not only to citizens but to all ARTICLES 14- 35 persons. It includes equality before Law and Equal Protection of Law. No one is above the law of the land. Everyone is equal in the eyes of law. There should be no discrimination. Law must be equal and must be equally administered. So like must be treated alike and unlike. Equality before law is negative concept and Equal protection of law is positive concept. Reasonable Classification is allowed in the administration of justice. But it should have some relation to the object of the legislature. In every society there are two classes namely upper class and lower class. The standard of living of the upper class is high but that of lower class is low. As a result it is the duty of the state to uplift the lower class in the society to bring Equality. Absolute equality is impossible but there should not be inequality. Discrimination on the basis of caste, sex, race, religion, language etc must be not there at all. A sense of equality must be there then and then only then will be unity in any states.

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