

## **Unit II: Human Rights under the Constitution of India**

### **Module No. 1: Rights to Equality (Article 14-18)**

#### **Objectives**

The lecture will make the students understand:

- i) the contents enshrined under Right to Equality in the Indian Constitution;
- ii) the exceptions pertaining to different articles under Right to Equality ; and
- iii) the new dimensions in the field of equality.

#### **Summary**

Part (iii) of the Indian Constitution guarantees fundamental rights. Articles 14 to 18 are grouped under 'Right to Equality'. Article 14 provides no discrimination on the grounds of religion, race, caste, sex and place of birth. Article 16 guarantees equality of opportunity in the matters of public employment; Article 17 guarantees abolition of untouchability making the practice in any form to be punishable under the law; and Article 18 provides for abolition of titles except for military and academic titles.

Exceptions are also laid down in the exercise of the Right to Equality, as no fundamental rights to equality are absolute. In the recent years, new dimensions in the Right to Equality appears to be extending by judicial interpretations widening the horizon of equality. The equality provisions play a noteworthy role in the areas of Indian Administrative Law.

#### **Introduction**

The individual rights and freedoms and also the relations between the individual on one hand and the state or the society on the other, is and has been a continuing, unsettled and open-ended problem, since time immemorial. It is apparent that it comprises the rights that the state gives to the individual and guarantees by incorporating and amending the Constitution or the ordinary laws that may extend or limit the content of rights. There can be genuine individual freedom only when the individual is free from exploitation and from economic and political oppression. Some written constitution like the Indian Constitution guarantee a few rights to the people and forbid the government organs from interfering with the same and the chapter on fundamental right expresses the concept of inviolable and basic rights of the people of India. Instead of incorporating the rights in the ordinary laws, the same have been enshrined in the Constitution as there is fear that these rights may be taken away by an oppressive government easily by using the ordinary amending process, as can be done in the ordinary laws.

One important and long cherished right of the people is the right to equality. In the international sphere, the concept of equality is proclaimed in the Charter of Human Rights called the Universal Declaration of Human Rights, 1948. It is declared in Article 1 of the Charter as "All human beings are born free and equal in dignity and rights". The Constitution of India also declared the right to equality by taking care of the reality of varying needs of

different classes or sections of people that will require differential and separate treatment.

Part (iii) of the Constitution of India guarantees fundamental rights. The Articles 14 to 18 may be grouped under 'Right to Equality'. Article 14 provides the general principle of equality before law; Article 15 provides no discrimination on the grounds of religion, race, caste, sex and place of birth; Article 16 provides for equality of opportunity in the matters of public appointment; Article 17 provides for the act of untouchability abolished; and Article 18 provides for the abolition of titles.

Article 14 is the most important article and been subjected to judicial interpretation time and again by the judiciary. This Article embodied the general principles of equality and the Articles i.e. 15 to 18 are the specific aspects of equality. Articles 14 to 18 taken together, enshrine the principles of equality and absence of discrimination. Among these provisions guaranteeing equality, some aspects of equality are extended to all persons- citizens or aliens, while some articles are guaranteed to the citizens only. It is necessary to analyse the concept of equality as provided in different Articles under Part (iii) of the Constitution.

### **Equality before Law and Equal Protection of Laws**

Articles 14 incorporates "The state shall not deny to any person equality before law or the equal protection of laws within the territories of India". A corresponding provision is incorporated in the Constitution of the United States of America being inserted by the 14<sup>th</sup> Amendment. The provision goes "No state shall deny to any person within its jurisdiction, equal protection of the laws". The Indian provision of equality provides two concepts i.e. Equality before law and equal protection of laws.

Equality before law is a negative concept which implies absence of any special privilege in favour of any individual and all individuals are subjected to the ordinary law. The equal protection of laws carries with it a positive concept. It means "Like should be treated alike" and among equals, law should be equal and equally administered. Equality before law is akin to the concept of rule of law as enunciated by A.V. Dicey. His enumeration of rule of law is that no man is above the law of the land and that every person whatever be the rank or status is subject to ordinary law and amenable to jurisdiction of the ordinary tribunals.

Equal protection of laws, has a positive content. It does not mean that identically same law should apply to all persons and that every law must have universal application within the country irrespective of differences of circumstances, and legislature is entitled to make reasonable classification. A legislature is entitled to make reasonable classification. By reasonable classification it means -

- i) It should not be arbitrary. It should be based on reasonable differentia which distinguishes persons or things grouped together then those left out of it;
- ii) The differentia adopted must have a rational nexus with the objectives sought to be achieved by the Act.

It is not possible to exhaust the circumstances or criteria, which may hold good for

classification in all cases. Whether a classification adopted by a law is reasonable or not is a matter for the court to decide, when a dispute comes up.

Some classification are held to be reasonable viz-

- i) The basis of classification on geographical differentia;
- ii) The classification according to difference in time; and
- iii) The classification based on difference in the nature of trade or occupation, which is sought to be regulated by the legislation.

### **Exceptions to Article 14**

Some of the exceptions under Article 14 are -

- i) The President or the Governor of a state shall not be answerable to any court for the exercise and performance of the power and duties of his office or for any act done or purporting to be done by him in the exercise of and performance of those powers and duties.
- ii) No criminal proceedings whatsoever shall be instituted or continued against the President or Governor in any court during his term in the office.
- iii) No civil proceeding in which relief is claimed against the President or the Governor of a state shall be instituted during his term of office in any court in respect of any act done by him in his personal capacity, whether before or after he entered upon his office as President or Governor as the case may be left, at his office stating nature of the proceeding. The cause of action therefore, the name description and place of residence of the party by whom such proceedings are to be instituted and the relief which he claims.

### **Prevention of Discrimination on the ground of Religion, Race, Sex, Caste or Place of Birth**

While the general principle stated in Article 14 extends to all persons in India, Article 15 refers to a particular aspect of equality. Article 15 is available to citizens only. It prohibits discrimination against any citizen in any matters that may be taken up by the state on the grounds of religion, race, caste, sex or place of birth.

The scope of this Article 15 is very wide. Article 15(1) specifically bars the state from discriminating against any citizen of India on the grounds only of religion etc. Article 15(2) prohibits subjection of a citizen to any disability, liability, restriction or condition on grounds only of religion, race, caste, sex and place of birth with regard to access to shops, public restaurants, hotels and places of public resort maintained wholly or out of state fund, or dedicated for the use of general public.

### **Exceptions to Article 15**

Articles 15(3), 15(4) and 15(5) constitute exceptions to the general provisions of no discrimination on the grounds only of religion, race, etc. Under Article 15(3), the state is not prevented from making any special provision for women and children. The state is not prevented from making any law for advancement of socially and economically backward tribes. The state is also not prevented from making any law for such persons relating to their admission to educational institutions. In short, the prohibitions against discrimination on the ground only of religion, race, caste, sex or place of birth, would not preclude the state from making special provision for the advancement of any socially and educationally backward classes of citizens or for scheduled castes and scheduled tribes.

### **Equality of Opportunity in the Matters of Public Employment**

Article 16(1) of the Constitution guarantees, equality of opportunity to all citizens in matters of employment or appointment to any office under the state. According to Article 16(2) no citizen would be discriminated against in the matters of public employment or office under the state on grounds only of religion, race, caste, sex, descent, place of birth or residence. Article 15 and 16 are instances of equality in specific situations.

The only exceptions to the rule of equality in matters of public employment are-

- a) Residence within the state may be laid down by Parliament as a condition of a particular classes of employment under any state or local authority;
- b) The state may reserve any post or appointment in favour of any backward classes of citizens who in the opinion of the state, are not adequately represented in the services under the state;
- c) Offices concerned with a religious institutions may be reserved for members professing the particular religion;
- d) The claims of the members of the scheduled castes and scheduled tribes to be taken into consideration in the matters of appointment to the services and post under the union or states.

### **Abolition of Untouchability**

Article 17 says “Untouchability is abolished and its practice in any form is forbidden. The enforcement of any disability arising out of untouchability shall be an offence punishable in accordance with law”. Article 35 of the Constitution authorises the Parliament to make law to punish this offence of untouchability.

The Parliament of India has incorporated the Untouchability Offences Act, 1955 which has been amended and renamed in 1975 as Protection of Civil Rights Act, 1955. The Prohibition of Untouchability in the Constitution has been given a fix and certain shape by the Act. However the Act has not defined in clear terms about the meaning of practice of Untouchability but, it is a well known practice which looks down upon certain depressed class solely on account of their birth.

The Act made some of the acts to be punishable, and they are -

- a) Refusing admissions to any person in public institutions like hospitals, educational institutions and the like;
- b) Preventing persons from worshipping in any place of worship;
- c) Subjecting any person to any obstruction with regard to access to any shop, public restaurants, hotel or public entertainment with regard to use of any reservoir-tap or other source of water, road, cremation ground or any other place where services are rendered to the public.

### **Prohibition of Title**

Article 18(1) prohibits the state from conferring any title except a military or academic distinction. Article 18(2) prohibits citizens of India to accept title from the foreign government. Further, a foreigner holding any office of profit or trust under the state, cannot accept any title from any foreign state without the consent of the President, any present emolument or office of any kind from or under any foreign state.

Title is an expression fixed at the end of a name and an appendage. There has been criticism from the public that during the time of Britishers, conferment of title was misused by corrupting social life. Therefore, the Constitution seeks to prevent that evil. It must be clarified that National Awards are not titles. A case *Balaji Raghavan vs Union of India AIR 1996 S.C.770* is a celebrated case in this regard. It has been held that the awards Bharat Ratna, Padma Vibhusan and Padma Shri called as National Awards, would not amount to title within the meaning of Article 18(1) and they should not be used as suffixes or prefixes. If it is done, the defaulter should forfeit the National Award conferred on him or her by following the procedure laid down in Regulation 10 of each of the notifications creating the National Awards.

### **New Dimensions in the Field of Equality**

In a case before the Supreme Court of India between *Dasratha vs State of Andhra Pradesh AIR 1961 SC564*, the view of the Supreme Court is that Article 14 and 16 taken together constitute the principle of equality and absence of discrimination. While the principle is generally stated in Article 14 which extends to all persons whether a citizen or an alien, Article 15 and 16 deals with prohibition of discrimination against any citizen in any matter at the disposal of the state on the grounds of religion, race, caste, sex and place of birth etc.

Here comes the matter of special protection for woman, that is permissible under the Constitution. Under Article 15(3), the state is not prevented from making special provisions for women and children this may be expressed as protective discrimination permissible under the Constitution. The concept of gender equality has crept in at this stage. Interestingly enough a case before the Supreme Court of India will illustrate well in the matter. In *G.B.Muthamma vs Union of India AIR 1979 S.C. 1868*, the issue that arose in the case was that, a provision in the service rules requiring a female employee to obtain permission of the government in writing before her marriage that may take place and denial of her right to be appointed on the ground that she was married woman, was hit by the provision of equality under the Constitution. The court held that the provision was discriminatory. The court observed, "We do not mean to universalise or dogmatise that men and women are equal in all

occupations and all situations and do not need to pragmatise where requirements of particular employment, the sensitiveness of sex may compel selectivity. But, save where the differentiation is demonstrable, the rule of equality must govern”.

In *Jagdish Saran vs Union of India AIR 1980 S.C. 820*, the Supreme Court emphasised that the primary imperatives of Articles 15 and 16 is equal opportunities of all across the nation to attain excellence. The philosophy and pragmatism of excellence through universal equal opportunity is part of Indian Constitutional creed. During the recent past, in the areas of equality which centers around gender justice, are seen to be an emerging phenomena that informed not only legislative aspects, but also judicial laws towards gender equality.

In *AIR India vs Nargesh Meerza AIR 1981 S.C. 1829* the question before the court was as to whether a rule of Air India providing for an Air Hostess to debar from marrying during the space of 4 years after she entered service and to oust from the service on her attaining first pregnancy was permissible under the Indian Constitution. The Court replied in negative. The Court struck down the provision as unconstitutional. The Court observed that, having taken the Air Hostess in service for 4 years, to terminate her service by the management, if she becomes pregnant, amounts to compelling the poor Air Hostess not to have any children is an open insult to Indian womanhood such a provision therefore, is not only manifest unreasonable and arbitrary but contains the quality of unfairness and exhibits naked despotism and is clearly violative of Article 14.

Another challenge on the touchstone of gender equality to mention is *Githa Hariharan vs Reserve Bank of India 1999 AIR SCW 811*. The mother of a minor boy applied to the Reserve bank of India for relief bonds in the name of her son and that she would act as the guardian of the minor son. The Bank refused to entertain that application and insisted to let his father act as guardian. Under the Hindu Minority and Guardianship Act, 1956 the natural guardian of the minor is father and “after him” the mother meaning thereby that during the lifetime of the father, mother cannot act as a guardian of the minor. This was challenged as being violation of Articles 14 and 15 of the Constitution. The Court had chosen to construe the contention by an interpretation that will not offend the constitutional mandate of equality and non-discrimination. The Court interpreted the word “after him” need not mean after his life time but “in absence of”. In other words mothers are equally held to be guardian just like the father and mother can also act as a guardian during the absence of the father. The scope of Right to Equality covering Articles 14 to 18 is widening and there is much scope to see the provisions widen in the near future.

## **Conclusion**

The fundamental rights are available against state action. But, this is also important to note that certain fundamental rights are available not only against the state but also directed against private individuals etc eg. Articles 15(2) i.e. equality in regard to access to and use of places of public resort; Article 17, Prohibition of Untouchability; Article 18 (3) and (4) Prohibition of Acceptance of Foreign Title are some of the examples. But even though they are available against private persons, their enforcement against the private persons would be possible only if some law is made to give effect to them and such law is violated. To mention

an instance is the Protection of Civil Rights Act, 1955. The Prohibition of Untouchability in the Constitution has been given effect to by the said Act.

The Chapter on Fundamental Rights incorporated few more exceptions to the right to equality. Under Article 31-A, 31-B and 31-C, exceptions to the application of the fundamental rights are enacted. Article 31-A is an exception that any law providing for acquisition of estates extending from agricultural land reform to industry and commerce shall not be void on the ground that such law violates Article 14. Article 31-B provides that a law which is listed in the 9<sup>th</sup> schedule of the Constitution, not to be challenged on the ground that such a law violates any of the fundamental rights in part iii of the Constitution. Article 31-C mandates that if any law gives effect to any of the Directive Principles of State Policy shall not be deemed to be void even if it violates Article 14 of the Constitution.

There is another circumstances where right is enforce the right to equality, may be curtailed by the presidential order in a proclamation of emergency but that is a temporary nature. Lastly, the equality provision plays a noteworthy role in the areas of Indian Administrative Law.

## **TRANSCRIPT**

### **Introduction**

The individual rights and freedoms and also the relationship between the individual on one hand and the state or the society on the other, is and has been a continuing, unsettled and open-ended problem, since time immemorial. It is apparent that it comprises the rights that the state gives to the individual. There can be genuine individual freedom only when the individual is free from exploitation and from economic and political oppression. Some written constitutions like the Indian Constitution guarantee a few rights to the people and forbid the government organs from interfering with the same and the chapter on fundamental right expresses the concept of inviolable and basic rights of the people of India.

In the international sphere, the concept of equality is proclaimed in the Charter of Human Rights called the Universal Declaration of Human rights, 1948. It is declared in Article 1 of the Charter as “All human beings are born free and equal in dignity and rights”. The Constitution of India also declared the right to equality by taking care of the reality of varying needs of different classes or sections of people that will require differential and separate treatment.

The Articles 14 to 18 may be grouped under ‘Right to Equality’. Article 14 provides the general principle of equality before law; Article 15 provides no discrimination on the grounds of religion, race, caste, sex and place of birth; Article 16 provides for equality of opportunity in the matters of public appointment; Article 17 provides for the act of untouchability abolished; and Article 18 provides for the abolition of titles.

Article 14 is the most important article and been subjected to judicial interpretation time and

again by the judiciary. The Article embodied the general principles of equality, and the Articles i.e. 15 to 18 are the specific aspects of equality. Articles 14 to 18 taken together, enshrines the principles of equality and absence of discrimination. Among these provisions guaranteeing equality, some aspects of equality are extended to all persons-citizens or aliens, while some articles are guaranteed to the citizens only. It is necessary to analyse the concept of equality as provided in different Articles under Part (iii) of the Constitution.

### **Equality before Law and Equal Protection of Laws**

Articles 14 incorporates “The state shall not deny to any person equality before law or the equal protection of laws within the territories of India”. The Indian provision of equality provides two concepts i.e. Equality before law and equal protection of laws.

Equality before law is a negative concept which implies absence of any special privilege in favour of any individual and all individuals are subject to the ordinary law. The equal protection of laws carries with it a positive concept. It means “like should be treated alike” and among equals, law should be equal and equally administered.

Equality before law is akin to the concept of rule of law as enunciated by A.V. Dicey. His enumeration of rule of law is that no man is above the law of the land and that every person whatever be the rank or status is subjected to ordinary law and amenable to the jurisdiction of the ordinary tribunals.

Equal protection of laws, has a positive content. It does not mean that identically same law should apply to all persons and that every law must have universal application within the country irrespective of differences of circumstances and legislature is entitled to make reasonable classification. By reasonable classification it means i) It should not be arbitrary. It should be based on reasonable differentia which distinguishes persons or things grouped together then those left out of it; ii) The differentia adopted must have a rational nexus with the objectives sought to be achieved by the Act.

It is not possible to exhaust the circumstances or criteria which may hold good for classification in all cases. Whether a classification adopted by a law is reasonable or not is a matter for the court to decide, when a dispute comes up.

### **Exceptions to the Article 14 as enacted in Article 361**

They are :

- i) The President or the Governor of a state shall not be answerable to any court for the exercise and performance of the power and duties of his office or for any act done or purporting to be done by him in the exercise of and performance of those powers and duties.
- ii) No criminal proceedings whatsoever shall be instituted or continued against the President or Governor in any court during his term in the office.
- iii) No civil proceeding in which relief is claimed against President or the Governor of a



state shall be instituted during his term of office in any court in respect of any act done by him in his personal capacity, whether before or after he entered upon his office as President or Governor as the case may be left, at his office stating the nature of the proceeding. The cause of action therefore, the name description and place of residence of the party by whom such proceedings are to be instituted and the relief which he claims.

### **Prevention of Discrimination on the Ground only of Sex, Race, Caste, Religion or Place of Birth etc.**

While the general principle stated in Article 14 extends to all persons in India, Article 15 refers to a particular aspects of equality. Article 15 is available to citizens only. It prohibits discrimination against any citizen in any matters that may be taken up by the state on the grounds only of religion, race, caste, sex or place of birth.

The scope of this Article 15 is very wide. Article 15(1) specifically bars the state from discriminating against any citizen of India on the grounds only of religion etc. Article 15(2) prohibits subjection of a citizen to any disability, liability, restriction or condition on grounds only of religion, race, caste, sex and place of birth with regard to access to shops, public restaurants, hotels and places of public resort maintained wholly or out of state fund, or dedicated to the use of general public.

### **Exceptions to Article 15**

Articles 15(3), 15(4) and 15(5) constitute exceptions to the general provisions of no discrimination on the grounds only of religion, race, etc. Under Article 15(3), the state is not prevented from making any special provision for women and children. The state is not prevented from making any law for advancement of socially and economically backward tribes. The state is also not prevented from making any law for such persons relating to their admission to educational institutions.

### **Equality of Opportunity in the Matters of Public Employment**

Article 16(1) of the Constitution guarantees, equality of opportunity to in matters of employment or appointment and is applicable to all the citizens. According to Article 16(2) no citizen would be discriminated against in the matters of public employment or office under the state on grounds only of religion, race, caste, sex, descent, place of birth or residence. Article 15 and 16 are instances of equality in specific situations.

The only exceptions to the rule of equality in the matters of public employment are :

- e) Residence within the state may be laid down by Parliament as a condition of a particular classes of employment under any state or local authority;
- f) The state may reserve any post or appointment in favour of any backward classes of citizens who in the opinion of the state, are not adequately represented in the services under the state;
- g) Offices concerned with a religious institutions may be reserved for members professing the particular religion;
- h) The claims of the members of the scheduled castes and scheduled tribes to be taken

into consideration in the matters of appointment to the services and post under the union or states.

### **Abolition of Untouchability**

Article 17 lays down as “Untouchability is abolished and its practice in any form is forbidden. The enforcement of any disability arising out of untouchability shall be an offence punishable in accordance with law”. Article 35 of the Constitution authorises the Parliament to make law to punish this offence of untouchability.

The Parliament of India has incorporated the Untouchability Offences Act, 1955 which has been amended and renamed in 1975 as Protection of Civil Rights Act, 1955. The Prohibition of Untouchability in the Constitution has been given a fix and certain shape by the Act. However the Act has not defined in clear terms about the meaning of practice of untouchables but, it is a well known practice which looks down upon certain depressed classes solely on account of their birth.

The act made some of the acts to be punishable, they are :

- i) Refusing admissions to any person in public institutions like hospitals, educational institutions and the like;
- ii) Preventing persons from worshipping in any place of worship;
- iii) Subjecting any person to any obstruction with regard to access to any shop, public restaurants, hotel or public entertainment with regard to use of any reservoir-tap or other source of water, road, cremation ground or any other place where services are rendered to the public.

### **Prohibition of Title**

Article 18(1) prohibits the state from conferring any title except a military or academic distinction. Article 18(2) prohibits citizens of India to accept title from the foreign government. Title is an expression fixed at the end of a name and an appendage. There has been criticism from the public that during the time of Britishers, conferment of title was misused by corrupting social life. Therefore, the Constitution seeks to prevent that evil. It must be clarified that National Awards are not titles. A case *Balaji Raghavan vs Union of India* AIR 1996 S.C.770 is a celebrated case in this regard.

It has been held that the awards *Bharat Ratna, Padma Vibhushan and Padma Shri* called as National Awards, would not amount to title within the meaning of Article 18(1) and they should not be used as suffixes or prefixes. If it is done, the defaulter should forfeit the National Award conferred on him or her by following the procedure laid down in Regulation 10 of each of the notifications creating the National Awards.

### **Conclusion**

The fundamental rights are available against state action. But, this is also important to note that certain fundamental rights are available not only against the state but also directed

against private individuals etc eg. Articles 15(2) i.e. equality in regard to access to and use of places of public resort; Article 17, Prohibition of Untouchability; Article 18 (3) and (4) Prohibition of Acceptance of Foreign Title are some of the examples. But even though they are available against private persons, their enforcement against the private persons would be possible only if some law is made to give effect to them and such law is violated. To mention an instance is the Protection of Civil Rights Act, 1955. The Prohibition of Untouchability in the Constitution has been given effect to by the said Act.

### **Frequently Asked Questions (FAQs)**

i) What is incorporated under Article 14 of the Constitution of India?

Ans: Article 14 of the Constitution of India incorporates “The state shall not deny to any person equality before law or the equal protection of laws within the territories of India”.

ii) What is meant by Right to Equality?

Ans: This is a right that the state gives to the individual and guarantees by incorporating and amending the Constitution or the ordinary laws that may extend or limit the contents of rights.

ii) What is incorporated under Article 17 of the Constitution of India?

Ans: Article 17 of the Constitution of India incorporates “Untouchability is abolished and its practice in any form is forbidden. The enforcement of any disability arising out of untouchability shall be an offence punishable in accordance with law”.

iv) What is the new name of Untouchability Offences Act, 1955?

Ans: Untouchability Offences Act, 1955 has been amended and renamed in 1975 as the Protection of Civil Rights Act, 1955.

v) What is prohibited under Article 18 (1) of the Indian Constitution?

Ans: Article 18(1) prohibits the state from conferring any title except for military and academic distinction.

### **Glossary**

i) Universal Declaration of Human Rights, 1948- It is a declaration adopted by the United Nations General Assembly on 10<sup>th</sup> of December, 1948 at Palais de Chaillot in Paris. This Declaration arose directly from the experience of the Second World War and represents the first global expression of rights to which all human beings are inherently entitled.

ii) A.V. Dicey- He was a British jurist and constitutional theorist and is most widely known as the author of *An Introduction to the Study of the Law of the Constitution* which was published in 1885.

iii) Bharat Ratna- It is the highest civilian award in India for performance of highest order in

any field of human endeavour. This award is eligible to all the citizens of India without any discrimination based on race, occupation, position or sex.

iv) Padma Vibhushan- It is the second highest civilian award in India and is awarded to recognise exceptional and distinguished service to the nation in any field, including government service.

v) Padma Shri- It is the fourth highest civilian award in India after Bharat Ratna, Padma Vibhushan and Padma Bhushan. It is awarded to citizens of India to recognise their distinguished contribution in various spheres of activities like arts, education, literature, science, sports, medicine, social service, public affairs etc.