

Right to Equality/ASR

Rule of law-Introduction

- Edward Coke has originated the doctrine of rule of Law. “Rule of law” is essentially embodied in Article 14 of the Constitution.
- The concept of Rule of Law is that the *state is governed, not by the ruler* or the nominated representatives of the people but *by the law*.
- The *King is not the law but the law is king*
- *No man is above law*
- *Every person is subject to the jurisdiction of ordinary courts of law irrespective of their position and rank.*

Dicey/Propounder modern rule of law

- According to Professor A.V Dicey, for achieving rule of law three principles of postulates must be followed which are as follows:
- Supremacy of law
- Equality before law and
- Predominance of Legal Spirit

Supremacy of law

As per the first postulate, rule of law refers to the *lacking of arbitrariness or wide discretionary power*

Equality before law

- *Equal subjection of all classes to the ordinary law of land. French legal system of Droit Administratif was also criticized by him as there were separate tribunals for deciding the cases of state officials and citizens separately.*

Predominance of Legal Spirit

Thirdly, that *the rule of law should emanate not from any written constitution but from the “common law”, which he call it as predominance of legal spirit as foundation of constitutional law of any country.///No deprivation of rights and liberties by an administrative action except by law*

MODERN AGE

- In modern age, the concept of rule of law oppose the practice of conferring discretionary powers upon the government.
- **discretionary power would lead to arbitrariness**
- The Supreme Court has declared that rule of law to be one of the 'basic features' of the Constitution (*Indira Nehru Gandhi v Raj Narain, AIR 1975 SC*)
- The two great values which emanate from the concept of Rule of law in modern time are:
 - no arbitrary government: and
 - upholding individual liberty.

Introduction –

- Articles 14 to 18 of the Constitution guarantee the right to equality to every citizen of India. **Article 14 embodies the general principle of equality before law and prohibits unreasonable discrimination between persons.**
- **Article 14 uses two expression “equality before the law” and “equal protection of the law”.**
- **The first expression ‘equality before law’ is of English origin and the second expression has been taken form the American Constitution..**

Expressions -do not convey the same meaning

- While 'equality before the law' is a somewhat negative concept implying the absence of any special privilege in favour of individuals and the equal subject of all classes to the ordinary law.
- "Equal protection of the law" is a more positive concept implying equality of treatment in equal circumstances.

Limitation-1

- Article 359(1) provides that where a proclamation of emergency is in operation the President may, by order, declare that the right to move any court for the enforcement of such rights conferred by Part III (except Arts. 20 and 21) shall remain suspended. Thus, if the President of India issues an order, where a Proclamation of Emergency is in operation, enforcement of Article 14 may be suspended for the period during which the Proclamation is in force.

Limitations-2&3

- **Article 361 lays down that the President and the Governors are exempted from any criminal proceeding during the tenure of their office.**
- **Under International law, foreign sovereign and ambassadors enjoy full immunity from any judicial process. This is also available to enemy aliens for acts of war.**

IDENTICAL TREATMENT IN UNEQUAL CIRCUMSTANCES WOULD AMOUNT TO INEQUALITY

- *– The equal protection of laws guaranteed by Article 14 does not mean that all laws must be general in character. It does not mean that the same laws should apply to all persons. It does not mean that every law must have universal application for, all persons are not, by nature, attainment or circumstances in the same position. The varying needs of different classes of persons often require separate treatment.*
- *In fact, identical treatment in unequal circumstances would amount to inequality.*

Article 14 applies where equals are treated differently

- *Thus, what Article 14 forbids is class-legislation but it does not forbid reasonable classification.*
- *Article 14 applies where equals are treated differently without any reasonable basis. But where equals and unequals are treated differently, Article 14 does not apply. Class legislation is that which makes an improper discrimination by conferring particular privileges upon a class of persons arbitrarily selected from a large number of persons, all of whom stand in the same relation*

Test of Reasonable Classification

- *While Article 14 forbids class legislation, it does not forbid reasonable classification of persons, objects and transactions* by the legislature for the purpose of achieving specific ends. *But classification must not be “arbitrary, artificial or evasive”*. *It must always rest upon some real and substantial distinction bearing a just and reasonable relation to the object sought to be achieved by the legislature.*

Classification to be reasonable must fulfil the following two conditions: -

- 1. The classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group; and**
- 2. The differentia must have a rational relation to the object sought to be achieved by the Act.**

Note: A **child below the age of 7** is totally exempted from criminal liability since it is presumed that a child below 7 cannot form guilty intention. Between 7 to 12 ,it depends on his mental maturity. Above 12, treated as an adult for ascertaining criminal liability

Child below 7

- However, if a child irrespective of age commits a tort (Tort is a civil wrong other than a breach of contract or breach of trust) is liable.
- The reason for this is in case of criminal liability, the consequence is punishment to the offender. However, in case of civil liability, generally the consequence is payment of compensation, which can be paid by the parents
- Another difference between a crime and a civil wrong is that in case of crime, the focus is on accused, whether he committed a crime. However, in case of a civil wrong, the focus is on the victim, whether his right is infringed

Nexus between the basis of classification and the object of the Act

- *There must be a nexus between the basis of classification and the object of the Act which makes the classification*
- *Thus, the Legislature may fix the age at which persons shall be deemed competent to contract between themselves. No contract can be made to depend upon the stature or colour of the hair. Such a classification will be arbitrary.*

Joseph Shine v. Union of India (2108)

- Adultery no longer a crime: The Supreme Court in a landmark ruling on September 27, 2018 struck down the 158-year-old Section 497 that criminalised adultery and said that women must be treated at par with men. Adultery law came under sharp criticism for treating women as possessions rather than human beings. The court underlined that Section 497 treats women as properties of their husbands and is hence manifestly discriminatory. CJI Justice Dipak Misra said that there can't be a social license to destroy the institution of marriage and added that the law violates Right to Privacy to some extent.

Shayara Bano versus Union of India(2017)

- **Declaring Triple Talaq unconstitutional**: In a landmark judgement, Supreme Court of India declared in the case *Shayara Bano v. Union of India and others* that the practice of 'talaq-e-bidat', also called the 'instant triple talaq', is unconstitutional by a 3:2 majority. While Justices Nariman and Lalit held that instant Triple Talaq is unconstitutional and violative of Article 14 (Right to Equality), Justice Joseph struck down the practice on the ground that it goes against Shariat and the basic tenets of the Quran. The verdict unequivocally established that this practice runs in defiance of the principles of equity, international human rights law and also asserted that "triple talaq is not a basic and integral part of Islam".

Indian Young Lawyers Assn. v. State of Kerala (2018)

- **Lifting ban on entry of women (aged 10-50) inside Sabarimala Temple:** Sabarimala temple in Kerala is a Hindu pilgrimage center in Periyar Tiger Reserve in Kerala, the Ayyappan temple in Sabarimala clocks about 45–50 million devotees every year. Saying that "Devotion cannot be subjected to gender discrimination", the Supreme Court on September 28, 2018, removed a ban that prevented women between 10 and 50 years of age from entering Kerala's Sabarimala temple.

CAA

- **The act offers asylum to non-Muslim illegal immigrants from three countries - Pakistan, Bangladesh and Afghanistan.**
- **It amends India's 64-year-old citizenship law, which currently prohibits illegal migrants from becoming Indian citizens.**
- **It also expedites the path to Indian citizenship for members of six religious minority communities - Hindu, Sikh, Buddhist, Jain, Parsi and Christian - if they can prove that they are from Muslim-majority Pakistan, Afghanistan or Bangladesh. They will now only have to live or work in India for six years - instead of 11 years - before becoming eligible to apply for citizenship.**
- **The government says this will give sanctuary to people fleeing religious persecution.**
- **Opponents say that faith cannot be made a condition of citizenship.**
- **But others protesting - particularly in border states - fear being "overrun" by new arrivals from the three neighbouring countries**
- **Refugee seeks asylum/ If granted asylee /amnesty=political**

Modern concept of equality: Protection against arbitrariness

- *In E.P. Royappa v. State of Tamil Nadu(1974) the Supreme Court has challenged the traditional concept of equality which is based on reasonable classification and has laid down a new concept of equality. Bhagwati, J.,* delivering the judgment on behalf of himself, Chandrachud and Krishna Iyer, JJ. 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 to view, *equality is antithesis to arbitrariness.*

EQUALITY AND ARBITRARINESS ARE SWORN ENEMIES

- *In fact, equality and arbitrariness are sworn enemies*; one belong to the rule of law in a republic while the other, to the whim and caprice of an absolute monarch. *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 Article 14”.
- *The conclusion is that if the action of State is arbitrary it cannot be justified even on the basis of doctrine of classification.* Where an act is arbitrary, it is implicit in it that it is unequal and therefore violative of Article 14. Article 14 strikes at arbitrariness in State action and ensures fairness and equality of treatment.

Ajay Hasia v. Khalid Mujib (1981)

- *In Ajay Hasia v. Khalid Mujib, the Regional Engineering College made admissions of candidates on the basis of oral interview after a written test. The test of oral interview was challenged on the ground that it was arbitrary and unreasonable because high percentage of marks were allocated for oral test, and candidates were interviewed only 2 or 3 minutes. the Court held that allocation of 33⅓ percent of the total marks for oral interview infected the admission procedure with arbitrariness.* It was observed that allocation of more than 15 per cent marks to interview will be arbitrary and unreasonable.

Air India v. Nargesh Meerza(1981)

- In *Air India v. Nargesh Meerza*, Supreme Court struck down the Air India and Indian Airlines Regulations on the retirement and pregnancy bar on the services of air hostesses as unconstitutional on the ground that the conditions laid down therein were entirely unreasonable and arbitrary. **Regulation 46 provided that an air hostess would retire from the service of the corporation upon attaining the age of 35 years, or on marriage, if it took place within four years of service or on first pregnancy, whichever occurred earlier. The Court held that the termination of service on pregnancy was violative of Article 14 of the Constitution**

Air India v. Nargesh Meerza(1981)

- Under Regulation 47, The Managing Director had the discretion to extend the age of retirement (by one year at a time) upto the age of 45 years if an air hostess was found medically fit.
- The provision of extension of service of the Air hostess “at the option” of the MD **conferred a discretionary power without laying any guidelines or principles** and liable to be struck down as unconstitutional (Extension of the retirement was **discriminatory entirely at the mercy and the sweetwill** of the MD and the **conferment of wide and uncontrolled power** suffered from the vice of excessive delegation of powers)

Basis of Classification

- *The constitutionality of every statute depends on whether there is a basis for the classification made in the statute. The basis of classification may be different, e.g., geographical, vocational, difference in time, difference in nature of persons, trade and callings or occupations, etc. Let us discuss certain broad classifications*

a) Geographical basis

- **Geographical basis – The words “within the territory of India” used in Article 14 do not mean that there must be a uniform law throughout the country. A law may be applicable to one State and not to another. A State may be divided into several geographical regions and a law may be applicable to one and not to others depending on particular circumstances.**

Discrimination by the State in its own favour

- *The State as a person constitutes a different class as, compared with private citizens. In Sagir Ahmad v. State of Uttar Pradesh, a monopoly created by the State in its favour was held not to violate Article 14. In Baburao v. Bombay Housing Borad, a law which exempt the factories run by the Government but applied to other factories was held not to be discriminatory.*

Discrimination by the State in its own favour

- ***Similarly, it has been held that the Government as a banker can be given special facilities for realisation of its dues which may not be available to other bankers.***
- ***And again a longer period of limitation may be allowed to Government for enforcing its claims as compared to private person in respect of similar claims.***
- **As per the Limitation Act 1963, the statutory period of limitation that is allowed for possession of immovable property or any interest is 12 years in the case of private property and 30 years for public property, from the date the trespasser occupies the property**

Article 14 and Taxation Laws

- *The State has wide power in selecting persons or objects it will tax and a statute is not open to attack on the ground that it taxes some persons and objects and not others.*
- *The legislature has ample freedom to select and classify persons, districts, goods, properties, income and object which it would tax, and which it would not tax.*

Article 14 and Taxation Laws

- ***A taxation law will be struck down as violative of Article 14 if there is no reasonable basis behind the classification made by it, or if the same class of property, similarly situated, is subject to unequal taxation.***
- ***Perfect equality in taxation is impossible and unattainable.***

D) Special Courts and Special Procedure

- Under Article 246(2) Parliament by law is empowered to set up Special Courts and to provide special procedure for the trial of certain 'offences' or 'classes of offences'. Such a law will not be violative of Article 14, if it lays down proper guidelines for classifying 'offences', 'classes of offences' or 'classes' of cases to be tried by Special Court. But the special procedure prescribed by such a law should not be substantially different from the procedure prescribed under an ordinary law.

E) A single individual may constitute a class

- Chiranji Lal v. The Union of India(1961), is the leading case on this point. The facts of the case were that owing to mismanagement in Sholapur Shipping and Weaving Company Limited the management threatened to close down the Mill. The Government of India passed the Sholapur Spinning and Weaving Co. (Emergency Provision) Act empowering the Government to take over the control and management of the company and its properties by appointing their own directors. *The Act was challenged by a stakeholder of the company on the ground that a single company and its shareholder was being denied equality before the law, because the Act treated him differently vis-à-vis other companies and their shareholders. The Supreme Court held the Act valid.*

Chiranji Lal v. The Union of India(1961)

- **The Supreme Court held the Act valid. It said that a law may be constitutional even though it applies to a single individual if, on account of some special circumstances or reasons applicable to him and not applicable to other, that single individual may be treated as a class itself, unless it is shown that there are other who are similarly circumstanced. In the present case the Sholapur Company formed a class by itself because the mismanagement of the Company's affairs prejudicially affecting the production of an essential commodity and had caused serious unemployment amongst labourers.**