



DYNAMICS OF EQUALITY OF STATUS OPPORTUNITY AND RESULT UNDER ARTICLE 14

Dr. NALLA. SUSHMA

HOD, Management Studies, Pydah PG College Visakhapatnam,

Introduction

Our's is the largest democracy in the world where women constitute nearly half of the population. Besides, weaker section like women there are suppressed and depressed classes like scheduled castes scheduled tribes and backward class, minorities and disabled persons our constitution guarantees equality of status and opportunity to these sections of people along with others through article 14 of Indian constitution says that right to equal opportunity for all sections of people. The main motto behind this article is that all should be treated equally and at the same time equal opportunities should be provided to all sections of people in the society without any discrimination.

The status of women in the traditional Hindu society was pathatectic. According to Manu Dharma Sastra women should be under the control of father in their childhood and husband after getting married and son in her old days. No liberty was given to women and she was treated as second grade citizen. Similarly the condition of scheduled caste people in traditional Hindu society was horrible Manu Dharma shastara divided the society on the basis of four Varna's. They are Brahmins Kshatriyas, Vyshas and Sudhras Brahmins were given first place at the top of caste hierarchy, second place to Kshatriyas third to Vysyas and fourth place to shudras. In addition to these four varnas the other Varna known as poncham Varna was identified by Manu. They are known as untouchables. They are suppose to stay at the outskirts of the village and not allowed to drink water from the common wells and Tanks.

Dr. B.R. Ambedkar the father of Indian constitution was personally undergone and experienced all the troubles from the caste Hindus. That might be the reason for his fighting for equality and equal opportunities for all sections of the people. After getting independence the trend has been changed and the status of women scheduled caste and Scheduled tribes and backward classes was changed due to the reservations provided for these sections of the people in educational and institutional jobs. So that equality is maintained and equal opportunities were provided and automatically. The status of these sections of people has been changed. The aim of this paper is to explain about the dynamics of equality of status and opportunities and result there by suggest measures to improve their positions.

The preamble described that state as a "sovereign democratic republic". 1976 the Forty- second Amendment explicitly enacted secular egalitarianism feature. The Constitution of India guarantees the Right to Equality through Art 14 to 18. In the series of Constitutional provisions from Article 14to 18, Art 14 is the most significant. The general principle of Equality is embodied in Art 14 is attracted whenever



discrimination is alleged. The goal set out in our Constitution regarding status & opportunity is embodied in Art 14 to art 18, Right to Equality has declared as Basic Feature of Indian Constitution by Supreme Court. Our Constitution uses both expressions that area Equality before law and Equal protection of law.

The two expressions may seem to be identical, but in fact they mean different things. The mere fact that Equality which is part of the basic structure, of the can be excluded for a limited purpose to protect certain kinds of law, does not prevent it from being part of the basic feature of Constitution.

- Equality is one of the magnificent corner stones' of Indian Democracy.
- The doctrine of equality before law is a corollary of Rule of law which pervades the Indian Constitution.
- Neither Parliament nor any state Legislature can transgress the principle of Equality⁵.

Meaning of Equality:

The state or quality of being equal; correspondence in quantity, degree, value rank or ability. Equality basically means access or provision of equal opportunities, where individuals are protected from being discriminated against, Discrimination in Equality can occur in race, sex health, religion, family structure, age ,politics, disability, culture, sexual orientation or in terms of believes. Equality is the basic feature of the constitution of India and treatment of equals unequally will be violation of basic structure of the constitution of India.

The ideal of equality under Indian Constitution

It has been that the Preamble to our constitution promises' equality of status and opportunity to all citizens and that this is the ideal of equality embraces both social and political equality. Even a constitutional amendment which offends basic feature is declared invalid. The state, its agencies and other local bodies being charged with public duty are bound to take action which must be in accordance with Art. 14. The equality clause under Art. 14 of the constitution do not speak of mere formal equality before law but embodies the real concept of real and substantive equalities in the status, income and opportunities amongst individuals. Where unequals are competing, conditions must be created by relaxation or otherwise so that unequals compete in terms of equality with others in respect of jobs and employment of the state.

- ARTICLE 14 provides that the State shall not deny to any person equality before law or the equal protection of the laws within the territory of India.
- The Right to Equality guaranteed under Art. 14 consists of two parts namely (a) **Equality before Law.**



(b) Equal protection of Laws

- Every person is entitled to equality before law and equal protection laws.
- Article 14 bars discrimination and prohibits discriminatory Laws.
- Article 14 of the Constitution of India is a declaration of equality of civil rights for all purpose within the territory of India and basic principles of republicanism and there is no discrimination
- The concept of equality and equal protection of laws guaranteed by Art. 14 in its proper spectrum encompass social and economic justice in a political democracy

Equality before the Law:

- “Equality before Law “only means that amongst the equals, the law should be equal and should be equally administered and that the like should be treated alike.
- The equality before the law” owes its origin to the English Common Law. The doctrine of equality is a dynamic and evolving concept. It is embodied not only Arts 15-18 as well as in Arts.3, 39, 39 A, 41 and 46. It is a negative concept because it implies the absence of any privilege in favor of any individual and equal subjection of all classes to the ordinary law. It means law should be equal and should equally administered, that is like should be treated alike. In short there shall not be discrimination. The concept of equality before law does not involve the idea of absolute equality amongst all, which may be a physical impossibility. Art.14, guarantees the similarity of treatment and not identical treatment.
- The phrase “Equal Protection of the Law“owes its origin to the American constitution. This is 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.

Limitation of the doctrine of equal protection

- State has power to classify persons for legitimate purpose. Every classification is likely to produce some inequality and production of equality is not enough.
- Once it is conceded that the phrase “equality before law” has a separate content that “equal protection of law”, the question arises, what would be the effect of incorporating the doctrine of equality before law in a written guarantee of fundamental rights and in particular along with the analogous guarantee of equal protection.



- The guarantee of equal protection would be satisfied if there is some reasonable basis for differential treatment. But even though a person may be differently circumstanced, e.g. if he is under a sentence of imprisonment, he may still be entitled to some basic human rights which may be deduced from the right of equality before the law, e.g.-
 - a) Right to recognition as a human being before the law.
 - b) Right to access to courts of law.
 - c) Right to a fair and public hearing by an independent and impartial tribunal established by law.

The contents of “Equality before Law” are indeed much wider today than in the days of Dicey.

Object of Article 14:

The aim or the object of this Article to ensure that invidious distinction or arbitrary discrimination shall not be made by the state between a citizen and a citizen who answers the same description and the differences which may obtain between them are of no relevance for the purpose of applying a particular law reasonable classification is permissible. Article 14 provides that the state shall not deny to any person whether citizens or not equality before the law and equal protection of law. It does not mean that same law must be applicable to all but the law should deal alike with all in one class. So the object is that “equals should be treated unlike and unlike should not be treated alike. Likes should be treated alike. The object unlike and unlike should not be treated alike. Likes should be treated alike. The object of Article 14 is wider and is to ensure fairness and equality of treatment.

Test of Reasonable Classification

If all men are treated equal and remained equal throughout their lives, then the same laws would apply to all of them. But we know that men are unequal. Equality does not mean that all men are protected by nature or circumstances, the varying needs of different classes or sections of people require different treatment. For this purpose of this Article, even a single institution can form a class by itself and while deciding the question of violation of Article 14, it is to be seen whether there are any reasonable basis on which a single or group of persons are left out of the group. Though discrimination is prohibited, that cannot be applied to nullify discrimination recognized by the constitution itself.

Article 14 prohibits class legislation and not classification for purpose of legislation. A classification would be justified unless it is patently arbitrary. If there is any Reasonable basis for classification, the legislature would be entitled to make a different legislation. The legislature is competent to make classification. It is upon the legislature to identify the class of the people to be given protection and on what basis such protection is given. Court cannot interfere.²⁰ Classification for the purpose of legislation cannot be done with mathematical precision. Conformity of special benefits or firths or protection to a particular class of citizens is envisaged under



Article 14 and is implicit in the concept of equality 2b. Article 14 proceeds on the premise that equality of treatments is required to be given to persons who are equally circumstanced. None should be floured or should be placed under any disadvantage, in circumstances that do not admit of any reasonable justification for a different.

Basis of Classification:

1. The basis of classification may be geographical.
2. The classification may be according to difference in time
3. The classification may be based on the difference in nature of trade, calling or occupation, which is sought to be regulated by the legislation

Classification Authorized by the other provisions of the Constitution

- Any law making special provision for women (or children) under Article 15(3) cannot be challenged on the ground of contravention of Art.14
- Where the constitution itself makes a classification, the charge of discrimination cannot be leveled against such separate treatment.

Arbitrariness as a test under Article 14:

While the American interpretation of the 'Equal protection of Law as well as earlier decision of our Supreme Court took the view that the test of violation of Art. 14 was the absence of a reasonable classification, while under Art 19, a restriction was to be considered unreasonable if it was arbitrary or not founded on any rational principle, in recent cases, and the Supreme Court appears to have mingled up the two concepts of equality 28. An arbitrary action may not be always being mala fide. Where the classification is not reasonable the impugned legislative or executive action would be held arbitrary and violative of Art.14; but the content of and reach of Art.14 must not be confused with the doctrine of classification.

Affirmative action needs protective discrimination

While in the earlier cases, the Supreme Court understood the guarantee of equality in Art.14 to mean absence of discrimination, in later cases, the courts has come to hold that in order that equality of opportunity may reach the backward classes and minority; the state must take affirmative action by giving them a preferential treatment or protective discrimination

- To make equality a living reality for the large masses of people, those who are unequal's cannot be treated by identical standards. It may be equality in law, but it would certainly not be real equality. It is necessary to take into account de facto inequalities which exist in the society and to take affirmative action by way of giving preferences to the socially economically disadvantaged persons. Such affirmative action though apparently discriminatory is calculated to produce equality by eliminating De Facto inequalities and placing the weaker sections on a footing of equality.



- When competing rights between the general and the reserved candidates require adjudication and adjustment with the rights of general candidates, the doctrine of Violation of Art.14 have no role to play, as some protective discrimination itself is a facet of Article 14 and it does not again deny equality to the reserved candidates.
- The very concept of equality is valid classification for preferences in favor of disadvantaged classes of citizens to improve their conditions so as to enable them to raise their position of equality with other more fortunate classes of citizen.

Principle of natural justice:

Doctrine of natural justice means fairness in action. It means Right to be heard before adverse action taken. Principle of Natural Justice is an integral part of the guarantee of equality assured by Art. 14 37 Natural justice is applicable to judicial, quasi-judicial, administrative orders affecting. Prejudicially unless they said rule is expressly exclude 38. Principle of Natural Justice is requirement of Art. 14.

Few cases:

- Where permission is granted to open a school, a subsequent decision cancelling the same without notice is not valid.
- An order cancelling the contract without notice to the affected person is not valid.
- Excluding a name from the list of eligible members of contractors on basis of decision of screening committee but without notice to the affected person is violation of Art. 14.

Right cannot be waived

A person cannot voluntarily get discrimination or waive his Fundamental Right against discrimination

Any Person:

- Any person, natural or artificial, whether he is a citizen or an alien, is entitled to the protection of Article 14.
- Government servants do not lose the protection of Article 14 by entering into Government service.
- Even a prisoner in a jail is entitled to equal treatment under the Prison Rules.
- The state itself is a juristic person. Hence, where no special provision is made the state has an equal right with other persons. The benefit of S.5 Limitation act under delay in filing appeal could be condoned, must be given to state also.



Who can complain of the violation of equal protection?

Only a person, who is aggrieved by the alleged discrimination, can challenge the validity of a law on ground of violation of Article 14. Thus the person aggrieved means a person who suffers a legal injury.

The petitioner cannot complain unless he belongs to the class of persons who are alleged to have been discriminated against.

Right to equal access to the Court:

Equal access to the courts for indication of legal right may also be regarded as a condition of equal protection and a person should not be deprived of such protection unless there is any reasonable basis of such classification. Access to the court is a right vested to every citizen and that the same cannot be denied even when the statutes are silent. Access to the Court is an important right to every citizen.

Limitation for Rule of access to the Court:

- It does not prevent the adjudication of Special cause or Dispute by Special tribunals.
- When right is created by the statute the statute may provide for a special remedy and a special forum for the determination of such right in which case, there is no right to take the matter to the ordinary courts except in certain cases.
- Reasonable checks may be imposed, in the public interests, to prevent vexatious litigations.

Justice should be available to all

In recent times, it has been realized that there cannot be any real equality in the 'Right to sue and sued', unless legal advice is available to the poorer people, in the same manner as to other, whether in civil or criminal matters. Without free advice, there is a virtual denial of equal justice to the poor man. The object of this Article 14 was to ensure equal justice which has been promised to all citizens by the preamble, and to further guarantee of equality before the under Article 14.

Important case: Smt.Maneka Gandhi V.Union of India. AIR 1978 SC 597.

On July 4 1977, Smt.Maneka Gandhi received a letter from the Regional Passport Officer Delhi, intimating her to surrender the passport (No. K.869668) within 7 days from the date of receipt of the letter, as it was decided by the Government of India to impound her passport under Section 10(3) (c) of the Passport Act 1967 in the public interest. The petitioner sends a letter to the Regional Passport Officer asking the reasons and requesting her to provide a copy of the statement of reasons for making the order.

On reply it was send by the Ministry of External Affairs, Government of India, on July 6, 1977 stating that the Government has decided t impound the passport



1. In the interest of the Public and
2. Not to hand over her a copy of the statement of reasons.

So the Petitioner filed a petition

- Is Section 10(3) (c) of the Passport Act 1967, violates the Article 14 of the Indian Constitution?

Under Section 10(3) (c) of the Passport Authority impounded the passport of the petitioner “in the interest of general public”, Thus it confers unguided and unfettered power to the Passport Authority.

- It is violative of the Equality clause contained in Article 14.

Practical Application of Right to Equality and Opportunity (Article-14)

Article 14 of Indian constitution says that there should not be any discrimination on the basics of caste, Sex, Race, Class and religion, But in actual practice it is not followed strictly in Indian Society Discrimination could be seen on the basis of caste, sex, class, and Religion etc... everywhere. India is a caste based society and caste is playing predominate role in social as well as political life of individuals. Similarly since birth preference is given to male child in Indian society and girl child is neglected in education property rights etc... Religions discrimination is al so found in many parts of India Violence against religions minority especially Christians could be seen in several parts of India. Preferential treatment is given to high class people in every sphere of life when compare to low class people. How can we say that equality is maintained and all are treated equally when Article 14 is violated. Many people are keeping quiet and or not fighting for their rights. Educational levels of the people should be increase and there by awareness will be promoted then only people will come forward and fight for their rights.

Conclusion:

Right 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 are vested not only to citizens but to all 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 Lowe class in the society to bring Equality. Absolute equality is impossible but there should not be inequality. 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 state.

References:

1. Adithya Singh, preamble of constitution of India and its significance.
2. Dicey, law of the constitution, 10 Ed. (1959)
3. Indhra sawhney V. union of India.
4. Ashutosh Gupta V state of Rajasthan (2002) 4 SCC 34.
5. Kesavanadha Bharathi V. State of Kerala
6. M.GBadappanavar V State of Karnataka.
7. Secretary, H.S.E.B.V.Suresh Ais 1999 Sc 1160:(1999)3 Sc 601
8. Farida Bad Singh V, New Delhi Municipal Committee Air 1996 Sc 1175: (1996) 2SSc 459.
9. Dalmia cement (Bharat) Ltd.V Union of India, (1996) 10 Sec 104 (Para 15)
10. Yousuf Abdul Aziz vs State of Bombay, 1954 SCR 930; AIR 1954 SC 321.
11. Indian Express News Paper (p) LTD vs Union of India, 1995, Supp (4) SSC 758
12. St.Stephen College Vs University of Delhi (1992), ISCC 558: AIR 1992 SC.