

**ARTICLE 14- Right to Equality**

**Assignment of Constitution Law**

**Article14 Right to Equality**

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**L.L.M (1<sup>st</sup> Year)**

# **ARTICLE 14- Right to Equality**

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## **ARTICLE 14- Right to Equality**

### **PREAMBLE**

WE, THE PEOPLE OF INDIA, HAVING SOLEMNLY RESOLVED TO  
Constitute INDIA INTO A "SOVEREIGN SOCIALIST SECULAR DEMOCRATIC  
REPUBLIC" AND to secure all its citizens:

**JUSTICE**, social, economic and political;

**LIBERTY**, of thought, expression, belief, faith and worship;

**EQUALITY**, of status and opportunity; and to promote among them all;

**FRATERNITY**, assuring the dignity of individual the unity and integrity of nation;

IN OUR CONSTITUENT ASSEMBLY this twenty-sixth day of November, 1949, do  
HEREBY ADOPT, ENACT AND GIVE TO OURSELVES THIS CONSTITUTION

## ARTICLE 14- Right to Equality

- **Preamble to the Constitution of India** is "Declaration of Independence" statement & a brief introductory that sets out the guiding principles & purpose of the document. It is the soul of the Indian Constitution, written by the Father of Indian Constitution Dr. B. R. Ambedkar

Proper function of a Preamble is to explain certain facts which are necessary to be explained before the enactments contained in the Act can be understood.<sup>1</sup> Preamble is not an integral part of the Indian constitution was once decided upon by the Supreme Court of India in the *Berubari* case; therefore it is not enforceable in a court of law. However, the Supreme Court of India has, in the *Kesavananda* case, recognised that the preamble may be used to interpret ambiguous areas of the constitution where differing interpretations present themselves. Supreme Court held that the Preamble is an integral part of the Constitution.

The preamble-page, along with other pages of the original Constitution of India, was designed and decorated solely by renowned painter Deodhar Rammanohar Sinha . As such, the page bears Deodhar Rammanohar Sinha's short signature *Ram* in Devanagari lower-right corner.

The preamble described the state as a "sovereign democratic republic". In 1976 the Forty-second Amendment explicitly enacted *secular egalitarianism* feature.

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<sup>1</sup> Adithya Singh, Preamble of Constitution of India and its significance.

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### **Meaning (PREAMBLE):**

A preamble is an introductory and explanatory statement in a document that explains the document's purpose and underlying philosophy. It is considered as the key to understand the constitution. When applied to the opening paragraphs of a law enacted by legislative body, it may recite historical facts pertinent to the subject of the statute. It is distinct from the long title or enacting formula of a law. The Preamble of our constitution is the introductory statement set out the guiding purpose and principal of the Constitution. It is based on the Objective Resolutions presented by Jawaharlal Nehru in the constituent assembly.

### **Chapter 1: Introduction**

The Constitution of India guarantees the Right To Equality through Art 14 to 18. In the series of Constitutional provisions from Article 14 to 18, Art 14 is the most significant. Situations not covered by Art 15 to 18, 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.

## **ARTICLE 14- Right to Equality**

The phrase 'Equality before Law' occurs in almost all written Constitution which guarantees the Right to Equality, the Constitution of United States uses the expression 'Equal protection of law'. Our Constitution, on the other hand, uses both expressions that are Equality before law and Equal protection of law.

The two expressions may seem to be identical, but in fact, they mean different things. As to their origin, it may be said that 'Equality before Law'<sup>2</sup>, while the other expression owes its origin to the American Constitution. Preamble to the Constitution of India emphasises principle of Equality as the basic to the Constitution. Even constitutional amendment which offends basic structure of the Constitution are invalid. The mere fact that Equality which is part of the basic structure, 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. It was held that essence of the principle behind Art.14 is part of basic structure. In fact, essence or principle of the right or nature of violation is more important than equality in the abstract or formal sense.

Equality is one of the magnificent corner stone's of Indian Democracy.<sup>3</sup>

The doctrine of equality before law is a corollary of Rule of law which pervades the Indian Constitution.<sup>4</sup>

Neither Parliament nor any State Legislature can transgress the principle of Equality.<sup>5</sup>

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<sup>2</sup> Dicey, Law of the Constitution, 10Ed.(1959)

<sup>3</sup> Indra sawhney v. Union of India.

<sup>4</sup> Ashutosh Gupta v. State of Rajasthan.

<sup>5</sup> Kesavananda Bharti v. State of Kerala

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## **Chapter 2: 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 beliefs.

- 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<sup>6</sup>.

## **The ideal of equality under Indian Constitution:**

It has been seen that the Preamble to our constitution promises 'equality of status and opportunity to all citizens and that this is the

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<sup>6</sup> M.G.Badappanavar v. State of Karnataka.

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ideal of equality embraces both social and political equality. So far the ideal of social equality is concerned it is embodied in a series of Articles, of which Art.14 is the genus, and succeeding Arts. 15-18 contain particular application thereof. Our constitution is wedded to the concept of equality which is the basic feature of the constitution. Even a constitutional amendment which offends basic feature is declared as 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 liability given to the state and its instrumentalities by the statute enacted under the constitution did not exempt them from honouring constitution itself and they continued to be ruled by Art.14. The equality clause under Art.14 of the constitution does not speak of mere formal equality before law but embodies the real concept of real and substantive equality, strikes at these inequalities<sup>7</sup>. A more positive duty of the state is to minimise inequalities 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.

### **Chapter 3: ARTICLE 14- Right to Equality**

(A) 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.

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<sup>7</sup> Secretary, H.S.E.B. v. Suresh AIR 1999 SC 1160: (1999)3 SCC 601

## ARTICLE 14- Right to Equality

(B)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.<sup>8</sup>
- 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

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<sup>8</sup> Faridabad Singh v, New Delhi Municipal Committee, AIR 1996 SC 1175 : (1996) 2 SSC 459

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- The expression “Equality before law” and “Equal protection of law” does not mean the same thing. Meaning of these expressions has to be found and determined having regard to the context and scheme of our Constitution. 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.
  
- The benefit of “Equality before law” and “Equal protection of law” accrues to every person in India, whether a citizen or not.”We are a country governed by Rule of Law.
  
- 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.<sup>9</sup>

### **1 Equality before the Law :**

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(a) “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.”<sup>10</sup>

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<sup>9</sup> Dalmia Cement (Bharat) Ltd. V. Union of India, (1996) 10 SCC 104 (para 15).

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The “equality before the law” owes its origin to the English Common Law. The doctrine of equality is a dynamic and evolving concept.<sup>11</sup> 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 favour of any individual, and equal subjection of all classes to the ordinary law<sup>12</sup>. It means law should be equal and should equally administered, that is like should be treated alike. In short there shall not be discrimination. It is a declaration of equality of privilege in favour of every individual<sup>13</sup>. It means that no man above the Law of the land and that every person, whatever is his rank or status is subject to ordinary law of land. 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.

### **(b) Rule of Law: (Prof. A.V.DICEY)**

Equality before law is co-relative to the concept of Rule of Law for all round evaluation of healthy social order.

- I. Basic Feature of the Rule of Law is that ‘Justice should not only be done but it must also be seen to be done’.

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<sup>10</sup> VENKATARAMAIYA’S LAW LEXICON-Volume 1 (Human Rights)

<sup>11</sup> Indra Sawhney v. Union Of India, AIR 1993 SC 477

<sup>12</sup> DICEY, Law of the Constitution, 10<sup>th</sup> Ed. (1959)

<sup>13</sup> Amita v. Union of India.

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- II. Judicial review of Administration action is an essential part of Rule of Law.<sup>14</sup>
- III. Independence of Judiciary.
- IV. Non Arbitrariness.

“A number of distinct meanings are normally given to the provision that there should be equality before the law. One meaning is that equality before the law only connotes the equal subjection of all to a common system of law, whatever its content...A second theory asserts that equality before the law is basically a procedural concept, pertaining to the application and enforcement of laws and the operation of the legal system....A third meaning normally borne by declarations that all are equal before the law, perhaps no more than a variant of the second, is that State and individual before the law should be equal”.

### **2 Equal Protection of Law:**

- a) 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

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<sup>14</sup> State of Bihar v. Sbhash Singh

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and equally administered. The guarantee of equal protection applies against substantive as well as procedural laws.<sup>15</sup>

### **b) Limitation of the Doctrine of Equal Protection:**

- i. Every law cannot be made universally applicable. There are different class of persons who require special treatment.
  
  - ii. State has power to classify persons for legitimate purpose. Every classification is likely to produce some inequality and mere production of equality is not enough.<sup>16</sup>
- International Covenant: Article 26- All persons are equal before the law and are entitled without any discrimination to the equal protection of law. Article 26 of the

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<sup>15</sup> Lachmandas v. State of Bombay, (1952) S.C.R. 710 (726)

<sup>16</sup> State of Bombay v. Balsara F.N.

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International Covenant on Civil and Political Rights, 1966, not only uses both the expressions but also adds explanatory words, prohibiting discrimination.

- *Cook Islands & Western Samoa*: Article 64(a) of Cook Islands and Article 15(1) of the Constitution of Western Samoa<sup>17</sup> combine the concept of equality and equal protection in the following words; “The right of the individual to equality before the law and to the protection of the law”
  
- *Japan*: Article 14 of the Japanese Constitution, 1946 also combines the two concepts of legal equality and non-discrimination. Article 14 provides that “All of the people are equal under the and there shall be no discrimination in political, economic or social relations because of caste, creed, sex, social status, or family origin.”

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<sup>17</sup> Vermeulen v. A.G.,(1986) LCR (Cont.)786 (813)-W.Samoa

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- ❖ Once it is conceded that the phrase “equality before law” has a separate content than “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.<sup>18</sup>
  
- ❖ 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 of 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.

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<sup>18</sup> It is unfortunate that though Setalad, in his “Indian Constitution” (p.87), acknowledges the difference in source and content between the two expressions, he does not explain the consequences, if any, of adopting both expressions in the Indian Constitution.

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### ❖ **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 citizen 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; there shall be equality of treatment under Equal circumstances. So the object is that “equals should be treated unlike and unlike should not be treated alike. Likes should be treated alike. The object of Art. 14 is wider and is to ensure fairness and equality of treatment.

### (A) **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 the same laws. It is here the Doctrine of classification steps in. All persons are not equal by nature or circumstances, the varying needs of different classes or sections of people require different treatment. This leads to classification among different groups of persons or class. For the purpose of this Article, even a single institution can form a class by itself and while deciding the question of violation of

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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<sup>19</sup>. Though discrimination is prohibited, that cannot be applied to nullify a discrimination recognised by the Constitution itself.

Art.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.<sup>20</sup> Art.14 does not require that the Legislative classification should be scientifically or logically perfect<sup>21</sup>. Classification for the purpose of legislation cannot be done with mathematical precision. The concept of equality permits rational or discriminating discrimination. Conformity of special benefits or rights or protection to a particular class of citizens is envisaged under Art.14 and is implicit in the concept of equality<sup>22</sup>. Art.14 proceeds on the premise that equality of treatment is required to be given to persons who are equally circumstanced. None should be favoured or should be placed under any disadvantage, in circumstances that do not admit of any reasonable justification for a different.

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<sup>19</sup> Kshetriaya Kisan Gramin Bank v. D. B. Sharma, AIR 2001 SC 168:

<sup>20</sup> D.C.Bhatia v. Union of India, (1995)1 S.C.C. 104.

<sup>21</sup> Ashutosh Gupta v. State of Rajasthan, (2002) 4 SCC 34.

<sup>22</sup> T.M.A. Pai Foundation v. State of Karnataka, (2002) 8 SCC 481.

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a. The two tests of classification are as follows:

1. **Ineligible Differentia:** The classification must be founded on an intelligible differentia which distinguishes those that are grouped together from other, and

2. **Rational Relation:** That differentia must have a rational relation to the object sought to be achieved by the Act.<sup>23</sup>

- Where the law is challenged as offending against the guarantee in Art 14, the first duty of the court is to examine the purpose and policy of the Act and then to discover whether the classification made by the law has a reasonable relation to the object which the Legislature seeks to obtain. The object of the Act is to found in its *Title, Preamble and Provisions*.

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<sup>23</sup> State of West Bengal v. Anvar Ali, (1952) S.C.R. 289.

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- It is not possible to exhaust the circumstances or criteria which may accord a reasonable basis for classification in all cases. It depends on the *object* of the legislature. In order to be 'Reasonable', a classification must not be *arbitrary* but must be *rational*.

### **b. Basis of Classification:**

1. The basis of classification may be *geographical*.
2. The classification may be according to difference in time.<sup>24</sup>
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.

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<sup>24</sup> Dhirendra v. Legal Remembrancer, (1955) 1 S.C.R. 224

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### **c. Classification Authorised by the other provisions of the Constitution:**

1. Any law making special provision for Women (or Children) under Article 15 (3) cannot be challenged on the ground of contravention of Art. 14<sup>25</sup>.
2. Where the Constitution itself makes a classification, the charge of discrimination cannot be levelled against such separate treatment<sup>26</sup>.

### **❖ REASONABLENESS and FAIRNESS is the Heart and Soul of Article 14<sup>27</sup>**

### **❖ Arbitrariness as a test under Art.14:**

- a) 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, the Supreme Court appears to have mingled up the two concepts in broadening the sweep of Art. 14, thus setting up a dynamic concept of equality<sup>28</sup>. An arbitrary action may not be always be mala fide.

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<sup>25</sup> Yusuf Abdul Aziz v. State of Bombay, 1954 SCR 930; AIR 1954 SC 321.

<sup>26</sup> Sianik Motors (M/S) v. State of Rajasthan, AIR 1961 SC 1480 (1486):1962 (1) SCR 517.

<sup>27</sup> Delhi Development Authority v. Joint Action Committee, Allottee of SFS Flats, (2008) 2 SCC 672 (para 43)

<sup>28</sup> Royappa E.P. v. State of T.N, AIR 1974 SC 555 (583); Maneka Gandhi v. Union of India.

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- b) Even if arbitrariness is not found ex facie, the same can be gathered on wholesome reading of the statute and rule, regulations, orders or notifications issued there under. An Act which is discriminatory is liable to be labelled as arbitrary<sup>29</sup>.
- c) 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.
- i. Extending a benefit to one class of establishment and denying to the other class enumerating in the same para of the Act was held to be arbitrary and bad<sup>30</sup>.
- ii. The refusal by university to grant an educational institution permission to start a new law college on the ground that a law college already existed in that district is unreasonable and

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<sup>29</sup> State of A.P v. McDowell & Co. (1996) 3 SCC 709.

<sup>30</sup> Indian Express Newspaper (P.) Ltd. v. Union of India, 1995 supp (4) SSC 758.

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arbitrary as the factor to considered is whether the population requires another such college for the purpose or not<sup>31</sup>.

- iii. A statute creating no right of appeal or only illusory right of appeal is not violative of Art. 14<sup>32</sup>
  
- d) For deciding whether a particular decision was arbitrary or reasonable, the existing circumstances at the time of taking the decision had to be examined and not those prior to the decision<sup>33</sup>. It has held that right to equality now means not only right to be not discriminated, but also protection against arbitrary act of State.
  
- e) Equality is not violated by the mere conferment of discretionary power; it is violated by arbitrary exercise of these on whom conferred.
  
- f) Due to spreading of arbitrariness there is requirement to state reasons in an order or decision. The recording of reasons in a decision would shield it from attack on the ground of arbitrariness or unfairness in the decision making process<sup>34</sup>

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<sup>31</sup> Shivaji University v. Bharati Vidyapeeth, (1999) 3 SCC 224: AIR 1999 SC 1762.

<sup>32</sup> Gujarat Agro Industries Co. Ltd. v. Municipal Corporation of the City of Ahmadabad, (1999) 4 SCC 468 (Para 8, 10 and 11): AIR 1999 SC 1818.

<sup>33</sup> Patna Regional Development Authority v. Rashtria Nirman Nigam, (1996) 4 SCC (para 7): AIR 1996 SC 2074.

<sup>34</sup> S.N. Mukherjee v. Union of India, (1990) 4SCC 594 (para 36): AIR 1990 SC 1984.

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### **❖ 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<sup>35</sup>

- 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

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<sup>35</sup> St. Stephens College v. University of Delhi, (1992) 1SCC 558: AIR 1992 SC.

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calculated to produce equality by eliminating De Facto inequalities and placing the weaker sections of the society 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<sup>36</sup>.
- The very concept of equality is valid classification for preferences in favour of disadvantaged classes of citizen to improve their conditions so as to enable them to raise their position of equality with other more fortunate classes of citizen.
- Sawant, J.-It was held that the object of positive discrimination was empowerment of backward class adequate sharing of power.

### ❖ **Principle of natural justice:**

Doctrine of natural justice means fairness in action. It means Right to be heard before adverse action is taken. Principle of Natural Justice is an integral part of the guarantee of equality assured by Art.14<sup>37</sup>. Natural Justice is applicable to judicial, quasi-judicial, administrative orders affecting

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<sup>36</sup> Jagdish Lal v. State of Haryana, AIR 1997 SC 2366: (1997) 6 SCC.

<sup>37</sup> Union of India v. Tulsiram, (1985) 3SCC 398 (Para.95)

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prejudicially unless the said rule is expressly excluded<sup>38</sup>. Principle of Natural Justice is requirement of Art.14.

### ***Few cases:***

- I. Where permission is granted to open a school, a subsequent decision cancelling the same without notice is not valid<sup>39</sup>.
- II. An order cancelling the contract without notice to the affected person is not valid<sup>40</sup>.
- III. 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<sup>41</sup>

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<sup>38</sup> Jasbir Kaur v. P.S.I.D Corp. Ltd., Chandigarh, AIR 2002 P&H 74.

<sup>39</sup> Madersa E. Garibnawaz v. State of Gujarat, AIR 2005 Guj 65.

<sup>40</sup> A. Krishna Reddy v. State of Andra Pradesh AIR 2003 AP 422.

<sup>41</sup> Surinder Kumar v. Union Territory of Chandigarh, AIR 2003 P7H 77.

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- ❖ **Right cannot be waived:** A person cannot *voluntarily* get discrimination or *wave* his Fundamental Right against discrimination.<sup>42</sup>

### **Any person:**

- 1) Any person, natural or artificial, whether he is a citizen or an alien, is entitled to the protection of Article 14.
- 2) Government servants do not lose the protection of Article 14 by entering into Government service<sup>43</sup>.
- 3) Even a prisoner in a jail is entitled to equal treatment under the Prison Rules<sup>44</sup>.

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<sup>42</sup> Bashesar Nath v. I.T. Commer., AIR 1959 SC 149: 1959.

<sup>43</sup> State of Orissa v. Dharendra Nath Das, AIR 1961 SC 1715.

<sup>44</sup> Ranbir Singh Sehgal v.State Of Punjab, AIR 1962 SC 510.

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4) The State itself is a juristic person. Hence, where no special provision is made, the State has equal rights with other persons. The benefit of S. 5 of Limitation act under delay in filing appeal could be condoned, must be given to State also<sup>45</sup>.

### ➤ **Who can complain of the violation of equal protection?**

1. Only a person, who is aggrieved by the alleged discrimination, can challenge the validity of a law on ground of violation of Article 14<sup>46</sup>. Thus the person aggrieved mean a person who suffers a legal injury.
2. The petitioner cannot complain unless he belongs to the class of persons who are alleged to have been discriminated against<sup>47</sup>.

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<sup>45</sup> Collector, Land Acquisition v. Katiji AIR 1987 SC 1353: (1987) 2 SCC 107.

<sup>46</sup> Ramana Dayaram Shetty v. I.A.A.I., AIR 1979 SC 1628.

<sup>47</sup> Kamakhya Narain Singh v. State of Bihar, AIR 1957.

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- The orthodox view of *Locus Standi* has been modified and the class of persons entitled to enforce Fundamental Rights has been widened by the doctrine of “ *Public Interest Litigation* ” according to which any public minded individual is allowed to invoke Fundamental Rights under Art. 32 & 226. No prejudice need to be proved for enforcing the fundamental rights.

### ***Burden of Proof and Pleading :***

1. The burden of showing that a classification rests upon an arbitrary and not reasonable basis or the discrimination is apparent and manifest is upon the person who impeaches the law as a violation of the guarantee of the equal protection.
2. The allegation must be specific, clear and unambiguous and must give particulars.

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3. It is for the petitioner to show that the person or objects as between whom the legislature is alleged to have discriminated, are similarly situated<sup>48</sup>.
4. Burden lies on the person claiming party in pay to establish that there was equality in work<sup>49</sup>. Burden to prove equality in qualifications, duties and functions is on the person claiming party in pay.
5. When prima facie, a plea of discrimination is made out, the burden of proof shifts on the state to show that it is not so.

### **❖ Right to Compensation:**

Apart from liability to pay damages under the law of Torts the Supreme Court has also ordered to pay compensation to the citizen for loss or injury (physical or mental), caused by the arbitrary action of the public authority<sup>50</sup>.

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<sup>48</sup> Srikishan Singh v. State of Rajasthan, (1955)2 SCR 531: AIR 1955 SC 795.

<sup>49</sup> Union of India v. S. K. SAREEN, (1998) 1 SCC 177.

<sup>50</sup> L.D.A. v. M.K.Gupta, (1994) 1 SCC 243.

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### **❖ Right to equal access to the Courts :**

Equal access to the courts for vindication 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. By 'just grievances' is meant the adjudication of disputes relating to his rights. When the legislature seeks to deprive a citizen of his right to access to the court without any reasonable basis for this special treatment, there is denial of equal protection.

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.

- A dispute was a ' long-standing ' one is no reasonable ground for denying the right to have their legal dispute adjudicated as those who have got that right<sup>51</sup>

### **➤ Limitation for Rule of access to the Court:**

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<sup>51</sup> Surajmal v.Viswanatha, (1955) 1 SCR 448: AIR 1954 SC 545.

## **ARTICLE 14- Right to Equality**

- I. It does not prevent the adjudication of Special cause or Dispute by special tribunals.
  
- II. When a 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.
  
- III. 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 realised 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 others, whether in civil or criminal matters. Without free advice, there is a virtual denial of equal justice to the poor man.

## **ARTICLE 14- Right to Equality**

- Earlier Article 39A to provide free legal Aid is a directive principle which cannot be enforced in the court of law. In 1979, the court opened a new vista by combining Art 39 A with Art. 21 and elevated the right under Art. 39A to the status of a fundamental right. Art. 39 A. Inserted in the constitution by the 42<sup>nd</sup> Amendment Act, 1976, which says, “The state shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity, and shall, in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities”.
- The *object* of this Article was to ensure equal justice which has been promised to all citizens, by the Preamble, and to further guarantee of equality before the law under Article 14.

❖ **Denial to a necessary party of the right to participate in the proceedings would amount to violation of Article 14<sup>52</sup>.**

➤ **Some important points :**

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<sup>52</sup> Neyvely Lignite Corp. Ltd. v. Spl Tahsildar (Land Acquisition), AIR 1995 SC 1004.

## **ARTICLE 14- Right to Equality**

- a) The condition precedent to such free legal aid is that the accused is indigent or illiterate and is otherwise unable to engage a lawyer<sup>53</sup>.
- b) This right as soon as the accused is arrested and subsists throughout the trial<sup>54</sup>.
- c) This right is not dependent upon the accused applying for such assistance. Being a constitutional mandate, it is a duty of the Magistrate or Sessions Judge to inform the accused that if he is unable to engage a lawyer, he is entitled to free legal aid.
- d) The assistance offered must be effective for a meaningful defence. Assigning an inexperienced lawyer will not discharge the obligation of the State.

### **❖ Important Case:**

**Smt. Maneka Gandhi V. Union of India. AIR 1978 SC 597.**

Facts of the case:

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<sup>53</sup> Khatri v. State of Bihar, (1981) 1 SCC 627.

<sup>54</sup> Hussainara v. State of Bihar, AIR 1979 SC 1369 (1374)

## **ARTICLE 14- Right to Equality**

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 sent by the Ministry of External Affairs, Government of India, on July 6, 1977 stating that the Government has decided to 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 Act, 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.

### **❖ Conclusion:**

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

## **ARTICLE 14- Right to Equality**

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 state.