Vol III Issue X April 2014 ISSN No :2231-5063

International Multidisciplinary Research Journal

Golden Research Thoughts

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RNI MAHMUL/2011/38595 **ISSN No.2231-5063**

Golden Research Thoughts Journal is a multidisciplinary research journal, published monthly in English, Hindi & Marathi Language. All research papers submitted to the journal will be double - blind peer reviewed referred by members of the editorial board.Readers will include investigator in universities, research institutes government and industry with research interest in the general subjects.

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Golden Research Thoughts
ISSN 2231-5063
Impact Factor : 2.2052(UIF)
Volume-3 | Issue-10 | April-2014
Available online at www.aygrt.isrj.net

CONCEPT OF EQUALITY UNDER THE CONSTITUTION OF INDIA

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Abstract:-The guiding principle of the article is that all persons and things similarly circumstances shall be treated alike both in respect of priviledges conferred and liabilities imposed. In fact public welfare requires that persons, property and occupations be classified and be subjected to different and appropriate legislation. Government is not a simple exercise. It encounts and must deal with the problems which come from persons in an infinite variety of relations. The Supreme Court has stated that the equal protection of laws guaranteed by Article 14 of the constitution does not mean that all the laws must be general in character and universal in application and that the state is no longer to have the power of distinguishing and classifying person or things for the purpose of legislation. Equality before the law means that amongst equals the law should be equal and should be equally administered and that like should be treated alike.

Keywords: Constitution , similarly circumstances , equal protection , liabilities.

1.INTRODUCTION

The absolute concepts of liberty and equality are very difficult to achieve in modern welfare society. That is why the fundamental rights under the constitution of India have been provided not in absolute forms. The form in which such rights have been provided is in the form of restrictions which the government is expected to follow in the Governance the country.

Article 14 to 18 of the constitution guarantee the right to equality to every citizen of India. Article 14 embodies the general principles of equality before law and prohibits unreasonable discrimination among the persons. In other constitutions generally the right to equality is expressed as in article 14. As such this right was considered generally a negative right of an individual not to be discriminated in access to public offices or places or in public matter generally. It did not take account of existing inequalities arising even from the public policies and exercise of public power. The framers of Indian constitution were not satisfied with that kind of undertaking of the right to equality. They knew of the wide-spread social and economic inequalities in the country sanctioned for thousands of years by public policies and exercise of public power supported by religion and other social norms and practices. Such inequalities could not be removed, minimised or taken care of by a provision like article 14 alone. But even if they could be so taken care of it would have been a very slow process. So they expressly abolished and prohibited some of the existing inequalities not only in public but even in private affairs and expressly authorised the state to take necessary steps to minimise and remove them. The succeeding articles 15, 16, 17 and 18 lay down specific application of the general rule lay down in article 14. Articles 15 relates to prohibition of discrimination on grounds of religion race, caste, sex or place of birth. Article 16 guarantees equality of opportunity in matters of public employment. Article 17 abolished, untouchability and article 18 abolished title. Here we concentrate only to general principle of equality i.e. Article 14 only.

NATURE AND SCOPE

Article 14 of the Indian Constitution applies to all persons and is not limited to citizens. A corporation which is a juristic person is also entitled to the benefits of this provision1. Article 14 guarantees to every person the right to equality before the law or the equal protection of the laws. The first expression equality before the law, which is taken from the English common law is a declaration of equality of all persons within the territory of India, implying thereby the absence of any special privilege in favour of any individual. Every person whatever be his rank or position, is subjected to the jurisdiction of the ordinary courts. Prof. Dicey in the explaining the concept of legal equality, as operating in England said : 'With us every official

from the Prime Minister down to a constable or a collector of taxes is under the same responsibility for every act done without any legal justification as any other citizen2.

The second expression 'The equal protection of laws' which is rather a corollary of the first expression and is based on the last clause of the first section of the fourteenth amendment to the American Constitution. This has been interpreted to mean subjection to equal law, applying to all in the same circumstances3. If only means that all persons similarly circumstances shall be treated alike both in the privileges conferred and liabilities imposed by the laws. Equal law should be applied to all the same situation, and there should be no discrimination between one person and another. As regard the subject matter of the legislation their position is the same. Thus the rule is that the like should be treated alike and not that unlike should be treated alike4. Patanjali Shastri, C.J. observed that the second expression was a corollary of the first. Indeed it will be difficult to imagine only violation of 'the equal protection of laws' which would not also be a violation of 'equality before the law'. However the court has clarified that even is there is much in common between the two expression in Article 14 they do not mean the same thing. The word 'Law' in the former expression is used in a generic sense – A philosophical sense – while the word 'Laws' in the later expression denotes specific laws5.

RULE OF LAW

The guarantee of equality before the law is an aspect of what Dicey calls the rule of law in England. It means that no man is above the law and that every person is the subject matter of ordinary courts. The rule of law imposes a duty upon the state to take special measure to prevent and punish brutality by police methodology6. The rule of law embodied in Article 14 is the basic structure of the Indian constitution and hence it cannot be destroyed even by an amendment of the constitution under article 368 of the constitution7.

LEGISLATIVE CLASSIFICATION

This leads us to the important question of legislative classifications or distinctions between persons and things made by law. It is accepted that person may be classified in to groups and such groups may be treated differently if there is a reasonable basis for such difference. In fact, public welfare requires that persons, property and occupations be classified and be subjected to different and appropriate legislation.

However the above rule of equality is not an absolute rule and there are number of exceptions of it, like as 'equality before law' does not mean the 'powers of the private citizens are the same as the power of the public officials.' This is not the violation of the rule of law. Thus a police officer has the power to arrest while a private person does not have this power. But the rule of law does not require that these powers should be clearly defined by law and that abuse of authority by public officers must be punished by ordinary courts in the same manners as illegal act committed by private persons. Further the rule of law does not prevent certain classes of persons being subject to special rules. Thus numbers of armed forces, medical practitioners are controlled by special rules. Article 361 of Indian Constitution provide an immunity to the president of India and Governors of the states. So this is not the violation of the rule of law.

APPLICATION OF ARTICLE 14

Chiranjit Lal Chawdhary v. Union of India8 is the leading case of single person laws. In this case the act effected a single joint stock company and its shareholders. In two subsequent cases, Ameerunnisa Begum v. Mehboob Begum9 and Ram Prasad v. State of Bihar10 the Supreme Court had to decided the validity of the legislation affecting specified individuals. When on the face of a statute there is no classification at all and no attempt has been made to select any individual or group and not possessed by others. This presumption is of little or no assistance.

These and some other cases seem to establish that except Charanjit Lal case the singling out of the individuals has never been seen with favour, particularly when such singling out has been done for the purpose of hostiles discrimination.11 As matter of course single person laws are prima facie violative of Article 14 because they do not make a classification on bases of some general or particular characteristics which may be found in any individual or class of individuals now or in future rather they make, one individual their target excluding every possibility of bringing any other person when their reach even if that other person also depicts those characteristics.12

There are instances where laws have been held violative of Article 14 because either there was a classification without a difference or the bases of classification was irrelevant to the purpose of the act. Surajmal Mehta & Co. Vs. A.V. Vishwanath Sastri13 is an example of attempt to segregate person who had no uncommon properties as compared to others similarly situated.

In P. Rajendran Vs. State of Madras14 the Supreme Court Struck down a provision which laid down district wise of the population of a district to the total population of the state. For a classification to be valid under article 14. There must be a nexus between the classification and the object sought to be achieved. Payment for equal pay for equal work has also been justified under article 14. Unequal pay for materially equal work can not be justified on the basis of an artificial classification between the two kinds of work and employment15.

SPECIAL COURTS AND PROCEDURAL INQUALITY

In a number of cases the constitutionality of legislation setting or authorising the executive to set up, special courts applying a special procedure for trial of criminal offences has been challenged. The first among them is the State of W.B. v. Anwar Ali Sarkar16. In this case the Supreme Court in majority invalidated section 5(1) of the West Bengal special courts act, 1950 because it conferred arbitrary powers on the government to classify offences or classes of offences or classes of cases at its pleasure and the act did not lay down any policy or guidelines for exercise by the Government of its discretion to classify offences or cases. As regards the references in the preamble to the necessity for "speedier trial of offences". It was held that the expression speedier trial was too vague, uncertain and illusive to afford a basis for rational classification.

"Viewed against this background, it will be seen that by and large the types of offences mentioned in the schedule to the act are those that were common and widely prevalent, during this period and it was evidently to prevent or to place an effective check upon the commission of such offences that the impugned legislation was considered necessary." Hence the system of special courts to deal with the special type of offences under a shortened and symplified procedure was devised and seems to us that the legislation in question is based on a perfectly intelligible principle of classification having a clear and reasonable relation to the object sought to be attained.17

Apart from the general principle that procedural discrimination violates Article 14, the court have also evolved some general principles of fair procedure from Article 14. In Erusion Equipment and Chemical Limited v. State of W.B.18 the Supreme Court quashed the order of blacklisting the petitioner whose name appeared on the approved list of D.G.S. & D. without giving any notice, as it had the effect of depriving a person of equality of opportunity in the matter of public contract.

TEST OF REASONABLENESS

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 fulfill the following two conditions.

(a)The classification must be founded on a intelligible differentia which distinguish persons or things that are grouped together from others left out of the group and;
(b)The differentia must have a rational relation to the object sought to be achieved by the act.19

The true meaning and scope of Article 14 have been explained in a number of cases by the Supreme Court. In re special Bill case Chandrachud J. (as he then was) reformulated new proposition to be followed regarding the applicability of Article 14. This has been rightly criticised by Mr. Seervai as making the well settled principles unsettled and creating confusion and uncertainty and encouraging litigation. The principles laid down by Das J. in Dalmia's case has not been disputed by Chandrachud J. and therefore there was no need to reformulate the same unless it was necessary to add something to the existing principles20. In view of this the proposition laid down in Dalmia's case still hold good governing a valid classification and are as follows :-

(1)A law may be constitutional even though it relates to a single individual if, on account of some special circumstances or reasons applicable to him and not applicable to others that single individual may be treated as a class by himself.
(2)There is always a presumption in favour of the constitutionality of an enactment and the burden is upon him who attacks it to show that there has been a clear transgression of the constitutional principles. The person, therefore who pleads that Article 14 has been violated, must make out that not only he has been treated differently from others but he has also been treated differently from persons similarly circumstances without any reasonable basis and such differential treatment has been unjustifiably made.
(3)The presumption may be rebutted in certain cases by showing that on the fact of the statute, there is no classification at all and no difference peculiar to any individual or class and not applicable to any other individual or class, and yet the law hits only a particular individual or class.
(4) It must be presumed that the Legislature understands and correctly appreciates the need of its own people, that its laws are directed to problems made manifest by experience and that its discriminations are based on adequate grounds.
(5) In order to sustain the presumption of constitutionality the court may take into consideration matters of common knowledge, matters of report, the history of the times and may assume every state of facts which can be conceived existing at the time of the legislation.
(6) That the Legislature is free to recognise degrees of harm and may confine its restrictions to those cases where the need is deemed to be the clearest.
(7) While good faith and knowledge of the existing conditions on the part of a Legislature are to be presumed, if there is nothing on the face of the law or the surrounding circumstances brought to the notice of the court on which the classification may reasonably be regarded as based, the presumption of constitutionality cannot be carried to the extent of always holding that there must be some undisclosed and unknown reasons for subjecting certain individuals or corporations to be hostile or discriminating legislation.
(8) The classification may be made on different basis, e.g., geographical or according to objects or occupations or the like.

(9) The classification made by a legislature need not be scientifically perfect or logically complete. Mathematical nicety and perfect equality are not required. Equality before the law does not require mathematical equality of all persons in all circumstances. Equal treatment does not mean identical treatment. Similarity, not identity of treatment is enough.21
(10) There can be discrimination both in the substantive as well as the procedural law. Article 14 applies to both.

If the classification satisfies the test laid down in the above propositions, the law will be declared constitutional. The question whether a classification is reasonable, and proper or not, must, however, be judged more on commonsense than on legal subtleties.

New concept of equality: Protection against arbitrariness.--In E.P. Royappa v. State of Tamil Nadu22, the Supreme Court has challenged the traditional concept of equality which was 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 of view, equality is antithesis to arbitrariness. 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."

In the famous Maneka Gandhi v. Union of India23 quoting himself from Royappa case, Bhagwati J. very clearly read the principal of reasonableness in Article 14 the said :

"Article 14 strikes at arbitrariness in state action and ensures fairness and equality of treatment. The principle of reasonableness which logically as well as philosophically is an essential element of equality or non arbitrariness pervades article 14 like a brooding omnipresence."

Uptil now Justice Bhagwati was stating this new approach to Article 14 in his concurring opinions. In Ramana Dayaram Shetty v. International Airport Authority24 and Kasturilal v. State of J.K.25 he however, emphatically spoke for it for the unanimous court of three-Judge bench in each. In Ajay Hasia v. Khalid Mujib26 he finally ..... the new approach with a unanimous opinion of a constitution bench of the court in the following words.

It must ..... now be taken to be well settled that what Article 14 strikes at is arbitrariness because an action what is arbitrary, must necessarily involve negation of equality. The doctrine of classification which is evolved by the courts is not paraphrase of Article 14 nor is it the objective and end of that article. It is merely a judicial formula for determining whether the legislative or executive action in question is arbitrary and therefore constituting denial of equality. If the classification is not reasonable and does not satisfy the two conditions referred to above, the impugned legislation or legislation or executive action would plainly be arbitrary and the guarantee of equality under Article 14 would be breached.

So it is submitted that according to this doctrine of classification the content and reach of Article 14 can not be determined. The basic postulate of the rule of law is that "Justice should not only be done but it must also be seen to be done. If there is any reasonable ground on which a litigant believes that this matter may not be heard by a particular judge it is appropriate for that judge to exclude him from the bench hearing that matter. This step is required to be taken by the learned Judge not because he is likely to give to a reasonable apprehension in the mind of the litigants that the mind of learned judge may be sub-consciously has been influenced by some extraneous factor in making the decision, particularly if it happen to be in favour of the opposite party. This ruling was giving in a recent case in R.K. Ghosh v. J.G. Rajput.27 In this case the Supreme Court held that by the action of the judge the rule of law was violated and quashed the order of the High Court and sent the matter for fresh hearing in accordance with law.

In D.S. Nakara v. Union of India28 the Supreme Court struck down rule 34 of the Central Services (Pension) rules 1972 as unconstitutional on the ground that the classification made by it between pensioners retiring before a particular date and retiring after that date was not based on any rational principle and was arbitrary and violative of Article 14 of the Constitution.

In that case, Desai, J. who spoke for the majority assimilated both the doctrines viz. the doctrine of arbitrariness and the doctrine of classification. Re-stating the concept of quality and the test of to be applied in order to satisfy the requirement of Article 14 his lordship said :-

"Thus the fundamental principle is that Article 14 forbid class legislation but permits reasonable classification for the purpose of legislation which classification must satisfy the twin test of classification being founded on an intelligible differentia which distinguishes persons or things that are grouped together from those that are differentia must have a rational nexus to the object sought to be achieved by the statute question.

CONCLUSION AND SUGGESTION

The question, whether an impugned act is arbitrary or not, is ultimately to be answered on the facts and in the circumstances of a given case. An obvious test to apply is to see whether there is any ..... principle emerging from the impugned act and if so, does it satisfy the test of reasonableness. Where a mode is prescribed for doing an act and there is no impediment in following that procedure, performance of the act otherwise and in a manner which does not disclose any discernible principle which is reasonable, may itself attract the ..... arbitrariness. Every state action must be informed by reason and it follows that an act informed by reason, is arbitrary. Therefore it is submitted that there is no doubt that it is for the

person alleging arbitrariness who has to prove it. This can be done by showing in the first instance that the impugned state action is uniformed by reason in as much as there is no discernible principle on which it is based or it is contrary to the prescribed mode of exercise of the power or is unreasonable. If it is shown than burden is shifted to the state to ..... the attack by disclosing the material and reason which led to the action being taken in order or shown that it was an informed decision which was reasonable.

The new developments in equality also include increasing emphasis on positive equality or affirmative action. In several decisions the court has emphasised that equality is a positive right and requires the state to minimise the existing inequalities and to treat unequals or unprivileged with special care as envisaged in the constitution. Article 14 has also been invoked to prohibit sexual harassment of working women on the ground of violation of the right of gender equality.

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