



A CRITICAL STUDY OF RIGHT TO EQUALITY UNDER INDIAN CONSTITUTION WITH JUDICIAL DECISION

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Abstract-

For writing this research paper null hypothecation are taken and critical approach and study done. In this present scenario Right to Equality under Indian Constitution are given Art. 14 to 18. Every person is equal under Indian Constitution and he should be treated equally and non-discrimination on the basis of religion, caste, race, place of birth. But state government can make special provision for women and children, scheduled caste, scheduled tribes and backward classes. In Indian constitution there is some provision for upliftment for Scheduled tribe, scheduled caste, backward classes, women and children so there is flexibility in Right to Equality provision. This is very important articles of Indian Constitution.

Introduction-

The constitution of India guarantees the right to equality to Article 14 to 18 equality is one of the magnificent cornerstones of Indian democracy. Article 14 of outlaws discrimination in the general way and guarantees equality before law to all persons. In view of a certain amount of indefiniteness attached to the general principle of equality enunciated in Art.14, separate provisions to cover specific discriminatory situation have been made by subsequent articles. Thus, Article 15 prohibits discrimination against citizens on such specific grounds as religion, race, caste, sex or place of birth. Art.16 guarantees to the citizens of India equality of opportunity in matter of public



employment. Art. 17 abolish untouchability and Article 18 abolishes titles, other than military or academic distinction.

Right to Equality (i):- Equality before law Article 14-

Two concepts is involved in Article 14 'equality before law and equal protection of laws.' Art.14 runs as follows "The state shall not deny to any person equality before the law or the equal protection of the laws within territory of India". So two concepts are involved in Article 14 'equality before law and equal protection of laws. It applies to all persons, citizens as well as non citizens. The Supreme Court has explained in **Sri. Srinivas Theatre v. Govt. of Tamil Nadu**, that the two expression 'equality before law and 'equal protection of law' do not mean the same thing even if there may be much in common between them. Equality before law is a dynamic concept having many facets. One facet is that there shall be no privileged person or class and that none shall be above law. Another facet is "the obligation upon the State to bring about, through the machinery of law, a more equal society for equality before law can be predicted meaningfully only in an equal society".

Art.14 Forbid class legislation; it does not forbid reasonable classification of persons-

Objects and transactions by the legislature for the purpose of achieving a specific ends.classification to be reasonable should fulfill the following two test: (1) It should not be arbitrary, artificial or evasive. It should be based on an intelligible differentia, some real and substantial distinction, which distinguishes persons or thing grouped together in class from other left out of it.(2) the differentia adopted as the basic of classification must have a rational or reasonable nexus with the object sought to be achieved by the statute in question. **Union of India v M.V. Valliappan (1999)6 SCC 259** the Supreme Court has observed "it a settled law that differentiation is not always discriminatory. if there is a rational Nexus on the basis of which differentiation has been made with objects sought to be achieved by particular provision, then such differentiation is not discriminatory and does not violate the principle of art.14 of the constitution.



Some Judicial decisions on Art.14-

(1) **Hari Ram Gupta v. State of U.P. AIR 1998 SC 2483** the state government refused to give the benefit of pension to those who had retired prior to the coming into force of the new rules. Refusing to apply the Nakara ruling to the instant factual situation, the court pointed out that in Nakara all pensioners formed a class as whole and the court refused to micro classify them by an arbitrary, unprincipled and unreasonable eligibility criteria.(2)**State of Bombay v. Balsara, AIR 1951 SC 318** It is valid to exempt military and navel messes and canteen from restrictions on use or consumption of liquor, for military has its own tradition and mode of life and therefore, there is an understandable basis for classification. The differentiation made by the prohibition law between Indians and foreigners staying in India for a short time is also valid.(3)**Joshi v. Madhya Bharat AIR 1955 SC 334** For admission to a Medical College of a state non residents were required to pay capitation fee but residents in the state were exempt from the same. This classification, based on residence within the state, is valid.(4)**Mohan Kumar Singhania vs Union of India AIR 1996 SC 857** Supreme Court held that each of the various civil services, namely IAS,IPS,IFS group A services and B services is a separate and determinate service making a different cadre and every service needs different intelligible which on rational grounds distinguishes persons grouped together from those who has left out. So differences are real and substantial which have rational and reasonable nexus to the objects sought to be achieved. **Case on discrimination by state in its own favour** (5) **Kandige Sham Bhai v. Agri. Income Tax Officer AIR 1963 SC 591** “the courts in view of the inherent complexity of Fiscal adjustment of diverse elements, permit a larger discretion to the legislature in the matter of classification so long its adheres to the fundamental principles underlying the said doctrine. the power of the Legislature to classify is of wide range and flexibility so that it can adjust its system of taxation in all proper and reasonable ways.”

Discretionary power on the government or Administrative officers & Art.14-

To ensure that discretionary power should exercise properly there must be some norms and principles according this administrator has to exercise his power. Most of time statute do not do so and leave administrator to exercise his power according to his judgment. It will create arbitrariness.



To mitigate this court have invoked Art.14. In this article it is guaranteed by state against any action of the administration which may be arbitrary, discriminatory or unequal. **Naraindas v. State of M.P. AIR 1974 SC 1232** “Article 14 ensures equality before law and strikes at arbitrary and discriminatory state action... its power conferred by Statute on any authority of the state is vagrant and unconfined and no standards or principles are laid down by the statute to guide and control the exercise of such power, the statute would be violative of the equality clause, because it would permit arbitrary capricious exercise of power which is the antithesis of equality before law.”

Right to Equality (ii) No Discrimination on Grounds of Religion etc. Art 15-

Article 15(1) bars the state from discriminating against any citizen of India on ground only of religion, race, caste, sex, place of birth or any of them. Art.15(2) prohibits subjection of a citizen to any disability, liability, restriction or condition on grounds only of religion, race, caste, sex or place of birth with regard to access to public restaurant hotel and place of entertainment, the use of wells, tanks, bathing Ghats roads and place of public Resort maintained wholly or partly out of state funds or dedicated to the use of general public. Art.15(3) the state is not prevented from making any special provisions for women and children. Art. 15(4) or Art.29(2) does not prevent the state from making any special provision for the advancement of any socially and educationally backward classes of citizens or scheduled caste and Scheduled tribe.

Some landmark cases on Article 15 clause (1),(2),(3),(4)-

(1) **D.P. Joshi v. Madhya Bharat, AIR 1955 SC 334** In this case residents of Madhya Bharat were exempted from capitation fee for admission in state medical college while non residents has to pay. This was questions in Supreme Court the court said that Art.15 (1) prohibited discrimination on the basis of birth not residence. So here there is difference between place of birth and resistance. So in this case classification on the basis of residence was held reasonable. (2) **Yusuf Abdul Aziz v. State of Maharashtra AIR 1954 SC 321** the Supreme Court held that “sex is a sound classification and although there can be no discrimination in general on that ground the constitution itself provides for a special provisions in the case of women and children by clause (3) of art.15 and art. 14 and 15 thus read together validate the last sentence of section 497 IPC which prohibits the women from



being punished as an abettor of the offence of adultery.”(3) **Indira Sawhney v. Union of India AIR 1993 SC 477** the Supreme Court held that “we are afraid we may not be able to fit this provisions into this kind of compartmentalization in the context and scheme of our constitutional provisions. By now it is well settled that reservation in educational institutions and other walk of life can be provided under art.15(4) just as reservations can be provided in services and art.16(4).If so it would not be correct to confine art.15(4) to programmes of positive action alone.Art.15(4) is wider than art.16(4) is as much as several kinds of positive action programme can also be evolved and implemented there under (in addition to reservations) to improve the condition of socially and educationally backward classes and Scheduled tribes and scheduled castes whereas art.16(4) speaks only of one type of remedial measure, namely, reservation of appointments/ posts. **Cases on the basis on Reservation in admission (4) Chairman/Director, combined entrance examination v. Osiri das 1992 3 SCC 543** the court held “the reservation of seats for admission to the B. tech course in favour of the sons and wards of the employees of the university is violative of the doctrine of equality enshrined in art.14 of the Constitution. There is no rationale for the reservation of the seats in favour of the sons and wards of the employees of the university nor any such reservation has any rational nexus with the object which is sought to be achieved by the University.”(5)**Gujarat University v. Rajiv Gopinath Bhatt AIR 1996 SC 2066** Supreme Court said “if a rule has been framed that out of the merit list prepared preference is to be given for admission in the Super Speciality course to the students of the university in question per se it cannot be held to be arbitrary, unreasonable or violative of art. 14.”

Right to Equality(iii) Equality of opportunity in public Employment-

This article apply to only citizens not to non citizens. Art.16(1)guarantees equality of opportunity to all citizens “ in matter relating to employment or appointment to any office under the state.art.16(2)no citizen can be discriminated against or be ineligible for any employment or office under the state, on the grounds only of religion, race, caste, sex, descent, place of birth or residence or any of them. Art. 16(3) Parliament may make a Law to prescribe a requirement as to residence within a state or union territory for eligibility to be appointed with respect to specified classes of appointments or posts. Art. 16(4)the state may make reservation of appointments or posts in favour of any backward class of citizens which in the opinion of the state is not adequately represented in the



public services under the state. Art.16(4A) permitting reservation in promotion to scheduled caste and Scheduled Tribes.

Cases on the basis on Art.16 clause (1),(2),(3),(4),(4a)-

(1) **J.k public service comm. V. Dr. Narinder Mohan (1994)2 SCC 630** the Supreme Court said “Backdoor ad hoc appointments at the behest of power source or otherwise and recruitment according to rules are mutually antagonistic and strange bed partners. They cannot co exist in the same sheath. The former is in negation of fair play. The later are the product of order and regularity.”(2) **State of Maharashtra v. Chandrakant Anant kulkarni AIR 1981SC1990** the Supreme Court observed “Mere chances of promotion are not conditions of service and the fact that there was reduction in the chances of promotion did not tantamount to a change in the condition of service. A right to be considered for promotion is a term of service but no chances of promotion are not.”(3)**Post Graduate Institute of Medical Education and Research Chandigarh v. Faculty Association AIR 1998 SCC 1767** constitutional bench of supreme court observed “ In a single post cadre, reservation at any point of time on account of rotation or roster is bound to bring about a situation where search single post in the cadre will be kept reserved exclusively for the members of the backward classes and in total exclusion of the general members of the public. Such total exclusion of general members of public and sent per cent reservation for the backward classes is not permitted within the constitutional framework.”

Art. 17 Abolition of untouchability & Art.18 Abolition of Titles-

Art.17 Abolishes untouchability and forbid its practice in any form and Art.18 prohibits the state from conferring any title except a military or academic distinction. Art18 (2) prohibits citizens of India from accepting titles from foreign govt.

Conclusion-

Article 14 of outlaws discrimination in the general way and guarantees equality before law to all persons. In view of a certain amount of indefiniteness attached to the general principle of equality enunciated in Art.14, separate provisions to cover specific discriminatory situation have been made



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by subsequent articles. Thus, Art. 15 prohibits discrimination against citizens on such specific grounds as religion, race, caste, sex or place of birth. Art. 16 guarantees to the citizens of India equality of opportunity in matter of public employment. Art. 17 abolishes untouchability and art. 18 abolishes titles, other than military or academic distinction. Every person is equal under Indian Constitution and he should be treated equally and nondiscrimination on the basis of religion, caste, race, place of birth. But state government can make special provision for women and children, scheduled caste, scheduled tribes and backward classes. In Indian constitution there is some provision for upliftment for Scheduled tribe, scheduled caste, backward classes, women and children so there is flexibility in Right to Equality provision. This is very important articles of Indian Constitution.

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