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Right to Equality Under Article -14

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5.1 Introduction

- ▶ The right to equality is embodied in a series of articles from Article 14 to 18 of the Constitution of India.
- ▶ Article 14 contains the principle of rule of law and Articles 15, 16, 17 and 18 contain the application of this principle.
- ▶ The Preamble to the Constitution of India provides for equality of status and opportunity.
- ▶ Equality forms part of the basic structure of the Constitution of India.

5.2 Article 14 - Equality Before The Law

- ▶ Article 14 of the Constitution guarantees that all people shall be equally protected by the laws of the country.
- ▶ It means that the State will treat people in the same circumstances alike.
- ▶ This Article also means that individuals, whether citizens of India or otherwise shall be treated differently if the circumstances are different.
- ▶ There are two expressions used in Article 14
 - equality before the law. and
 - equal protection of the laws.
- ▶ Both these expressions sound similar but have different connotations.
- ▶ The expression 'equality before the law' has its origin in the English Common Law.
- ▶ It means that amongst equals law shall be equal and shall be equally administered.
- ▶ The expression equal protection of laws has its source in the U.S. Constitution.
- ▶ Equality before the law is a negative concept and equal protection of the laws is a positive concept.
- ▶ The doctrine of equality before the law is equally operative against the legislature itself.
- ▶ If the legislature dares to enact an enactment inconsistent with any provisions of Fundamental Rights, the courts are competent enough to pronounce it unconstitutional.
- ▶ Equal protection of the laws means the right to equal treatment in similar circumstances, both in privileges conferred and liabilities imposed.
- ▶ Both the rule of procedure and the substantive law come under the purview of Article 14.
- ▶ Equal protection requires affirmative action by the State towards unequal by providing them facilities and opportunities.
- ▶ Article 14 applies to any person including any company, association, citizen, non-citizens, natural persons as well as legal persons.
- ▶ The rule does not prevent certain classes of persons from being subject to special rules.
- ▶ For example, Article 361 is an exception to the rule of law.
- ▶ It provides that the president of the Governors or the Rajpramukhs shall not be answerable to any court for the exercise and performance of the powers and duties of the office.

- ▶ This is because of, the reason. that Article 14 does not imply that the same laws should apply to all persons or that every law must have universal application because all persons are not, by nature, attainment or circumstances, in the same position.
- ▶ This Article prohibits class legislation which makes improper discrimination by conferring particular privileges upon a class of persons arbitrarily selected but it permits reasonable classification for the purpose of achieving specific ends.
- ▶ For classification to be reasonable, two conditions must be fulfilled:
 - The classification must be based on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group.
 - The differentia must have a rational relation with the object sought to be achieved by the act.
- ▶ It means that there must be some nexus between the differentia and the object so that the classification does not appear arbitrary or discriminatory.
- ▶ What Article 14 strikes at is arbitrariness because any action that is arbitrary must necessarily involve negation of equality.
- ▶ The doctrine of classification which is evolved by the courts is not a paraphrase of Article 14 nor is it the objective or end of that Article.
- ▶ It is merely a judicial formula for determining whether the legislative or executive action in question is arbitrary and therefore the constitutional denial of equality.
- ▶ In fact, the concept of reasonableness and non-arbitrariness pervades the entire constitutional scheme and is a golden thread that runs through the whole of the fabric of the Constitution.
- ▶ In Menaka Gandhi's case, the court had opined that Article 14 was not to be equated with the principle of classification. It was primarily a guarantee against arbitrariness in State action and the doctrine of classification was evolved only as a subsidiary rule for testing or determining whether a particular State action was arbitrary or not.

5.3 Article 15 - Social Equality and Equal Access to Public Areas

- ▶ Article 15 of the constitution states that no person shall be discriminated on the basis of religion, race, caste, sex or place of birth.
- ▶ Every person shall have equal access to public places like public parks, museums, wells, bathing ghats, etc.
- ▶ However, the state may make any special provision for women and children.
- ▶ As per Article 15(4), special provisions may be made for the advancements of any socially or educationally backward class or Scheduled Castes or Scheduled Tribes.
- ▶ For the purpose of Article 15 (4), backwardness must be both social and educational and caste cannot be made the sole or dominant test for determining the backwardness of a class of citizens.
- ▶ It was held that order under Article 15(4) need not be in the form of legislation, it can also be in the form of an executive order.
- ▶ Speaking generally and in a broad way, a special provision should be less than 50% - The actual percentage must depend upon the relevant prevailing circumstances in each case.

- ▶ The court further commented that the interests of weaker sections of society, which are the first charge on the State and the center, have to be adjusted with the interests of the community as a whole.
- ▶ Regarding Article 15 (4), the court observed that it is only an enabling provision and does not impose any obligations on the State to take any special action under it.

5.4 Article 16 - Equality In Matters of Public Employment

- ▶ Article 16 of the Constitution lays down that the State cannot discriminate against anyone in the matters of public employment.
- ▶ All citizens can apply for government jobs, however, there are some exceptions.
- ▶ However, this does not prevent the State from laying down the requisite qualifications for recruitment in government services.
- ▶ It also prohibits discrimination by the State in relation to employment or appointment to any office under the State on the grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them.
- ▶ Article 16 allows the State to reserve seats in favor of backward classes of citizens which according to State are not adequately represented in the services under the State. This may be meant for posts that require knowledge of the locality and language of the area.
- ▶ The State may also reserve posts for members of backward classes, scheduled castes or scheduled tribes which are not adequately represented in the services under the State to bring up the weaker sections of the society.
- ▶ Also, there a law may be passed that requires that the holder of an office of any religious institution shall also be a person professing that particular religion. According to the Citizenship (Amendment) Bill, 2003, this right shall not be conferred to overseas citizens of India.
- ▶ In the landmark case of Indra Sawhney v Union of India also known as the Mandal Commission Case, the Supreme Court dealt with various aspects of the complex issue of reservation and gave out a very thoughtful judgment. Some of the key aspects of the judgment are
 - A creamy layer must be excluded from Backward Classes.
 - Article 16(4) is not an exception to Article 16(1), but an independent clause. Article 16(a) is exhaustive of the subject of reservation in favor of backward classes, though it may not be exhaustive of the very concept of reservation. Reservation for other classes can be made under article 16(1).
 - Reservation shall not exceed the 50% limit. Carry forward rule is valid provided it should not result in the breach of the 50 % rule.
 - Reservation in appointments under Article 16(4) confined to initial appointments only. There shall be no reservation in promotion.
 - Backward classes referred to in Article 16(a) shall not be the same as the Socially and Educationally Backward Classes referred to under Article 15(5).
 - Article 16(4) permits the classification of Backward classes into backward and more backward classes.

- ▶ In the aftermath of the Mandal commission Judgment, clause (4A) was added in Article 16 by way of the Seventy Seventh Amendment Act, 1995 providing for reservation in the matters of promotion.

5.5 Article 17 - Abolition of Untouchability

- ▶ Article 17 of the constitution abolishes the practice of untouchability.
- ▶ The practice of untouchability is an offense and anyone doing so is punishable by law.
- ▶ It can be termed as one of the earliest efforts made in the direction of social reforms.
- ▶ since the Article contemplates the practice of untouchability to be a punishable offense, the legislature enacted the protection of the Civil Liberties Act, 1955 previously known as the Untouchability (Offenses) Act, 1955 to prescribe punishment for untouchability and other practices connected with it.
- ▶ The word untouchability has not been defined either under Article 17 or the Protection of Civil Liberties Act, 1955.
- ▶ The term has not been used in the Article in a literal or grammatical sense.
- ▶ it actually refers to the social disabilities historically imposed on certain classes of people by reason of their birth in certain castes and would not include instigation of a social boycott by reason of the conduct of certain persons.
- ▶ The record 'Harijan' prime facie refers to an untouchable.
- ▶ Untouchability is an integral part of the case system and is not based on men's rea. Men's rea means guilty, mind.

5.6 Article 18 - Abolition of Titles

- ▶ Article 18 of the constitution prohibits the State from conferring any titles.
- ▶ Citizens of India cannot accept titles from a Foreign State.
- ▶ The British government had created an aristocratic class known as Rai Bahadurs and Khan Bahadurs in India * these titles were also abolished.
- ▶ However, Military and academic distinctions can be conferred on the citizens of India.
- ▶ The awards of 'Bharat Ratna' and 'Padma Vibhushan, cannot be used by the recipient as a title and do not, accordingly, come within the constitutional prohibition.
- ▶ The Supreme Court, on 15 December 1995, upheld the validity of such awards.

5.7 References

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