

COMPREHENSIVE NOTES ON RIGHT TO EQUALITY | ARTICLE 14**REVISION NOTES STARTS ON**

EQUALITY IS BASIC HUMAN RIGHT : Article 7 of the Universal Declaration of Human Rights, 1948, declares that all are equal before the law and are entitled without any discrimination to the equal protection of laws.

WHY EQUALITY IS IMPORTANT? Every individual from every segment of society should have equal rights which enable him/her to grow. The Court should give more importance to rights of class or community which has been object of humiliation, discrimination, separation and violence by State, society as well as family.¹

Janhit Abhiyan v. Union of India, 2022 SCC OnLine SC 1540 : While SC upheld 103rd Amendment on EWS, it stated "The equality code in its majestic formulation (Article 14, 15, 16 and 17) promotes inclusiveness. Even provisions enabling reservations foster social justice and equality, to ensure inclusiveness and participation of all sections of society. These provisions assure representation, diversity, and empowerment"

ARTICLE 14 OF INDIAN CONSTITUTION

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

This provision is similar to 14th Amendment of the U.S. Constitution which declares: "No State shall deny to any person within its jurisdiction the equal protection of the laws."

Article 14 is the '*fon juris*' of our constitution. Two concepts are involved in Art. 14, viz., 'equality before law' and 'equal protection of laws'. Both the expression conveys the idea of equal status and equal justice as we find in the preamble of our constitution.²

IS BOTH CONCEPTS ARE SAME? The Supreme Court has explained *in Sri Srinivasa Theatre v. Govt. of Tamil Nadu*³, that the two expressions '*equality before law*' and '*equal protection of law*' do not mean the same thing even if there may be much in common between them.

- "*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.
- "*Equal protection of law*" is "the obligation upon the State to bring about, through the machinery of law, a more equal society... For, equality before law can be predicated meaningfully only in an equal society.."

¹ Indian Young Lawyers Assn. (Sabarimala Temple-5 J.) v. State of Kerala, (2019) 11 SCC 1

² Shoeshankav Vs State of M.P. AIR 1951 Nagpur 53.

³ AIR 1992 SC, at 1004.

EQUALITY BEFORE LAW	EQUAL PROTECTION OF LAWS
It is a negative concept which ensures that there is no special privilege in favour of any one, that all are equally subject to the ordinary law of the land and that no person, whatever be his rank or condition, is above the law.	It is positive in content. It denotes equality of treatment in equal circumstances. It implies that among equals the law should be equal and equally administered, that the like should be treated alike without distinction of race, religion, wealth, social status or political influence. ⁴

IN INDIA : The benefit of "equality before law" and "equal protection of law" accrues to every person in India whether a citizen or not. As the Supreme Court has observed on this point: "*We are a country governed by the Rule of Law. Our Constitution confers certain rights on every human-being and certain other rights on citizens. Every person is entitled to equality before the law and the equal protection of the laws.*"⁵

The Supreme Court took note of the unprecedented humanitarian crisis in India, following the **Covid-19 pandemic**. Notices were issued to the Union of India ("UOI", interchangeably referred to as the "Central Government"), the State Governments and Union Territories as it assumed jurisdiction under Article 32. This approach is exercised so that the Union of India and States can justify the rationale behind their policy approach which must be bound by the human rights framework which includes the right to life (Article 21) and the right to equality (Article 14) of the Constitution.⁶

SECURED TO WHOM? Equality under Indian Constitution is secured to all persons, citizens or non-citizens.⁷ It covers *hijars/transgenders* who are not male/female.⁸ There cannot be any discrimination based on religion or origin in the matter of equal treatment or employment and to apply the same even in respect of a cooperative society.⁹

EQUALITY IS A BASIC FEATURE | CANNOT BE TAKEN AWAY

"Equality is the basic feature of the Constitution of India and any treatment of equals unequally or unequals as equals will be violation of basic structure of the Constitution of India." Explain.

UPSC 2008.

Equality is

⁴ Jagannath Prasad v. State of Uttar Pradesh, AIR 1961 SC 1245

⁵ Faridabad CT. Scan Centre v. D.G. Health Services, AIR 1997 SC 3801

⁶ In Re: Distribution of Essential Supplies and Services During Pandemic Suo Motu Writ Petition (Civil) No.3 of 2021. [May 2021]

⁷ Natural Resources Allocations Re.Special Reference Number 1 of 2012, (2012) 19 SCC 1]

⁸ National Legal Services Authority V. Union of India (2014) 5 SCC 438.

⁹ Zoroastrian Coop. Housing Society Ltd. v. District Registrar, Co-op. Societies (Urban), (2005) 5 SCC 632

- One of magnificent corner-stones of Indian democracy
- necessary corollary of Rule of Law in Indian Constitution.

Right to equality has been declared by the Supreme Court as a basic feature of the Constitution. This means that even a constitutional amendment offending the right to equality will be declared invalid.

M.G. Badappanavar v. State of Karnataka, AIR 2001 SC 260

"Equality is a basic feature of the Constitution of India and any treatment of equals unequally or unequals as equals will be violation of basic structure of the Constitution of India."

D.S. Nakara & Others vs Union Of India 1983 AIR 130, 1983 SCR (2) 165

Equality is a dynamic concept with many aspects and dimensions and it cannot be imprisoned within traditional and doctrinaire limits....Article 14 strikes at arbitrariness in State action and ensure fairness and equality of treatment. The principle of reasonableness, which legally as well as philosophically, is an essential element of equality or non-arbitrariness pervades Article 14 like a brooding omnipresence."

'Equality is a dynamic concept with many aspects and dimensions, and it cannot be cribbed, cabined or confined within traditional and doctrinaire limits.' Explain, how the judiciary has widened the scope of the right to equality by various decision.

Asked in UPSC 2011.

EQUALITY BEFORE LAW : ART. 14

Equality before law is based on English Common Law. This doctrine is enshrined in the constitution of USA and India as well. The entire basis of administrative law is the concept of rule of law. The term "Rule of Law"¹⁰ is derived from French phrase (La principle de Legalite) (The principle of legality) which refers to a government based on principal of law and not of men.

A.V.DICEY - CONCEPT OF RULE OF LAW

- (i) Absence of arbitrary power, that is, no man can be punished except for a breach of law.
- (ii) Equality before the law, that is, equal subjection of all citizens (rich or poor, high or low, official or non-official) to the ordinary law of the land administered by the ordinary law courts

¹⁰ According to Davis, there are seven principal meanings of the term "Rule of law: (1) law and order; (2) fixed rules; (3) elimination of discretion; (4) due process of law or fairness; (5) natural law or observance of the principles of natural justice; (6) preference for judges and ordinary courts of law to executive authorities and administrative tribunals; and (7) Judicial review of administrative actions.

(iii) The primacy of the rights of the individual, that is, the constitution is the result of the rights of the individual as defined and enforced by the courts of law rather than the constitution being the source of the individual rights.

The first and the second elements are applicable to the Indian System and not the third one. In the Indian System, the constitution is the source of the individual rights.

Earlier the concept of equality revolved *around discrimination and classification*, but it is said to comprehend the doctrine of promissory estoppel, non-arbitrariness, compliance with rules of natural justice eschewing irrationality etc. Art. 14 is now proving as a bulwark against any arbitrary or discriminatory state action.

Article 14 bars discrimination and prohibits discriminatory laws.

NEED FOR PRINCIPLE OF CLASSIFICATION? Article 14 prescribes equality before law. All persons in similar circumstances shall be treated alike both in privileges and liabilities imposed.¹¹

- But the fact remains that all persons are not equal by nature, attainment or circumstances, and, therefore, a mechanical equality before the law may result in injustice.
- As all persons are not equal by nature or circumstances, the varying needs of different classes or sections of people require differential treatment.
- This leads to classification among different groups of persons and differentiation between such classes. A Legislature is entitled to make reasonable classification for purposes of legislation and treat all in one class on an equal footing.
- Accordingly, to apply the principle of equality in a practical manner, the courts have evolved the principle that if the law in question is based on rational classification it is not regarded as discriminatory.¹²

HOW THE CLASSIFICATION SHOULD BE? 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.

DOCTRINE OF CLASSIFICATION: The doctrine of classification is the *first instance* where the Supreme court of India drew a line, and indicated a choice of interpretation of Article 14.¹³

Classification to be reasonable should fulfil the following two tests:

(1) It should not be arbitrary, artificial or evasive.
It should be based on an intelligible differentia,

(2) The differentia adopted as
the basis of classification must

¹¹ John Vallamattom v. Union of India, (2003) 6 SCC 611 : AIR 2003 SC 2902

¹² Ashutosh Gupta v. State of Rajasthan, (2002) 4 SCC 34

¹³ Jaishri Laxmanrao Patil vs The Chief Minister And Ors. on 5 May, 2021 [Supreme Court of India]

some real and substantial distinction, which distinguishes persons or things grouped together in the class from others left out of it.

have a rational or reasonable nexus with the object sought to be achieved by the statute in question.¹⁴

These principles are summarized is given in Revision Notes.

In re the Special Courts Bill, 1978 (1979) 1 SCC 380, Chandrachud, C.J., speaking for majority of the Court adverted to large number of judicial precedents involving interpretation of Article 14 and culled out several propositions including the following:

- (i) The State, in the exercise of its governmental power, has of necessity to make laws operating differently on different groups or classes of persons within its territory to attain particular ends in giving effect to its policies, and it must possess for that purpose large powers of distinguishing and classifying persons or things to be subjected to such laws.
- (ii) The constitutional command to the State to afford equal protection of its laws sets a goal not attainable by the invention and application of a precise formula. therefore, classification need not be constituted by an exact or scientific exclusion or inclusion of persons or things. The courts should not insist on delusive exactness or apply doctrinaire tests for determining the validity of classification in any given case. Classification is justified if it is not palpably arbitrary.
- (iii) The principle underlying the guarantee of Article 14 is not that the same rules of law should be applicable to all persons within the Indian territory or that the same remedies should be made available to them irrespective of differences of circumstances. It only means that all persons similarly circumstanced shall be treated alike both in privileges conferred and liabilities imposed. Equal laws would have to be applied to all in the same situation, and there should be no discrimination between one person and another if as regards the subject-matter of the legislation their position is substantially the same.
- (iv) By the process of classification, the State has the power of determining who should be regarded as a class for purposes of legislation and in relation to a law enacted on a particular subject. This power, no doubt, in some degree is likely to produce some inequality; but if a law deals with the liberties of a number of well defined classes, it is not open to the charge of denial of equal protection on the ground that it has no application to other persons. Classification thus means segregation in classes which have a systematic relation, usually found in common properties and characteristics. It postulates a rational basis and does not mean herding together of certain persons and classes arbitrarily.
- (v) The law can make and set apart the classes according to the needs and exigencies of the society and as suggested by experience. It can recognise even degree of evil, but the classification should never be arbitrary, artificial or evasive.
- (vi) The classification must not be arbitrary but must be rational, that is to say, it must not only be based on some qualities or characteristics which are to be found in all the persons grouped together and not in others who are left out but those qualities or characteristics must have a reasonable relation to the object of the legislation.

ARTICLE 14 FORBIDS CLASS-LEGISLATION

- Article 14 forbids class-legislation but it does not forbid reasonable classification. The classification however must not ***be "arbitrary, artificial or evasive"*** but must

¹⁴ Laxmi Khandasari v. State of Uttar Pradesh, AIR 1981 SC 873, 891 : (1981) 2 SCC 600. Test for valid classification restated. State of Haryana v. Jai Singh, (2003) 9 SCC 114 : AIR 2003 SC 1696; Welfare Assn. ARP v. Ranjit P. Gohil, (2003) 9 SCC 358; See also (2004) 1 SCC 369 : AIR 2003 SC 3057; See also Javed v. State of Haryana, (2003) 8 SCC 369 : AIR 2003 SC 3057.

be based on some real and substantial bearing, a just and reasonable relation to the object sought to be achieved by the legislation.

- Undoubtedly, every differentiation is not a discrimination but at the same time, differentiation must be founded on pertinent and real differences as distinguished from irrelevant and artificial ones.
- *A simple physical grouping which separates one category from the other without any rational basis is not a sound or intelligible differentia.* The separation or segregation must have a systematic relation and rational basis and the object of such segregation must not be discriminatory.¹⁵
- The classification must not be arbitrary but must be rational, that is to say, it must not only be based on some qualities or characteristics which are to be found in all persons grouped together and not in others who are left out, but those qualities and characteristics must have reasonable relation to the object of the legislation.¹⁶
- In *Subramanian Swamy v. CBI (2014) 8 SCC 682*, a Constitution Bench of the court unanimously held that “*if the object itself is discriminatory, then explanation that classification is reasonable having rational relation to the object sought to be achieved is immaterial*” and invalidated Section 6-A, Delhi Special Police Act, 1946.

What is Prohibited is hostile discrimination, and not reasonable classification.

Comment. UPSC 1999

Hostile discrimination is obvious where some allottees despite having complied with all conditions, including payment of full amount due, were not given possession, whereas others were granted possession even before payment or after depositing a small proportion of the total dues. [Government of AP V. Maharishi Publishers Pvt. Ltd. (2003) 1 SCC 95.

HOW THE VIOLATION SHOULD BE? In *K. Thimmappa v. Chairman Central Board of Directors, AIR 2001 SC 467 : (2001) 2 SCC 259* : Mere differentiation or inequality of treatment does not *per se* amount to discrimination within the inhibition of the equal protection clause. To attract Art. 14, it is necessary to show that the selection or differentiation is **unreasonable or arbitrary**; that it does not rest on any rational basis having regard to the object which the Legislature has in view in making the law in question.

In *Deepak Sibal v. Punjab University AIR 1989 SC 903*. the Supreme Court has pointed out that a classification need not be made with “mathematical precision”. But, if there is little or no difference between the persons or things which have been grouped together and those left out of the group, then classification cannot be regarded as reasonable. The Court has also pointed out that to consider reasonableness of classification it is necessary to take into account the objective for such classification. “*If the objective be*

¹⁵ S.Seshachalam & Ors.Etc vs Chairman Bar Council Of Tamilnadu (2014) 16 SCC 72

¹⁶ Vikram Cement & Anr vs State Of M.P. (2015) 11 SCC 708.

illogical, unfair and unjust, necessarily the classification will have to be held as unreasonable."

Burden of Proof is on the person who complains : When a person seeks to impeach the validity of a law on the ground that it offends Art. 14, the onus is on him to plead and prove the infirmity. If a person complains of unequal treatment, the burden lies on him to place before the court sufficient material from which it can be inferred that there is unequal treatment.

The Supreme Court explained the **principle of initial presumption of validity** as follows in *Ashutosh Gupta v. State of Rajasthan (2002) 4 SCC 34* : "There is always a presumption in favour of the constitutionality of enactment and the burden is upon him who attacks it to show that there has been a clear transgression of the constitutional principles...It must be presumed that the legislature understands and correctly appreciates the need of its own people."

However, if discrimination is writ large on the face of the legislation, the onus may shift to the state to sustain the validity of the legislation in question.¹⁷

A person setting up a grievance of denial of equal treatment by law must establish that between persons similarly circumstanced, some were treated to their prejudice and the differential treatment had no reasonable relation to the object sought to be achieved by the law.¹⁸

The two dimensions of Article 14 in its application to legislation and rendering legislation invalid are now well recognized and these are

- (i) discrimination, based on an impermissible or invalid classification and
- (ii) excessive delegation of powers; conferment of uncanalised and unguided powers on the executive, whether in the form of delegated legislation or by way of conferment of authority to pass administrative orders if such conferment is without any guidance, control or checks, it is violative of Article 14 of the Constitution. ¹⁹

EXAMPLES :

- The clubbing of those dealers against whom there was no allegation with the handful of those against whom there were allegations of political connection and patronage, results in treating unequals as equals.²⁰
- In the context of Karnataka Industrial Areas Development Act, 1966 and the Regulations framed thereunder it has been held that fixation of price at a higher rate for small and fully developed plots and at a lower rate for a large plot not entirely

¹⁷ Dalmia v. Tendolkar, AIR 1958 SC 538 : 1959 SCR 279

¹⁸ Western U.P. Electric Power and Supply Co. Ltd. v. State of Uttar Pradesh, AIR 1970 SC 21, 24 : (1969) 1 SCC 817. Also see, R.K. Garg v. Union of India, AIR 1981 SC 2138 : (1981) 4 SCC 676; Re: Special Courts Bill, AIR 1979 SC 478 : (1979) 1 SCC 380; State of Uttar Pradesh v. Kamla Palace, AIR 2000 SC 617 : (2000) 1 SCC 557.

¹⁹ Subramanian Swamy V. CBI (2014) 8 SCC 682.

²⁰ . Onkar Lal Bajaj v. Union of India, (2003) 2 SCC 673

developed and provided with peripheral infrastructural facilities only, was not arbitrary.²¹

- Obligation of all the assesses to provide Aadhaar number or enrolment ID of Aadhaar application form while applying for PAN or while filing income tax return does not violate Articles 14 or 19(1)(g) of the Constitution.²²
- In *Medical Council of India v. State of Kerala, (2019) 13 SCC 185* : Independence of the judiciary is fundamental to the rule of law. A legislation can be invalidated on the basis of breach of separation of judicial power since such breach is negation of equality under Art. 14. Law can be declared void if it is found to have transgressed the constitutional limitations. However, the legislature cannot declare any decision of a court of law to be void or of no effect.
- In *State of Uttarakhand v. S.K. Singh, (2019) 10 SCC 49* : Higher educational qualification having nexus to job to be performed, held, can be a basis for exclusive or accelerated promotion since higher qualification intrinsically brings in certain skills. The factum to determine such nexus left to wisdom of administrative authorities.

“The extensive use of the device of reasonable classification by State and its approval by the Supreme Court has rendered the guarantee of fair and equitable treatment under Article 14 largely illusory.” Discuss making clear the constitutional and popular concepts of right to equality in India

UPSC 2004.

OVERDO CLASSIFICATION IS UNDO EQUALITY : The doctrine of classification is only a subsidiary rule evolved by the courts to give practical content to the doctrine of equality, over-emphasis on the doctrine of classification or anxious or sustained attempt to discover some basis for classification may gradually and imperceptibly erode the profound potency of the glorious content of equity enshrined in Art. 14 of the Constitution.

In *B. Manmad Reddy and Ors. Vs. Chandra Prakash Reddy and Ors. AIR 2010 SC 1001* observed: "There is no gainsaying that classification must rest on a reasonable and intelligible basis and the same must bear a nexus to the object sought to be achieved by the statute. By its very nature classification can and is often fraught with the danger of resulting in artificial inequalities which make it necessary to subject the power to classify to restraints lest the guarantee of equality becomes illusory on account of classifications being fanciful instead of fair, intelligible or reasonable."

In the case of *T.R. Kothandaraman v. T.N. Water Supply and Drainage B.D., (1994) 6 SCC 282 (Para 2)*, Apex Court observed-- ".....the guarantee of equality is precious and the theory of classification may not be allowed to be extended so as to subvert or submerge the same"

²¹ Chairman & MD, BPL Ltd. v. S.P. Guraraja, (2003) 8 SCC 567 : AIR 2003 SC 4536.

²² Binoy Viswam v. Union of India, (2017) 7 SCC 59

- It was held in *Roop Chand Adlakha*²³ that “**to overdo classification is to undo equality**”. Marginal over inclusiveness or under inclusiveness, will not vitiate the classification.²⁴
- There cannot be perfect equality in any matter on an absolute scientific basis and that would not offend Art. 14.²⁵
- Merely because in the past two categories of employees had been treated differently does not mean that they cannot be equated subsequently.²⁶
- The decision to treat all Junior Engineers, whether degree holders or diploma holders, as equals for the purpose of promotion is a policy decision, and it is well-settled that this Court should not ordinarily interfere in policy decisions unless there is clear violation of some constitutional provision or the statute.²⁷
- Separate classification of properties belonging to religious institutions for purpose of rent legislations [like Punjab Religious Premises and Land (Eviction and Rent Recovery) Act, 1997 in this case], held, permissible. It is not violative of Art. 14. Court can interfere only when the policy of Act is irrational. [*Harbhajan Singh v. State of Punjab*, (2020) 2 SCC 659]

NEW CONCEPT OF EQUALITY

Do you agree with the view that “equality is antithesis of arbitrariness. In fact equality and arbitrariness are sworn enemies”?

Asked in UPSC 2013.

“In fact, equality and arbitrariness are sworn enemies; one belongs to the rule of law in a republic while the other, to the whim and caprice of an absolute monarch.”
Elucidate with the help of constitutional provisions & judicial decisions.

Asked in UPSC 2006.

ARBITRARY ACTION : Article 14 strikes at arbitrary state action, both administrative and legislative. Every State action must be informed by reason and it follows that an act uninformed by reason is per se arbitrary.²⁸

In *E.P. Royappa v. State of Tamil Nadu*²⁹, the Supreme Court has drifted from 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”

²³ Roop Chand Adlakha v. Delhi Development Authority, AIR 1989 SC 307

²⁴ Basheer alias N. P. Basheer v. State of Kerala, (2004) 3 SCC 609 : AIR 2004 SC 2757.

²⁵ H. P. Gupta And Another Vs. Union Of India (2002) 10 SCC 658

²⁶ Dilip Kumar Garg v. State of Uttar Pradesh, (2009) 4 SCC 753 : (2009) 3 JT 202.

²⁷ Dilip Kumar Garg v. State of Uttar Pradesh, (2009) 4 SCC 753

²⁸ Bannari Amman Sugars Ltd. v. CTO, (2005) 1 SCC 625

²⁹ AIR 1974 SC 555.

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”.

A few months later in *Maganlal Chhaganlal (P) Ltd. v. Municipal Corpn. of Greater Bombay* 1974 AIR 2009 , Bhagwati J, again in a concurring opinion, speaking for himself and Krishna Iyer J emphasised: Article 14 enunciates a vital principle which lies at the core of our republicanism and shines like a beacon light pointing towards the goal of classless egalitarian socio-economic order which we promised to build for ourselves when we made a tryst with destiny on that fateful day when we adopted our Constitution... *What the equality clause is intended to strike at are real and substantial disparities...and arbitrary or capricious actions of the executive and it would be contrary to the object and intendment of the equality clause to exalt delicate distinctions, shades of harshness and theoretical possibilities of prejudice into legislative inequality or executive discrimination.*”

In *Maneka Gandhi v. Union of India*³⁰, Bhagwati, J., again quoted with approval the new concept of equality propounded by him in the E.P. Royappa case. He said : ..Equality is a dynamic concept with many aspects and dimensions and it cannot be imprisoned within traditional und doctrinaire limits. Article 14 strikes at arbitrariness in State action and ensures fairness and equality of treatment. The principle of reasonableness, which legally as well as philosophically, is an essential element of equality or non-arbitrariness, pervades Article 14 like a brooding omnipresence.”

In *International Airport Authority*³¹ case Bhagwati, J., reiterated the same principle in the following words : "It must..... therefore, now be taken io be well-settled that what Article 14 strikes at is arbitrariness because an action that is arbitrary, must necessarily involve negation of equality.

In *Natural Resources Allocation, Re. Special Reference No.1 of 2012*, the Court said: “For the first couple of decades after the establishment of the Constitution, the “classification” test was adopted. Thereafter the emphasis shifted to “arbitrariness” and “unreasonableness”. Even though the classification doctrine was never overruled, it has found less favour with the Supreme Court as compared to “arbitrariness” doctrine. The action of the State, whether it relates to distribution of largesse, grant of contracts or allotment of land, is to be tested on the touchstone of *Article 14*. A law may not be struck down on the basis of “arbitrariness” without the pointing out of a constitutional infirmity. Therefore, a State action has to be tested for constitutional infirmities qua Article 14 of the Constitution; the action has to be fair, reasonable, non-discriminatory, transparent, non-capricious, unbiased, without favouritism or nepotism, in pursuit of

³⁰ AIR 1978 SC 597

³¹ RD Shetty V. Airport Authority AIR 1979 SC 1628.

promotion of healthy competition and equitable treatment. It should conform to the norms which are rational, informed with reasons, and guided by public interest, etc. All these principles are inherent in the fundamental conception of Article 14 and this is the mandate of Article 14.

See., The test of Manifest arbitrariness under the sub-heading “Unreasonable laws”

WHEN AN ACTION IS ARBITRARY? Whether an action was arbitrary or not depends upon facts of each case. Tests to determine it are (i) whether there is any discernible principle emerging from impugned act; and (ii) if yes, does it satisfy test of reasonableness.

Where a mode is prescribed for performance of an act and there is no impediment in following that procedure, performance of that act otherwise and in manner which does not disclose any discernible principle which is reasonable, may attract arbitrariness. Executive action would not be arbitrary merely because action was not explicitly stated to have been taken for particular reason or based on particular principle which itself is reasonable. It would be open for courts to see whether such reasonable principle is discernible from facts of case. As courts can examine whether executive action is motivated by extraneous reasons so also courts can examine whether executive action led to germane objective by examining surrounding facts leading to that action. [J.S. *Luthra Academy v. State of J&K, (2018) 18 SCC 65.*]

- **Non**-application of mind is a facet of arbitrary exercise of power.³²
- **Non**- compliance with the rules of natural justice amounts to arbitrariness.³³
- Where a particular mode is prescribed for doing an act and there is no impediment in adopting the procedure, the deviation to act in different manner which does not disclose any discernible principle which is reasonable in itself shall be labelled as arbitrary.³⁴
- In *State of Bihar v. Bihar Secondary Teachers Struggle Committee, (2019) 18 SCC 301* : Art. 14 narrows down to a question of fact which must be determined by the highest Judges in the land as each case arises. Always there is in these cases a clash of conflicting claims and it is the core of the judicial process to arrive at an accommodation between them. Anybody can decide a question if only a single principle is in issue. The heart of the difficulty is that there is hardly any question that comes before the Courts that does not entail more than one principle.

Example :

- A resolution passed by a Legislative Assembly for suspension of some MLAs was set aside by Supreme Court of India for the violation for rules of natural justice.³⁵

³² Onkar Lal Bajaj V. Union of India (2003) 2 SCC 673.

³³ Rajasthan State Road Transport Corporation v. Bal Mukund Bairwa (2), (2009) 4 SCC 299

³⁴ Bannari Amman Sugars Ltd. v. CTO, (2005) 1 SCC 625

³⁵ Alagaapuram R Mohanraj V. TN Legislative Assembly (2016) 6 SCC 82.

- Government Company/Corporation –must be not only substantively but also procedurally reasonable.³⁶
- Where administrative action is attacked as arbitrary, then one has to see, *whether there is any discernible principle emerging from the impugned action and if so, does it really satisfy the test of reasonableness.*³⁷
- Entitlement of former CMs of State of U.P. for allotment of government accommodation for their lifetime in terms of Section 4(3) of U.P. Ministers (Salaries, Allowances and Miscellaneous Provisions) Act, 1981 (as amended by U.P. Act 22 of 2016), violates doctrine of equality and is ultra vires the Constitution. Natural resources, public lands and public goods like government bungalows/official residence are public property and “Doctrine of Equality” which emerges from concepts of justice, fairness must guide State in distribution/allocation of same.³⁸

EXCEPTIONS TO EQUALITY

Exceptions based on comity of Nations : These exceptions based on International law/comity of nations can be recognised under the Constitution of India (under Article 51).

(1) Foreign Sovereigns.— Every Sovereign of an independent country, while entering into the territory of another State, reserves the immunities due to his sovereign status, and is exempt from the jurisdiction of the Courts of the foreign country, criminal or civil.

(2) Ambassadors.— An Ambassador represents his Sovereign, and enjoys, in general, all the immunities which his Sovereign could claim in the foreign territory.

(3) Alien enemies.— Alien enemies can be tried in respect of ordinary crimes in the ordinary Courts, as regards acts of war they can be tried only under martial law and not by the ordinary Courts. Every State has sovereign powers in the matter of admission, expulsion or deportation of aliens, but once admitted, friendly aliens *are entitled to equality before the law.*

Exceptions based on Public Interest :

(1) Heads of State.— Though public officials have no general immunity, heads of State, in India, are immune from legal proceedings during their term of office (under Article 361).

(2) Judges - Judges of the superior Courts have an absolute immunity for acts done in discharge of their judicial duty. Judges are exempt from civil or criminal liability for

³⁶ New India Assurance Co. Ltd. v. Nusli Neville Wadia, (2008) 3 SCC 279

³⁷ Union of India V. International Trading Corporation (2003) 5 SCC 437.

³⁸ Lok Prahari v. State of U.P., (2016) 8 SCC 389 & Lok Prahari v. State of U.P., (2018) 6 SCC 1.

things done or said while acting within their jurisdiction, even if done maliciously and without reasonable or probable cause.

(3) *Members of Legislatures.*— Members of a Legislature enjoy immunity, in respect of arrest under civil process during session of the Legislature, from action for defamation for anything said within the Houses; which will be explained fully, under Article 105. These exceptions to equality before the law are necessary to maintain the freedom of the Legislature which constitutes the foundation of representative democracy.

(4) *Trade Unions.*— An absolute immunity has also been granted to trade unions, by statute, in India (Trade Unions Act, 1926), in view of the special importance of the trade union from the social standpoint.

(5) *Military personnel.*— In view of the special importance of security and discipline amongst members of the armed forces, they enjoy certain special privileges and some special disabilities as well, which will be discussed under Article 33.

(6) *Public Officials* - The Constitution of India contains no provision prescribing immunity of officials for anything done in the discharge of official duties, *save in the matter of contracts [Article 299(2)]*. In the result, the position of officers, under our Constitution, will be the same as that of private individuals except in so far as exceptions may be engrafted by legislation within the permissible limits imposed by the Constitution.

DISCUSSION ON ARTICLE 14 HEREINAFTER BECOMES NOT-SO-IMPORTANT FOR UPSC (EXCEPT FOR FEW TOPICS- WHERE THE IMPORTANCE IS HIGHLIGHTED IN RED)

IMPORTANT THEMES UNDER ARTICLE 14 |

[IMPORTANT] POSITIVE V. NEGATIVE EQUALITY/ ILLEGALITY/ MISTAKE : Article 14 provides positive and not negative equality. It cannot be used to perpetuate illegality.³⁹ Hence any action or order contrary to law does not confer any right upon any person for similar treatment.

- Thus, unauthorized additional construction and change of user of land cannot be claimed on the basis that the same had been granted in other cases in contravention of law.⁴⁰

³⁹ Usha Mehta V. State of Andhra Pradesh 2012 AUR SCW 6107 (SC)

⁴⁰ Vishal Properties (P) Ltd. v. State of Uttar Pradesh, (2007) 11 SCC 172

- Equality cannot be applied when it arises out of illegality e.g. when Art. 14 is sought to be involved in aid of compassionate appointment wrongly made earlier.⁴¹
- Article 14 does not mandate that a person should be granted illegal and unjustified relief similar to those granted to others earlier.⁴²

In *Gursharan Singh v. New Delhi Municipal Commissioner*⁴³, If an illegality or irregularity is committed by the state in favour of a person or a group of persons, others cannot claim that the same irregularity or illegality be also committed in their favour on the principle of equality before law.

In *Islamic Academy of Education v. State of Karnataka*⁴⁴: It would be constitutionally immoral to perpetuate inequality among majority people of the country in the guise of protecting the Constitutional Rights of minorities and the backward and downtrodden.

In *P. Singaravelan v. Collector, Tiruppur, (2020) 3 SCC 133* : A person cannot invoke Art. 14 to claim benefit on grounds of parity if he is not entitled to such benefit. Art. 14 embodies concept of positive equality alone and not negative equality i.e. it cannot be relied upon to perpetuate illegality or irregularity. Said principle extends to judicial orders as well. Thus, jurisdiction of higher court cannot be invoked on basis of wrong order passed by lower forum.

APPOINTMENT ON COMPASSIONATE GROUND : In certain circumstances, appointment on compassionate ground of dependants of the deceased employee is considered inevitable so that the family of the deceased employee may not starve. The primary object of such scheme is to save the bereaved family from sudden financial crisis occurring due to death of the sole bread earner. It is thus an exception to the general rule of equality and not another independent and parallel source of employment.⁴⁵

CUT-OFF DATES : In *D.S. Nakara*⁴⁶ case : Government issued an office memorandum for pension scheme and made applicable to retired government servants who had retired after March 31, 1979. SC held that this fixation of the cut-off date to be discriminatory as violating Article 14 as there was no acceptable or persuasive reason for such classification.

This position is now altered to the effect, after *Indian Ex-Service League v. Union of India*⁴⁷ & *Union of India v. B.P.N. Menon*⁴⁸ that any revised scheme in respect of post-retirement benefits can be implemented from a cut-off date which can be regarded as

⁴¹ General Manager, Uttaranchal Jal Sansthan v. Laxmi Devi, (2009) 7 SCC 205

⁴² Anand Buttons Ltd. v. State of Haryana, (2005) 9 SCC 164 : AIR 2005 SC 565.

⁴³ AIR 1996 SC 1174

⁴⁴ (2003) 6 SCC 697

⁴⁵ General Manager, State Bank of India v. Anju Jain(2008) 8 SCC 475

⁴⁶ D.S. Nakara v. Union of India, AIR 1983 SC 130 :

⁴⁷ (1991) 2 SCC 104

⁴⁸ AIR 1994 SC 2221

reasonable and rational in the light of Art. 14. It should be noted that some persons or a section of society would face hardship, by itself, cannot be a ground for holding that the cut-off date so fixed is ultra vires Article 14.⁴⁹

State of West Bengal v. Rattan Behari Dey, (1993) 4 SCC 62

"It is open to the State or to the Centre, as the case may be, to change the conditions of service unilaterally... The power to specify a date from which the revisions of pay scales or terminal benefits/pensionary benefits, as the case may be, shall take effect is a concomitant of the said power. So long as such date is specified in a reasonable manner, i.e., without bringing about a discrimination between similarly situated persons, no interference is called for by the court in that behalf... The only question is whether the prescription of the date is unreasonable or discriminatory.."

In **Ramakrishna Raju V. Union of India (2014) 12 SCC 1** : Members of the bar joining Higher Judicial Service are entitled to retirement benefits for the 10 years practice as advocate. But the same was denied to direct appointees of High Courts, however accorded to anyone who elevated from State Judicial Service to High Courts. This practice was held to be discriminatory, arbitrary and violative of Article 14,16(1) and 21 of the Constitution.

In **S Seshachalam V. Bar Council of Tamil Nadu (2014) 16 SCC 72** : Welfare fund was denied to advocates who had retired from government jobs, as they were already receiving retiral benefits. SC held that this differentiation of *giving welfare fund* to advocates, who set up practice from law college, and *denial of welfare fund* to retired employee advocates, as valid and reasonable.

FOREIGNERS: The power of the Government of India to expel foreigners is absolute and unlimited and there is no provision in the Constitution fettering its discretion and the executive government has unrestricted right to expel a foreigner. So far as right to be heard is concerned, there cannot be any hard and fast rule about the manner in which a person concerned has to be given an opportunity to place his case.

In **Sarbananda Sonowal v. Union of India, (2005) 5 SCC 665 : AIR 2005 SC 2920** : The deportation proceedings are not proceedings for prosecution where a man may be convicted or sentenced. The procedure under the foreigners Act and the Foreigners (Tribunals) Order 1964 is just, fair and reasonable and does not offend any Constitutional provision.

CIVIL SERVICES : In **Mohan Kumar Singhania v. Union of India⁵⁰**, The supreme court held that each of various civil service , namely, I.A.S., I.R.S., I.P.S., is distinct and founded on intelligible differentia and such there are rational grounds for such distinction.

In **Abhay Singh V. State of UP (2013) 15 SCC 435** : Use of red light by 'high dignitaries' will not violate the dignity of other citizens, because such benefits are co-terminus with

⁴⁹ Ramrao v. All India Backward Class Bank Employees Welfare Association., (2004) 2 SCC 76

⁵⁰ AIR 1992 SC 1

the tenure of the office. And as their constitutional positions requires such special category, it would not be appropriate for the courts to exclude them.

LIFE INSURANCE : LIC of India v. Consumer Education & Research Centre, AIR 1995 SC 1811 : The Life Insurance Corporation, a statutory body, introduced a scheme of life insurance, which was open only to persons in government or semi-government service or of reputed commercial firms. This scheme was declared unconstitutional as being violative of Article 14.

HARDSHIPS: In *Prafualla Kumar Das V. State of Orissa*⁵¹: Mere hardship is no ground to strike down a valid legislation. However, wednesbury principle can be resorted for doing so.⁵²

PREFERABLE TREATMENT TO PSUs : Favorable treatment shown to a public sector undertaking⁵³ or to co-operative society⁵⁴ is not discriminatory as the same augurs public interest.

DISCRIMINATION BY STATE IN ITS OWN FAVOUR :

- Art. 14 does not outlaw discrimination between the state and a private individual because the two are not placed on the same footing. Thus, creation of a monopoly by the state in its favour will not be bad under Art. 14.⁵⁵
- Exemptions to government or local authority from Rent Control Act is valid, as the government is not having profit motive.⁵⁶
- Exemption of state from payment of court-fee is valid, as anyway the state is responsible for the expense of the administration of civil justice.⁵⁷
- Use of red-beacons in ambulances, fire services, police etc. would not cause prejudice to any person as the same is permitted to be used for operational requirements.⁵⁸

TAXING STATUTES : In *State of Maharashtra v. M.B. Badiya*, AIR 1988 SC 2062 : (1988) 4 SCC 290 : The courts assert that in view of the intrinsic complexity of fiscal adjustments of diverse elements, a legislature ought to be permitted a larger discretion and latitude in the matter of classification for taxing purposes.

In *Kerala Hotel and Restaurant Association v. State of Kerala*, AIR 1990 SC 913 : (1990) 2 SCC 502: The reason for greater judicial tolerance shown towards a tax law is that taxation is not merely a source of raising money to defray government expenses but it is also a tool to reduce inequalities in society. Accordingly, while applying the doctrine of

⁵¹ (2003) 11 SCC 614

⁵² Grand Kakatiya Sheraton Hotel V. Srinivasa Resorts Ltd. (2009) 5 SCC 342.

⁵³ Indian Drugs & Pharmaceutical Limited & Punjab Drugs Manufactures Association, AIR 1999 SC 1626.

⁵⁴ Sarkari Sasta Anaj Vikreta Sangh, Tahsil Bemetra V. Madhya Pradesh AIR 1981 SC 2030.

⁵⁵ Saghir Ahmad v. State of Uttar Pradesh, AIR 1954 SC 728

⁵⁶ Baburao V. Bombay Housing Board, AIR 1954 SC 153.

⁵⁷ PC Sukhani V. State of Sikkim, AIR 1982 Sikkim 1.

⁵⁸ Abhay Singh V. State of UP (2015) 16 SCC 365.

classification, the legislature is allowed much more freedom of choice in the matter of taxation *vis-à-vis* other types of laws. A tax measure is struck down on the ground of discrimination under Art. 14 only on the ground of *palpable arbitrariness applied in the context of the felt needs of the times and societal exigencies informed by experience.*

In Deputy Commissioner Of Income Tax vs M/S Pepsi Foods Ltd. (Now Pepsico ... on 6 April, 2021⁵⁹ : The expression “permissible” policy of taxation would refer to a policy that is constitutionally permissible. If the policy is itself arbitrary and discriminatory, such policy will have to be struck down under Article 14.

In East India Tobacco Co. v. State of Andhra Pradesh, AIR 1962 SC 1733 : (1963) 1 SCR 404 : A sales tax imposed on sales of virginia tobacco but not of country tobacco is not bad under Art. 14, for the former has certain features which distinguish it from the latter.

In K.T. Moopil Nair v. State of Kerala, AIR 1961 SC 552 : (1961) 3 SCR 7 : A land tax at a flat rate of Rs. 2 per acre was declared discriminatory as it made no reference to income, either actual or potential, from the land taxed. Lack of classification by the Act therefore created inequality.

ECONOMIC AFFAIRS: *In R.K. Garg v. Union of India AIR 1981 SC 2138* : In the instant case, the Supreme Court emphasized that the laws relating to economic activities should be viewed with greater indulgence than ordinary laws and economic laws may not be struck down merely on account of crudities and inequities inasmuch as such legislations are designed to take care of complex situations and complex problems which do not admit of solutions through any doctrinaire approach or straight-jacket formulae.

In P.P. Enterprises v. Union of India, (1982) 2 SCC 33 : Sugar dealers in Calcutta were permitted to keep a maximum stock of 3500 quintals of sugar whereas those in towns with population up to one lakh, only 250 quintals and in towns with less than one lakh population, only 100 quintals. Such a classification of dealers was held to be not arbitrary but based on reasonable classification and so not bad under Art. 14.

In Pathumma v. State of Kerala, (1978) 2 SCC 1 : The agricultural debtors form a separate category because of their poverty, economic backwardness and miserable conditions. Therefore, a law enacted to give relief to agricultural indebtedness is not invalid.

GEOGRAPHICAL DIFFERENTIATION : As a valid basis of classification, geographical considerations may form a for purposes of legislation in appropriate cases.

In Kishan Singh v. State of Rajasthan, AIR 1955 SC 795 : The State of Rajasthan passed an Rent Act applicable only for tenants in the Marwar region. Challenge to this law was failed, as the petitioners failed to prove that conditions prevailing in other areas of the

⁵⁹CIVIL APPEAL NO. 1106OF 2021

State were similar to those in Marwar where the Act applied. Therefore, it was held that a law cannot be held discriminatory merely because it did not apply to the whole State.

In *Clarence Pais v. Union of India* AIR 2001 SC 1151, 1155 : “Historical reasons may justify differential treatment of separate geographical regions provided it bears a reason and just relation to the matter in respect of which differential treatment is accorded. Uniformity in law has to be achieved, but that is a long-drawn process.”

[IMPORTANT] LEGISLATION APPLICABLE TO A SINGLE PERSON : A statute based on a reasonable classification does not become invalid merely because the class to which it applies consists of only one person. A single body or institution may form a class. A single institution is capable of being treated as a class by itself if there are special circumstances or reasons which are applicable to that institution

A restriction imposed by reason of a statute, for a person to whom it applies, forms a separate and distinct class and such classification is a reasonable one based on intelligible differentia having nexus with the object sought to be achieved.⁶⁰

In *Dharam Dutt V. Union of India*⁶¹, The contention that the institution Indian Council of World Affairs (ICWA) was singled out and several other societies or other organizations which were in the grip of more serious mismanagement and maladministration were left out by the law cannot be accepted.

In *Charanjit Lal V. Union of India*⁶², A large cotton textiles mill employing a large labour force, closed down due to mismanagement. A law was passed by government to take over the company. The contention that this company was singled out in the law cannot be accepted.

A law providing for taking over of Auroville by government does not infringe Art. 14 as the Auroville institution has a uniqueness of its own.⁶³

In *Charan Lal Sahu V. Union of India*⁶⁴ : Consequent upon the Bhopal Gas Disaster, Parliament enacted the Bhopal Gas Disaster (Processing of Claims) Act, 1985. Under this Act, the Central Government took over the exclusive right of representing and acting on behalf of every victim for claiming compensation from the concerned multinational corporation. This law was held to be valid, as the state as sovereign can act as *parens patriae* and victims of this disaster formed a distinct class requiring special treatment.

TWO LAWS : If there are two laws on a same aspect, the one which is softer will be upheld and the one which is drastic will be void, if it does not have any rational or reasonable principle in regulating the discretion.

⁶⁰ John Vallamattom V. Union of India (2003) 6 SCC 611.

⁶¹ (2004) 1 SCC 712.

⁶² AIR 1951 SC 41.

⁶³ SP Mittal V. Union of India, AIR 1983 SC 1.

⁶⁴ AIR 1990 SC 1480

In *Northern India Caterers V. State of Punjab AIR 1967 SC 1581* : To evict a person from unauthorised occupation of public premises,, collector had two choices; he could order eviction under the Punjab Act, or could file an ordinary suit in a court for eviction under the general law. Punjab Act was held void as it did not have any guidelines for the exercise of discretion.

This decision was overruled in *Maganlal Chhagganlal v. Greater Municipality*.

Now where a statute providing for a more drastic procedure different from the ordinary procedure covers the whole field covered by the ordinary procedure, without any guidelines as to the class of cases in which either procedure is to be resorted to, the statute will be hit by Art. 14. Even there, a provision for appeal may cure the defect.

In *Iqbal Singh*⁶⁵ by saying that mere availability of two procedures would not justify the quashing of a provision as being violative of Art. 14. What is necessary to attract the inhibition of Art. 14 is that there must be "substantial and qualitative differences" between the two procedures so that one is really and substantially more drastic than the other.

SPECIAL COURTS : In *State of West Bengal v. Anwar Ali Sarkar*⁶⁶, was involved a Bengal law permitting setting up of special courts for the 'speedier trial' of such 'offences', or 'classes of offences' or 'cases', or 'classes of cases', as the State Government might direct by a general or special order. These courts were to follow a procedure less advantageous to the accused in defending himself than the procedure followed by the ordinary criminal courts.

The Act was held invalid as it made no reasonable classification, laid down "no yardstick or measure for the grouping either of persons or of cases or of offences" so as to distinguish them from others outside the purview of the Act.

But if the law specifies the purpose in its preamble and as to whom it applies, then it will be valid.⁶⁷

In August, 1978, the President made a reference to the Supreme Court under Art. 143(1) of the Constitution,⁴⁵ seeking the Court's opinion on the constitutional validity of the Special Courts Bill proposing the setting up of special courts for speedy trial of offences committed by the holders of high public and political offices during the emergency of 1975-77. The Supreme Court ruled that Parliament could make the law in question under entries 11A of List III and entry 77 of List I,⁴⁶ and that it did not infringe Art. 14 as the classification provided for by the Bill was valid.⁶⁸

⁶⁵ *Iqbal Singh V. State (Delhi Administration) AIR 1977 SC 2437.*

⁶⁶ AIR 1952 SC 75.

⁶⁷ *Kathi Raning Rawat V. Saurashtra AIR 1952 SC 123.*

⁶⁸ AIR 1979 SC 478.

The courts Act 1979, which was passed in consequence as a further development, was held to be valid in *State (Delhi Administration) V. V.C.Shukla*.⁶⁹

[IMPORTANT] UNREASONABLE LAWS : In *Shayara bano V. Union of India (August 2017)* By a majority of 3:2, the Islamic practice of 'talaq-e-biddat' – triple talaq was held to be unreasonable and violative of Article 14,25,26.

The 5- Judge Bench judgment in *Shayara Bano v. Union of India (2017) 9 SCC 1* as follows:

“14. The test of manifest arbitrariness, therefore, as laid down in the aforesaid judgments would apply to invalidate legislation as well as subordinate legislation under Article 14. Manifest arbitrariness, therefore, must be something done by the legislature capriciously, irrationally and/or without adequate determining principle. Also, when something is done which is excessive and disproportionate, such legislation would be manifestly arbitrary. We are, therefore, of the view that arbitrariness in the sense of manifest arbitrariness as pointed out by us above would apply to negate legislation as well under Article 14.”

A statutory provision providing for payment of compensation for the land acquired by the State from a person, in several annual instalments instead of one lump sum, is unreasonable.⁷⁰

Under the Bombay Rent Restriction Act, rents of premises were frozen at the level of 1st September, 1940. The Supreme Court declared the provision to be unreasonable and arbitrary and violative of Art. 14 in the year 1998 in view of so much inflation in the country since 1940.⁷¹

In *Motor General Traders v. State of Andhra Pradesh*⁷², the Supreme Court has observed: "What was once a perfectly valid legislation may, in course of time, become discriminatory and liable to challenge on the ground of its being violative of Art. 14."

⁶⁹ AIR 1980 SC 1982.

⁷⁰ State of TN V. Ananthi Ammal AIR 1995 SC 2114.

⁷¹ Malpe Vishwanath Acharya V. State of Maharashtra AIR 1998 SC 602.

⁷² AIR 1984 SC 121.

REVISION NOTES ON ARTICLE 14

Equality is guaranteed in UDHR (Article 7). Equal rights are important for an individual to grow in the society.¹

ARTICLE 14 OF INDIAN CONSTITUTION

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

Similar provision can be found in 14th Amendment.

Article 14 is the '*fon juris*' of our constitution. Two concepts are involved in Art. 14, viz., 'equality before law' and 'equal protection of laws'.

Janhit Abhiyan v. Union of India, 2022 SCC OnLine SC 1540 : While SC upheld 103rd Amendment on EWS, it stated "The equality code in its majestic formulation (Article 14, 15, 16 and 17) promotes inclusiveness. Even provisions enabling reservations foster social justice and equality, to ensure inclusiveness and participation of all sections of society. These provisions assure representation, diversity, and empowerment"

Sri Srinivasa Theatre², case –

- '*Equality before law*' – **Negative concept**. Absence of privilege & no one is above law.
- '*Equal protection of laws*' – **Positive concept**. Striving for a more equal society. Like should be treated alike without distinction³.

SECURED TO WHOM? Equality under Indian Constitution is secured to all persons, citizens or non-citizens.⁴ It covers *hijars/transgenders* who are not male/female.⁵

SC asked Union of India and States to justify the rationale behind their policy approach which must be bound by the human rights framework which includes the right to life (Article 21) and the right to equality (Article 14) of the Constitution during humanitarian crisis of Covid-19.⁶

EQUALITY IS A BASIC FEATURE | CANNOT BE TAKEN AWAY

"Equality is the basic feature of the Constitution of India and any treatment of equals unequally or unequals as equals will be violation of basic structure of the Constitution of India." Explain.
UPSC 2008.

Equality is

- One of magnificent corner-stones of Indian democracy
- necessary corollary of Rule of Law in Indian Constitution.

¹ Indian Young Lawyers Assn. (Sabarimala Temple-5 J.) v. State of Kerala, (2019) 11 SCC 1

² AIR 1992 SC, at 1004.

³ Jagannath Prasad v. State of Uttar Pradesh, AIR 1961 SC 1245

⁴ Natural Resources Allocations Re.Special Reference Number 1 of 2012, (2012) 19 SCC 1]

⁵ National Legal Services Authority V. Union of India (2014) 5 SCC 438.

⁶ In Re: Distribution of Essential Supplies and Services During Pandemic Suo Motu Writ Petition (Civil) No.3 of 2021. [May 2021]

Right to equality has been declared by the Supreme Court as a basic feature of the Constitution. This means that even a constitutional amendment offending the right to equality will be declared invalid.

M.G. Badappanavar v. State of Karnataka, AIR 2001 SC 260

"Equality is a basic feature of the Constitution of India and any treatment of equals unequally or unequals as equals will be violation of basic structure of the Constitution of India."

D.S. Nakara & Others vs Union Of India 1983 AIR 130, 1983 SCR (2) 165

Equality is a dynamic concept with many aspects and dimensions and it cannot be imprisoned within traditional and doctrinaire limits....Article 14 strikes at arbitrariness in State action and ensure fairness and equality of treatment. The principle of reasonableness, which legally as well as philosophically, is an essential element of equality or non-arbitrariness pervades Article 14 like a brooding omnipresence."

'Equality is a dynamic concept with many aspects and dimensions, and it cannot be cribbed, cabined or confined within traditional and doctrinaire limits.' Explain, how the judiciary has widened the scope of the right to equality by various decision.

Asked in UPSC 2011.

EQUALITY BEFORE LAW : ART. 14

Article 14 bars discrimination and prohibits discriminatory laws.

NEED FOR PRINCIPLE OF CLASSIFICATION? All persons are not equal by nature, attainment or circumstances, and, therefore, a mechanical equality before the law may result in injustice. Therefore, the varying needs of different classes or sections of people require differential treatment.

DOCTRINE OF CLASSIFICATION: The doctrine of classification is the *first instance* where the Supreme court of India drew a line, and indicated a choice of interpretation of Article 14.⁷

Classification to be reasonable should fulfil the following two tests:

(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 things grouped together in the class from others left out of it.

(2) The differentia adopted as the basis of classification must have a rational or reasonable nexus with the object sought to be achieved by the statute in question.⁸

In re the Special Courts Bill, 1978 (1979) 1 SCC 380, Chandrachud, C.J., speaking for majority of the Court adverted to large number of judicial precedents involving interpretation of Article 14 and culled out several propositions including the following: [Simplified version]

(i) State should have power to classify persons or things under the law.

(ii) Equal protection of law cannot be achieved in a scientific way. If the classification is palpably arbitrary, then it is valid.

⁷ Jaishri Laxmanrao Patil vs The Chief Minister And Ors. on 5 May, 2021 [Supreme Court of India]

⁸ Laxmi Khandhari v. State of Uttar Pradesh, AIR 1981 SC 873, 891 : (1981) 2 SCC 600. Test for valid classification restated. State of Haryana v. Jai Singh, (2003) 9 SCC 114 : AIR 2003 SC 1696; Welfare Assn. ARP v. Ranjit P. Gohil, (2003) 9 SCC 358; See also (2004) 1 SCC 369 : AIR 2003 SC 3057; See also Javed v. State of Haryana, (2003) 8 SCC 369 : AIR 2003 SC 3057.

(iii) The principle underlying the guarantee of Article 14 is all persons similarly circumstanced shall be treated alike both in privileges conferred and liabilities imposed.

(iv) State has the power to classify for purposes of legislation and in relation to a law enacted on a particular subject. But such classification must be in systematic way, rather than being herding together of certain persons and classes arbitrarily.

(v) Law can make and set apart the classes as per needs of society, without being arbitrary, artificial or evasive.

(vi) The classification must not be arbitrary but must be rational.

ARTICLE 14 FORBIDS CLASS-LEGISLATION

- Article 14 forbids class-legislation but it does not forbid reasonable classification.
- It is **reasonable**, if the same is not "**arbitrary, artificial or evasive**" and if it *has some systematic relation and rational basis*.
- *A simple physical grouping which separates one category from the other without any rational basis is not a sound or intelligible differentia.*⁹
- In *Subramanian Swamy v. CBI (2014) 8 SCC 682*, a Constitution Bench of the court unanimously held that "*if the object itself is discriminatory, then explanation that classification is reasonable having rational relation to the object sought to be achieved is immaterial*" and invalidated Section 6-A, Delhi Special Police Act, 1946.

What is Prohibited is hostile discrimination, and not reasonable classification. Comment. UPSC 1999

Hostile discrimination is obvious where some allottees despite having complied with all conditions, including payment of full amount due, were not given possession, whereas others were granted possession even before payment or after depositing a small proportion of the total dues. [Government of AP V. Maharishi Publishers Pvt. Ltd. (2003) 1 SCC 95.]

HOW THE VIOLATION SHOULD BE? In *K. Thimmappa v. Chairman Central Board of Directors, AIR 2001 SC 467 : (2001) 2 SCC 259* : Differentiation should be **unreasonable or arbitrary** to attract violation of Article 14.

In *Deepak Sibal v. Punjab University AIR 1989 SC 903*. Classification cannot be made in "mathematical precision".

Burden of Proof is on the person who complains : When a person seeks to impeach the validity of a law on the ground that it offends Art. 14, the onus is on him to plead and prove the infirmity. If a person complains of unequal treatment, the burden lies on him to place before the court sufficient material from which it can be inferred that there is unequal treatment.

Ashutosh Gupta v. State of Rajasthan (2002) 4 SCC 34 : The legislature *understands and correctly appreciates the need of its own people*. And therefore *There is always a presumption in favour of the constitutionality of enactment*.

However, if discrimination is writ large on the face of the legislation, the onus may shift to the state to sustain the validity of the legislation in question.¹⁰

A person setting up a grievance of denial of equal treatment by law must establish that between persons similarly circumstanced, some were treated to their prejudice and the

⁹ S.Seshachalam & Ors.Etc vs Chairman Bar Council Of Tamilnadu (2014) 16 SCC 72

¹⁰ Dalmia v. Tendolkar, AIR 1958 SC 538 : 1959 SCR 279

differential treatment had no reasonable relation to the object sought to be achieved by the law.¹¹

Law is held to be invalid if there is (i) discrimination, (ii) excessive delegation of powers¹²

EXAMPLES :

- Clubbing of dealers with dealers against whom there were allegations of political connection and patronage results in treating unequals as equals.¹³
- Fixation of price at a higher rate for small and fully developed plots and at a lower rate for a large plot not entirely developed and provided with peripheral infrastructural facilities only, was not arbitrary.¹⁴
- Obligation of all the assesses to provide Aadhaar number or enrolment ID of Aadhaar application form while applying for PAN or while filing income tax return does not violate Articles 14 or 19(1)(g) of the Constitution.¹⁵
- In *Medical Council of India v. State of Kerala, (2019) 13 SCC 185* :. A legislation can be invalidated on the basis of breach of separation of judicial power since such breach is negation of equality under Art. 14.

“The extensive use of the device of reasonable classification by State and its approval by the Supreme Court has rendered the guarantee of fair and equitable treatment under Article 14 largely illusory.” Discuss making clear the constitutional and popular concepts of right to equality in India

UPSC 2004.

OVERDO CLASSIFICATION IS UNDO EQUALITY : In *B. Manmad Reddy and Ors. Vs. Chandra Prakash Reddy and Ors. AIR 2010 SC 1001* observed: "By its very nature classification can and is often fraught with the danger of resulting in artificial inequalities which make it necessary to subject the power to classify to restraints lest the guarantee of equality becomes illusory on account of classifications being fanciful instead of fair, intelligible or reasonable."

In the case of *T.R. Kothandaraman v. T.N. Water Supply and Drainage B.D., (1994) 6 SCC 282 (Para 2)*, Apex Court observed-- ".....the guarantee of equality is precious and the theory of classification may not be allowed to be extended so as to subvert or submerge the same"

- It was held in *Roop Chand Adlakha*¹⁶ that "**to overdo classification is to undo equality**". Marginal over inclusiveness or under inclusiveness, will not vitiate the classification.¹⁷

¹¹ Western U.P. Electric Power and Supply Co. Ltd. v. State of Uttar Pradesh, AIR 1970 SC 21, 24 : (1969) 1 SCC 817. Also see, R.K. Garg v. Union of India, AIR 1981 SC 2138 : (1981) 4 SCC 676; Re: Special Courts Bill, AIR 1979 SC 478 : (1979) 1 SCC 380; State of Uttar Pradesh v. Kamla Palace, AIR 2000 SC 617 : (2000) 1 SCC 557.

¹² Subramanian Swamy V. CBI (2014) 8 SCC 682.

¹³ . Onkar Lal Bajaj v. Union of India, (2003) 2 SCC 673

¹⁴ Chairman & MD, BPL Ltd. v. S.P. Guraraja, (2003) 8 SCC 567 : AIR 2003 SC 4536.

¹⁵ Binoy Viswam v. Union of India, (2017) 7 SCC 59

¹⁶ Roop Chand Adlakha v. Delhi Development Authority, AIR 1989 SC 307

¹⁷ Basheer alias N. P. Basheer v. State of Kerala, (2004) 3 SCC 609 : AIR 2004 SC 2757.

- There cannot be perfect equality in any matter on an absolute scientific basis and that would not offend Art. 14.¹⁸
- Merely because in the past two categories of employees had been treated differently does not mean that they cannot be equated subsequently.¹⁹
- Separate classification of properties belonging to religious institutions for purpose of rent legislations [like Punjab Religious Premises and Land (Eviction and Rent Recovery) Act, 1997 in this case], held, permissible. It is not violative of Art. 14. Court can interfere only when the policy of Act is irrational. [*Harbhajan Singh v. State of Punjab*, (2020) 2 SCC 659]

NEW CONCEPT OF EQUALITY

Do you agree with the view that “equality is antithesis of arbitrariness. In fact equality and arbitrariness are sworn enemies”?

Asked in UPSC 2013.

“In fact, equality and arbitrariness are sworn enemies; one belongs to the rule of law in a republic while the other, to the whim and caprice of an absolute monarch.” Elucidate with the help of constitutional provisions & judicial decisions.

Asked in UPSC 2006.

ARBITRARY ACTION : Article 14 strikes at arbitrary state action, both administrative and legislative. Every State action must be informed by reason and it follows that an act uninformed by reason is per se arbitrary.²⁰

In *E.P. Royappa v. State of Tamil Nadu*²¹ : “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 *Maganlal Chhaganlal (P) Ltd. v. Municipal Corpn. of Greater Bombay* 1974 AIR 2009: ... What the equality clause is intended to strike at are real and substantial disparities...and arbitrary or capricious actions of the executive..”

In *Maneka Gandhi v. Union of India*²², “Equality is a dynamic concept with many aspects and dimensions and it cannot be imprisoned within traditional und doctrinaire limits...The principle of reasonableness, which legally as well as philosophically, is an essential element of equality or non-arbitrariness, pervades Article 14 like a brooding omnipresence.”

In *International Airport Authority*²³ case Bhagwati, J., reiterated the same principle in the following words : “It must..... therefore, now be taken io be well-settled that what

¹⁸ H. P. Gupta And Another Vs. Union Of India (2002) 10 SCC 658

¹⁹ Dilip Kumar Garg v. State of Uttar Pradesh, (2009) 4 SCC 753 : (2009) 3 JT 202.

²⁰ Bannari Amman Sugars Ltd. v. CTO, (2005) 1 SCC 625

²¹ AIR 1974 SC 555.

²² AIR 1978 SC 597

²³ RD Shetty V. Airport Authority AIR 1979 SC 1628.

Article 14 strikes at its arbitrariness because an action that is arbitrary, must necessarily involve negation of equality.

In *Natural Resources Allocation, Re. Special Reference No.1 of 2012*, the Court said Even though the classification doctrine was never overruled, it has found less favour with the Supreme Court as compared to "arbitrariness" doctrine. Therefore, a State action has to be tested for constitutional infirmities qua *Article 14 of the Constitution*; the action has to be fair, reasonable, non-discriminatory, transparent, non-capricious, unbiased, without favouritism or nepotism, in pursuit of promotion of healthy competition and equitable treatment. It should conform to the norms which are rational, informed with reasons, and guided by public interest, etc. All these principles are inherent in the fundamental conception of *Article 14* and this is the mandate of *Article 14*.

See., *The test of Manifest arbitrariness under the sub-heading "Unreasonable laws"*

WHEN AN ACTION IS ARBITRARY? Whether an action was arbitrary or not depends upon facts of each case. Tests to determine it are (i) whether there is any discernible principle emerging from impugned act; and (ii) if yes, does it satisfy test of reasonableness.

Where a mode is prescribed for performance of an act and there is no impediment in following that procedure, performance of that act otherwise and in manner which does not disclose any discernible principle which is reasonable, may attract arbitrariness. [*J.S. Luthra Academy v. State of J&K, (2018) 18 SCC 65.*]²⁴

- **Non-application of mind** is a facet of arbitrary exercise of power.²⁵
- **Non-compliance with the rules of natural justice** amounts to arbitrariness.²⁶

Example :

- A resolution passed by a Legislative Assembly for suspension of some MLAs was set aside by Supreme Court of India for the violation for rules of natural justice.²⁷
- Government Company/Corporation –must be not only substantively but also procedurally reasonable.²⁸
- Law enacted to accommodate former CMs for their lifetime in government property is violative of doctrine of equality and is ultra vires the Constitution.²⁹

IMPORTANT THEMES UNDER ARTICLE 14 |

POSITIVE V. NEGATIVE EQUALITY/ ILLEGALITY/ MISTAKE : Article 14 provides positive and not negative equality. It cannot be used to perpetuate illegality.³⁰

²⁴ *Bannari Amman Sugars Ltd. v. CTO, (2005) 1 SCC 625*

²⁵ *Onkar Lal Bajaj V. Union of India (2003) 2 SCC 673.*

²⁶ *Rajasthan State Road Transport Corporation v. Bal Mukund Bairwa (2), (2009) 4 SCC 299*

²⁷ *Alagaapuram R Mohanraj V. TN Legislative Assembly (2016) 6 SCC 82.*

²⁸ *New India Assurance Co. Ltd. v. Nusli Neville Wadia, (2008) 3 SCC 279*

²⁹ *Lok Prahari v. State of U.P., (2016) 8 SCC 389 & Lok Prahari v. State of U.P., (2018) 6 SCC 1.*

³⁰ *Usha Mehta V. State of Andhra Pradesh 2012 AUR SCW 6107 (SC)*

Article 14 does not mandate that a person should be granted illegal and unjustified relief similar to those granted to others earlier.³¹

In *Islamic Academy of Education v. State of Karnataka*³²: It would be constitutionally immoral to perpetuate inequality among majority people of the country in the guise of protecting the Constitutional Rights of minorities and the backward and downtrodden.

In *P. Singaravelan v. Collector, Tiruppur, (2020) 3 SCC 133* : A person cannot invoke Art. 14 to claim benefit on grounds of parity if he is not entitled to such benefit. Art. 14 embodies concept of positive equality alone and not negative equality i.e. it cannot be relied upon to perpetuate illegality or irregularity.

APPOINTMENT ON COMPASSIONATE GROUND : The primary object of compassionate ground scheme is to save the bereaved family from sudden financial crisis occurring due to death of the sole bread earner. It is thus an exception to the general rule of equality and not another independent and parallel source of employment.³³

CUT-OFF DATES : In *D.S. Nakara*³⁴ case : **Government** issued an office memorandum for pension scheme and made applicable to retired government servants who had retired after March 31, 1979. SC held that this fixation of the cut-off date to be discriminatory as violating Article 14 as there was no acceptable or persuasive reason for such classification.

This position is now altered to the effect, after *Indian Ex-Service League v. Union of India*³⁵ & *Union of India v. B.P.N. Menon*³⁶ that any revised scheme in respect of post retirement benefits can be implemented from a cut-off date which can be regarded as reasonable and rational in the light of Art. 14.

In *Ramakrishna Raju V. Union of India (2014) 12 SCC 1* : Members of the bar joining Higher Judicial Service are entitled to retirement benefits for the 10 years practice as advocate. But the same was denied to direct appointees of High Courts, however accorded to anyone who elevated from State Judicial Service to High Courts. This practice was held to be discriminatory, arbitrary and violative of Article 14,16(1) and 21 of the Constitution.

In *S Seshachalam V. Bar Council of Tamil Nadu (2014) 16 SCC 72* : Welfare fund was denied to advocates who had retired from government jobs, as they were already receiving retiral benefits. SC held that this differentiation of *giving welfare fund* to advocates, who set up practice from law college, and *denial of welfare fund* to retired employee advocates, as valid and reasonable.

LANDLORD-TENANT RELATIONSHIP : State and its instrumentalities have to be *fair, just, and reasonable* in all their activities including when being as a landlord or tenant.

³¹ Anand Buttons Ltd. v. State of Haryana, (2005) 9 SCC 164 : AIR 2005 SC 565.

³² (2003) 6 SCC 697

³³ General Manager, State Bank of India v. Anju Jain(2008) 8 SCC 475

³⁴ D.S. Nakara v. Union of India, AIR 1983 SC 130 :

³⁵ (1991) 2 SCC 104

³⁶ AIR 1994 SC 2221

In *Motor General Traders v. State of Andhra Pradesh*³⁷, Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960 which exempted all buildings constructed on or after August 26, 1957, from the operation of the Act was held to be as discriminatory under Article 14. The court held that, this law, in effect, will create a privileged class of landlords without any rational basis.

FOREIGNERS: The power of the Government of India to expel foreigners is absolute and unlimited and there is no provision in the Constitution fettering its discretion and the executive government has unrestricted right to expel a foreigner.

In *Sarbananda Sonowal v. Union of India*, (2005) 5 SCC 665 : AIR 2005 SC 2920 : The deportation proceedings are not proceedings for prosecution where a man may be convicted or sentenced. The procedure under the foreigners Act and the Foreigners (Tribunals) Order 1964 is just, fair and reasonable and does not offend any Constitutional provision.

CIVIL SERVICES : In *Mohan Kumar Singhania v. Union of India*³⁸, The supreme court held that each of various civil service , namely, I.A.S., I.R.S., I.P.S., is distinct and founded on intelligible differentia and such there are rational grounds for such distinction.

In *Abhay Singh V. State of UP (2013) 15 SCC 435* : Use of red light by 'high dignitaries' will not violate the dignity of other citizens, because such benefits are co-terminus with the tenure of the office. And as their constitutional positions requires such special category, it would not be appropriate for the courts to exclude them.

LIFE INSURANCE : LIC of India v. Consumer Education & Research Centre, AIR 1995 SC 1811 : The Life Insurance Corporation, a statutory body, introduced a scheme of life insurance, which was open only to persons in government or semi-government service or of reputed commercial firms. This scheme was declared unconstitutional as being violative of Article 14.

HARDSHIPS: In *Prafulla Kumar Das V. State of Orissa*³⁹: Mere hardship is no ground to strike down a valid legislation. However, wednesbury principle can be resorted for doing so.⁴⁰

PREFERABLE TREATMENT TO PSUs : Favorable treatment shown to a public sector undertaking⁴¹ or to co-operative society⁴² is not discriminatory as the same augurs public interest.

DISCRIMINATION BY STATE IN ITS OWN FAVOUR :

- Art. 14 does not outlaw discrimination between the state and a private individual because the two are not placed on the same footing. Thus, creation of a monopoly by the state in its favour will not be bad under Art. 14.⁴³

³⁷ AIR 1984 SC 121

³⁸ AIR 1992 SC 1

³⁹ (2003) 11 SCC 614

⁴⁰ Grand Kakatiya Sheraton Hotel V. Srinivasa Resorts Ltd. (2009) 5 SCC 342.

⁴¹ Indian Drugs & Pharmaceutical Limited & Punjab Drugs Manufactures Association, AIR 1999 SC 1626.

⁴² Sarkari Sasta Anaj Vikreta Sangh, Tahsil Bemetra V. Madhya Pradesh AIR 1981 SC 2030.

⁴³ Saghir Ahmad v. State of Uttar Pradesh, AIR 1954 SC 728

- Exemptions to government or local authority from Rent Control Act is valid, as the government is not having profit motive.⁴⁴
- Exemption of state from payment of court-fee is valid, as anyway the state is responsible for the expense of the administration of civil justice.⁴⁵
- Use of red-beacons in ambulances, fire services, police etc. would not cause prejudice to any person as the same is permitted to be used for operational requirements.⁴⁶

TAXING STATUTES : In *State of Maharashtra v. M.B. Badiya*, AIR 1988 SC 2062 : (1988) 4 SCC 290 : The courts assert that in view of the intrinsic complexity of fiscal adjustments of diverse elements, a legislature ought to be permitted a larger discretion and latitude in the matter of classification for taxing purposes.

In *Kerala Hotel and Restaurant Association v. State of Kerala*, AIR 1990 SC 913 : (1990) 2 SCC 502: A tax measure is struck down on the ground of discrimination under Art. 14 only on the ground of palpable arbitrariness applied in the context of the felt needs of the times and societal exigencies informed by experience.

In Deputy Commissioner Of Income Tax vs M/S Pepsi Foods Ltd. (Now Pepsico ... on 6 April, 2021⁴⁷ : The expression “permissible” policy of taxation would refer to a policy that is constitutionally permissible. If the policy is itself arbitrary and discriminatory, such policy will have to be struck down under Article 14.

ECONOMIC AFFAIRS: In *R.K. Garg v. Union of India* AIR 1981 SC 2138 : In the instant case, the Supreme Court emphasized that the laws relating to economic activities should be viewed with greater indulgence than ordinary laws and economic laws may not be struck down merely on account of crudities and inequities inasmuch as such legislations are designed to take care of complex situations and complex problems which do not admit of solutions through any doctrinaire approach or straight-jacket formulae.

GEOGRAPHICAL DIFFERENTIATION : As a valid basis of classification, geographical considerations may form a for purposes of legislation in appropriate cases.

In *Kishan Singh v. State of Rajasthan*, AIR 1955 SC 795 : The State of Rajasthan passed an Rent Act applicable only for tenants in the Marwar region. Challenge to this law was failed, as the petitioners failed to prove that conditions prevailing in other areas of the State were similar to those in Marwar where the Act applied. Therefore, it was held that a law cannot be held discriminatory merely because it did not apply to the whole State.

In *Clarence Pais v. Union of India* AIR 2001 SC 1151, 1155 : “Historical reasons may justify differential treatment of separate geographical regions provided it bears a reason and just relation to the matter in respect of which differential treatment is accorded. Uniformity in law has to be achieved, but that is a long-drawn process.”

⁴⁴ Baburao V. Bombay Housing Board, AIR 1954 SC 153.

⁴⁵ PC Sukhani V. State of Sikkim, AIR 1982 Sikkim 1.

⁴⁶ Abhay Singh V. State of UP (2015) 16 SCC 365.

⁴⁷CIVIL APPEAL NO. 1106OF 2021

LEGISLATION APPLICABLE TO A SINGLE PERSON : A statute based on a reasonable classification does not become invalid merely because the class to which it applies consists of only one person. A single body or institution may form a class.

In *Dharam Dutt V. Union of India*⁴⁸, The contention that the institution Indian Council of World Affairs (ICWA) was singled out and several other societies or other organizations which were in the grip of more serious mismanagement and maladministration were left out by the law cannot be accepted.

In *Charanjit Lal V. Union of India*⁴⁹, A large cotton textiles mill employing a large labour force, closed down due to mismanagement. A law was passed by government to take over the company. The contention that this company was singled out in the law cannot be accepted.

A law providing for taking over of Auroville by government does not infringe Art. 14 as the Auroville institution has a uniqueness of its own.⁵⁰

In *Charan Lal Sahu V. Union of India*⁵¹ : Consequent upon the Bhopal Gas Disaster, Parliament enacted the Bhopal Gas Disaster (Processing of Claims) Act, 1985. Under this Act, the Central Government took over the exclusive right of representing and acting on behalf of every victim for claiming compensation from the concerned multinational corporation. This law was held to be valid, as the state as sovereign can act as *parens patriae* and victims of this disaster formed a distinct class requiring special treatment.

TWO LAWS : If there are two laws on a same aspect, the one which is softer will be upheld and the one which is drastic will be void, if it does not have any rational or reasonable principle in regulating the discretion.

In *Northern India Caterers V. State of Punjab AIR 1967 SC 1581* : To evict a person from unauthorised occupation of public premises,, collector had two choices; he could order eviction under the Punjab Act, or could file an ordinary suit in a court for eviction under the general law. Punjab Act was held void as it did not have any guidelines for the exercise of discretion.

This decision was overruled in *Maganlal Chhaganlal v. Greater Municipality*. Now where a statute providing for a more drastic procedure different from the ordinary procedure covers the whole field covered by the ordinary procedure, without any guidelines as to the class of cases in which either procedure is to be resorted to, the statute will be hit by Art. 14. Even there, a provision for appeal may cure the defect.

SPECIAL COURTS : In *State of West Bengal v. Anwar Ali Sarkar*⁵², was involved a Bengal law permitting setting up of special courts for the 'speedier trial' of such 'offences', or 'classes of offences' or 'cases', or 'classes of cases', as the State Government might direct by a general or special order. The Act was held invalid as it made no reasonable

⁴⁸ (2004) 1 SCC 712.

⁴⁹ AIR 1951 SC 41.

⁵⁰ SP Mittal V. Union of India, AIR 1983 SC 1.

⁵¹ AIR 1990 SC 1480

⁵² AIR 1952 SC 75.

classification, laid down "no yardstick or measure for the grouping either of persons or of cases or of offences" so as to distinguish them from others outside the purview of the Act.

But if the law specifies the purpose in its preamble and as to whom it applies, then it will be valid.⁵³

In August, 1978, the President made a reference to the Supreme Court under Art. 143(1) of the Constitution, seeking the Court's opinion on the constitutional validity of the Special Courts Bill proposing the setting up of special courts for speedy trial of offences committed by the holders of high public and political offices during the emergency of 1975-77. The Supreme Court ruled that Parliament could make the law in question under entries 11A of List III and entry 77 of List I, 46 and that it did not infringe Art. 14 as the classification provided for by the Bill was valid.⁵⁴

The courts Act 1979, which was passed in consequence as a further development, was held to be valid in *State (Delhi Administration) V. V.C.Shukla*.⁵⁵

UNREASONABLE LAWS : In *Shayara bano V. Union of India (August 2017)* By a majority of 3:2, the Islamic practice of 'talaq-e-biddat' – triple talaq was held to be unreasonable and violative of Article 14, 25, 26.

The 5- Judge Bench judgment in *Shayara Bano v. Union of India (2017) 9 SCC 1* as follows:

"14. The test of manifest arbitrariness, therefore, as laid down in the aforesaid judgments would apply to invalidate legislation as well as subordinate legislation under Article 14. Manifest arbitrariness, therefore, must be something done by the legislature capriciously, irrationally and/or without adequate determining principle. Also, when something is done which is excessive and disproportionate, such legislation would be manifestly arbitrary. We are, therefore, of the view that arbitrariness in the sense of manifest arbitrariness as pointed out by us above would apply to negate legislation as well under Article 14."

A statutory provision providing for payment of compensation for the land acquired by the State from a person, in several annual instalments instead of one lump sum, is unreasonable.⁵⁶

⁵³ *Kathi Raning Rawat V. Saurashtra AIR 1952 SC 123.*

⁵⁴ AIR 1979 SC 478.

⁵⁵ AIR 1980 SC 1982.

⁵⁶ *State of TN V. Ananthi Ammal AIR 1995 SC 2114.*