DISCLAIMER

No part of this publication may be reproduced or copied in any form by any means without prior written permission of Managing Editor of IJLRA. The views expressed in this publication are purely personal opinions of the authors and do not reflect the views of the Editorial Team of IJLRA.

Though every effort has been made to ensure that the information in Volume I Issue X is accurate and appropriately cited/referenced, neither the Editorial Board nor IJLRA shall be held liable or responsible in any manner whatsoever for any consequences for any action taken by anyone on the basis of information in the Journal.

Copyright © International Journal for Legal Research & Analysis
EDITORIAL TEAM

EDITORS

Ms. Ezhiloviya S.P.
Nalsar Passout

Ms. Priya Singh
West Bengal National University of Juridical Science

Mr. Ritesh Kumar
Nalsar Passout

Mrs. Pooja Kothari
Practicing Advocate

Dr. Shweta Dhand
Assistant Professor
ABOUT US

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS

ISSN

2582-6433 is an Online Journal is Quarterly, Peer Review, Academic Journal, Published online, that seeks to provide an interactive platform for the publication of Short Articles, Long Articles, Book Review, Case Comments, Research Papers, Essay in the field of Law & Multidisciplinary issue. Our aim is to upgrade the level of interaction and discourse about contemporary issues of law. We are eager to become a highly cited academic publication, through quality contributions from students, academics, professionals from the industry, the bar and the bench. INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS ISSN

2582-6433 welcomes contributions from all legal branches, as long as the work is original, unpublished and is in consonance with the submission guidelines.
ARTICLE 14: A BULWARK AGAINST ARBITRARY STATE ACTION

By Sparsh Sharma

Student, Faculty of Law
Aligarh Muslim University, Aligarh

INTRODUCTION

Articles 14 to 18 of the Indian Constitution deal with the right to equality. One must acknowledge the fact that in the series of Constitutional provisions from Article 14 to 18, Art 14 is the most significant one because in situations not covered by Art 15 to 18, the general principle of Equality as embodied in Art 14 comes into picture. Therefore, it is worth knowing about Art.14 in detail. But before moving forward it is necessary to know that what Art 14 actually states. Art 14 declares that:

The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.

Thus, this article uses two expressions: ‘equality before the law’ and ‘equal protection of the laws’. Although prima facie both these expressions may seem identical, but, in reality, they have different meanings. The Supreme Court had observed in Sri Srinivasa Theatre v. Govt. of Tamil Nadu, that the two expressions ‘equality before law’ and ‘equal protection of law’ do not mean the same thing even if there may be much in common between them. Both these expressions are discussed below in detail.

EQUALITY BEFORE LAW

The expression ‘equality before law’ finds place in most of the written Constitutions around the world. However, it is a negative concept which ensures that there is no special privilege in favour of any one, that all are equally subject to the ordinary law of the land and that no person, whatever be his rank or condition, is above the law. This shows that, it is a necessary corollary to the concept of the rule of law.

Thus equality before law simply means absence of any special privileges for any particular person. However, it is not an absolute rule and there are a number of exceptions to it. For e.g., under international law, foreign diplomats enjoy immunity from the country’s judicial process; Art. 361 of Indian Constitution extends immunity to the President of India and the State Governors from any criminal proceedings; public officers and judges also enjoy some protection, and some special

---

1 AIR 1992 SC 1004.
groups and interests, like the trade unions, have been accorded special privileges by law. An important thing is that the concept of equality before law does not involve the idea of absolute equality amongst all, achieving which is physically impossible.

**EQUAL PROTECTION OF THE LAWS**

The expression *equal protection of the laws* is based on sec 1 of the fourteenth Amendment of the Constitution of USA adopted on July 28, 1868 which runs as: “nor shall any State deny to any person within its jurisdiction the equal protection of laws.” This has been interpreted to mean subjection to equal law, applying to all in the same circumstances. It only means that all persons similarly circumstanced shall be treated alike both in the privileges conferred and liabilities imposed by the laws.

Thus, the concept of equal protection of laws is positive in content because it does not mean that identically the same law should apply to all persons, or that every law must have a universal application within the country irrespective of differences of circumstances. Rather it postulates the application of the same laws alike and without discrimination to all persons similarly situated. It implies that among equals the law should be equal and equally administered, that the like should be treated alike without distinction of race, religion, wealth, social status or political influence.

**ARTICLE 14 PERMITS REASONABLE CLASSIFICATION**

As all persons are not equal by nature or circumstances, the varying needs of different classes or sections of people require differential treatment. This leads to classification among different groups of persons and differentiation between such classes. Accordingly, to apply the principle of equality in a practical manner, the courts have evolved the principle that if the law in question is based on rational classification it is not regarded as discriminatory. Thus, a legislature is entitled to make reasonable classification for purposes of legislation and treat all in one class on an equal footing. The Supreme Court has underlined this principle thus:

“Art. 14 of the Constitution ensures equality among equals: its aim is to protect persons similarly placed against discriminatory treatment. It does not however operate against rational classification. A person setting up a grievance of denial of equal treatment by law must establish that between persons similarly circumstanced, some were treated to their prejudice and the differential treatment had no reasonable relation to the object sought to be achieved by the law.”

Art 14, therefore, forbids class legislation; it does not forbid reasonable classification of persons,

---

objects and transactions by the Legislature for the purpose of achieving specific ends.

**Test of Reasonable Classification**

In order to be ‘reasonable’, a classification must not be arbitrary, artificial or evasive, but must be rational, that is to say, it must not only be based on some qualities or characteristics which are to be found in all the persons grouped together and not in others who are left out but those qualities or characteristics must have a reasonable relation to the object of the legislation. Thus, in order to be reasonable the classification must fulfill the following conditions, namely, that

1. the classification must be founded on an intelligible differentia which distinguishes those that are grouped together from others, and
2. the differentia must have a rational relation to the object sought to be achieved by the Act.

The differentia which is the basis of the classification and the object of the Act are two distinct things. What is necessary is that there must be a nexus between the basis of classification and the object of the Act which makes the classification. The Supreme Court made the following observation in *K. Thimmappa v. Chairman, Central Board of Directors, SBI*:

“When a law is challenged to be discriminatory essentially on the ground that it denies equal treatment or protection, the question for determination by the Court is not whether it has resulted in inequality but whether there is some difference which bears a just and reasonable relation to the object of legislation. Mere differentiation does not per se amount to discrimination within the inhibition of the equal protection clause. To attract the operation of the clause it is necessary to show that the selection or differentiation is unreasonable or arbitrary, that it does not rest on any rational basis having regard to the object which the legislature has in view.”

The Supreme Court has however warned against over-emphasis on classification. The Court has explained that:

“the doctrine of classification is only a subsidiary rule evolved by the courts to give practical content to the doctrine of equality, over-emphasis on the doctrine of classification or anxious or sustained attempt to discover some basis for classification may gradually and imperceptibly erode the profound potency of the glorious content of equity enshrined in Art. 14. The over-emphasis on classification would inevitably result in substitution of the doctrine of classification for the doctrine of equality… Lest, the classification would deny equality to the larger segments of the society.”

**Basis of Classification**

---

7 AIR 2001 SC 467.
8 *L.I.C. of India v. Consumer Education and Research Centre*, AIR 1995 SC 1811, 1822 ; (1995) 5 SCC 482,
There is no exhaustive list of circumstances or essentials to determine that what may be the basis of a reasonable classification. The basis of classification may be geographical, vocational, difference in time, difference in nature of persons, income, trade and callings or occupation etc. The position will be clearer by a perusal of the following illustrative cases.

In *Krishna Singh v. State of Rajasthan,* the validity of Marwar Land Revenue Act, 1949, that prescribed a procedure for fixing fair and equitable rent payable by the tenants in the Marwar region was challenged. It was contended that it did not apply to the whole State. Rejecting the objection, the Supreme Court stated that Art. 14 prohibits unequal treatment of persons similarly situated. The Act would be bad if it were established that conditions prevailing in other areas of the State were similar to those in Marwar where the Act applied. This was not proved. An Act could not be held discriminatory merely because it did not apply to the whole State.

In *Western India Theater v. Cantonment Board,* a higher tax on cinema house containing large seating accommodation and situated in fashionable and busy localities where the number of visitors are more numerous, than the tax imposed on smaller cinema house containing less accommodation and situated in a locality where visitors are poor and less numerous, was held not to be violative of the equal protection clause of Art 14. The classification was based on income of cinema house.

In *Indian Express Newspapers v. Union of India,* it was held that the classification of newspapers into small, medium and big newspapers on the basis of their circulation for the purpose of levying custom duty on newsprint is not violative of Art 14.

In *State of Bihar v. Bihar 10 + 2 Lecturers Associations,* it was held that there is clear distinction between a trained teacher and untrained teacher. Such a distinction is valid, rational and reasonable. Trained teachers, therefore can neither be said to be similarly circumstanced nor do they form one and the same class. The classification is reasonable and is based on intelligible difference which distinguishes one class (trained) and the other class (untrained) which is left out. It cannot therefore be said that different pay scales cannot be fixed for trained teachers on the one hand, and untrained teachers on the other hand. Prescribing different pay scales cannot be held illegal, improper or unreasonable infringing Art 14 of the Constitution.

**NEW CONCEPT OF EQUALITY**

In *E.P. Royappa v. State of Tamil Nadu,* the Supreme Court drifted from the traditional concept of equality which was based on reasonable classification and laid down a new concept of equality.

---

9 AIR 1955 SC 795.
10 AIR 1959 SC 582.
11 (1985) 1 SCC 641.
12 AIR 2007 SC 1948.
13 AIR 1974 SC 555.
Bhagwati, J. propounded the new concept of equality in the following words:

“Equality is a dynamic concept with many aspects and dimensions and it cannot be ‘cribbed cabined and confined’ within traditional and doctrinaire limits. From a positivistic point of view, equality is antithesis of arbitrariness. Where an act is arbitrary, it is implicit in it that it is unequal both according to political logic and constitutional law and is therefore violative of Art 14.”

The court reiterated the same opinion in Maneka Gandhi v Union of India where it was observed that Art 14 strikes at arbitrariness in state action and ensures fairness and equality of treatment. This new approach has been consistently applied by the courts in determining the true scope of the equalizing principle.

In D.S. Nakara v. Union of India, the Supreme Court struck down Rule 34 of the Central Services (Pension) Rules, 1972 as unconstitutional on the ground that the classification made between pensioners retiring before a particular date and retiring after a particular date was not based on any rational principle and was arbitrary and violative of Art 14.

In A.L. Kalra v. Project and Equipment Corporation, the appellant had lost his job because he had failed to utilize certain loans he had taken from the corporation and had also failed to return the same within the stipulated period. The court quashed the order partly for the reason that it was arbitrary and was violative of Art 14. Desai J observed:

“One need not confine the denial of equality to a comparative evaluation between two persons to arrive at a conclusion of discriminatory treatment. An action per se arbitrary itself denies equality of protection by law.”

While the application of the doctrine of reasonable classification is conditional upon some comparatively differential treatment between two persons or two classes of persons, the arbitrariness doctrine is not thus handicapped. It can and has been invoked for any sufficiently serious failure to base an action on good reasons. This new approach to constitutional adjudication involving Art 14 has enormously widened the scope of the application of this article.

The articulation of a new standard was welcomed by many scholars and constitutionalists, who had critiqued the doctrine of reasonable classification for its inadequacy and inappropriateness when applied to certain cases. However, the doctrine of arbitrariness was not without its critics. The most poignant criticism was made by the famous jurist and constitutional expert H.M. Seervai who stated thus: “The new doctrine hangs in the air, because it propounds a theory of equality

---

14 AIR 1978 SC 597.
15 AIR 1983 SC 130.
without reference to the language of Art. 14.”  

He further stated that the new doctrine suffers from “fallacy of undistributed middle” in that “whatever violates equality is not necessarily arbitrary, though arbitrary actions are ordinarily violative of equality.”

Notwithstanding the soundness or otherwise of the arguments against the enunciation of the new doctrine, there is certain amount of vagueness associated with the doctrine of arbitrariness that has troubled lawyers and academicians alike.

In *Natural Resources Allocation, in re*, the Supreme Court had the opportunity to comment on the ‘doctrinal looseness’ of the arbitrariness test. The Court observed that “A law may not be struck down for being arbitrary without the pointing out of a constitutional infirmity.”

Thus, one may contend that there exists some amount of uncertainty on the question of legitimacy of application of the arbitrariness test to review the constitutionality of statutes. However, notwithstanding the doubtful legitimacy of such an exercise, it is very clear in view of the judicial pronouncements made by the constitution benches of the Supreme Court that such an exercise is constitutionally valid and permissible.

**CONCLUSION**

As is clear from the foregoing analysis, Art 14 of the Indian Constitution bars discrimination and prohibits discriminatory laws. It embodies the idea of equality expressed in the Preamble because it does not speak of mere formal equality before the law but embodies the concept of real and substantive equality which strikes at the inequalities arising on account of vast social and economic differentiation in a country like India and is thus an essential ingredient of social and economic justice. It may be noted that the right to equality has been declared by the Supreme Court as a basic feature of the Constitution. Art 14 is now proving as a useful weapon against any arbitrary or discriminatory state action. The horizons of equality as embodied in Art. 14 have been expanding as a result of the judicial pronouncements, from time to time, and it has now come to have a ‘wider ambit’.

---