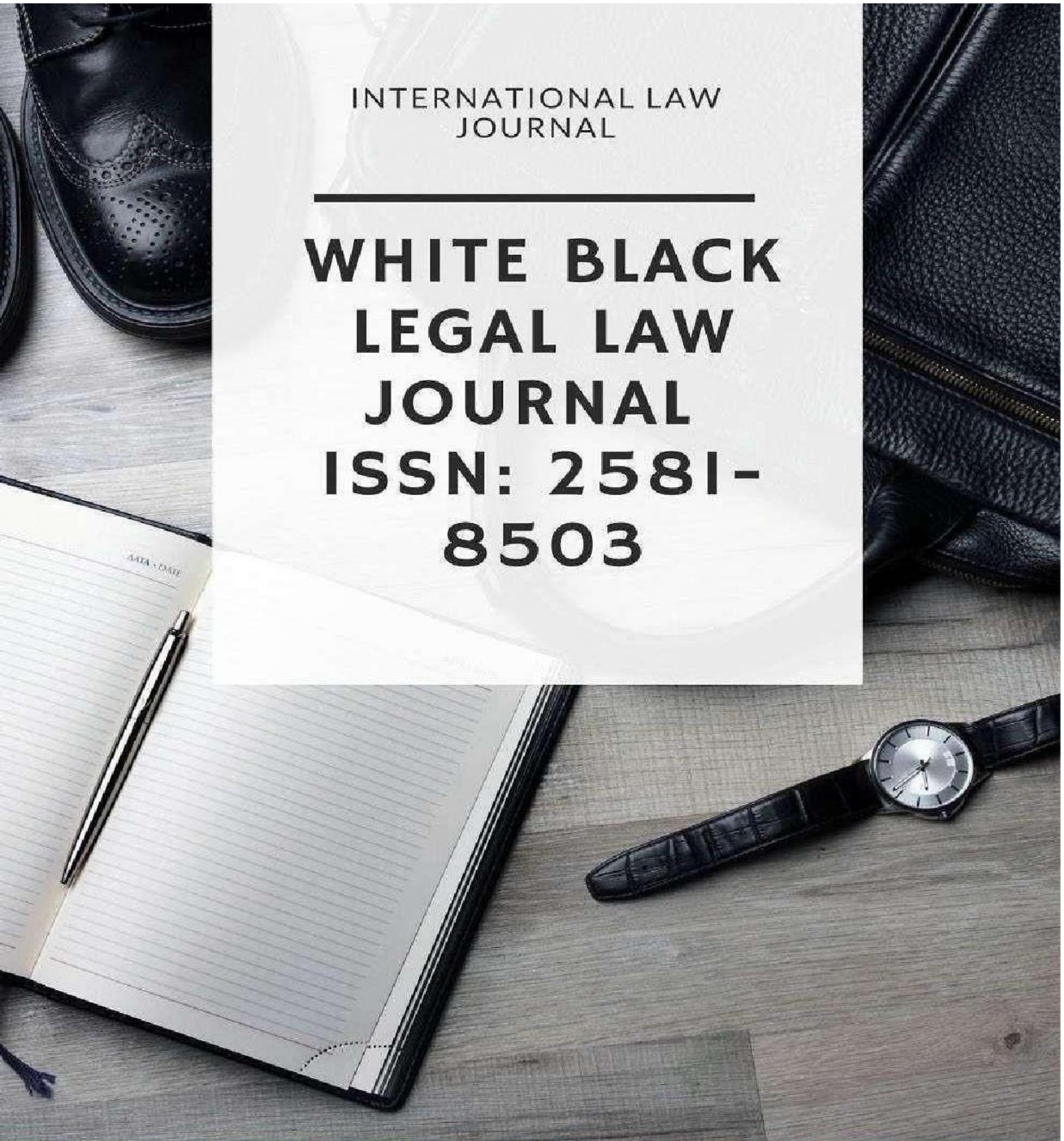




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RIGHT TO EQUALITY (ARTICLES 14–18): A WAY TOWARD MOVING FROM EQUALITY TO EQUITY PRINCIPAL

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Abstract

The first Fundamental Right secured to the people of India is the "Right to Equality." It is given under Article 14–18 of Indian law. This right is given to citizens of India as well as non-citizens. It forms the backbone of a democratic society by ensuring fairness, justice, and equal treatment to all individuals irrespective of caste, religion, gender, race, or economic status. Equality is not only a legal principle but also a moral value that strengthens social harmony and national unity. The general principle of "Right to Equality" needs no explanation because it defines itself.

Article 14 defines that no one is above the law and all are equal in the eye of law.

Keywords: Equality, Equal Protection of Law, Equality Before Law, Fundamental Right.

Introduction

The Constitution of India guarantees the right to equality under Articles 14 to 18. Equality is one of the magnificent cornerstones of Indian democracy. It has been said that Articles 14 to 18, read with the Preamble, which prohibit discrimination on the basis of caste, colour, creed, religion or gender, form the heart and soul of the Constitution. The concept of equality has been held basic to the rule of law and is regarded as the most fundamental postulate of republicanism. Articles 14 to 18 of the Indian Constitution contain all the provisions related to the Right to Equality. Article 14 embodies the general principles of equality before law and prohibits unreasonable discrimination between persons. Article 14 embodies the idea of equality expressed in the Preamble. The succeeding Articles 15, 16, 17, and 18 lay down specific

applications of the general rules laid down in Article 14 and 15 — related to prohibition of discrimination on grounds of religion, race, sex or place of birth.

Right to Equality (Article 14): Equality Before Law and Equal Protection of Law

Two concepts are involved in Article 14: equality before law and equal protection of law. Article 14 runs as follows: "The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India."

The first expression 'equality before law' is of English origin and the second expression 'equal protection of the laws' has been taken from the American Constitution. The benefit of Article 14 is, therefore, not limited to citizens. Every person — whether natural or artificial, whether a citizen or an alien — is entitled. Article 14 permits "Reasonable Classification" but prohibits class legislation.

Equality Before Law

The phrase "equality before law" finds place in almost all written Constitutions that guarantee fundamental rights. It is of English origin. The phrase is a somewhat negative concept implying the absence of any special privilege in favour of individuals and the equal subjection of all classes to the ordinary law. It is a familiar feature of what Dicey called the 'Rule of Law' — it means that no man is above the law and that every person, whatever be his rank or condition, is subjected to the ordinary law of the land and is amenable to the jurisdiction of the ordinary tribunals.

Equal Protection of Law

The phrase "equality protection of laws" is based on Section 1 of the 14th Amendment of the Constitution of the United States, meaning the subjection of equal law applying to all in the same circumstances. Thus the phrase "equal protection of laws" lays down the rule that "like should be treated alike and not that unlike should be treated alike." The phrase is a somewhat positive concept. It simply means that all persons in similar circumstances shall be given the same rights and liabilities. The concept of equal protection of law comes from the United States.

For example, people from the backward and Scheduled Classes are entitled to distinctive protection of the laws.

Exception to the Right to Equality

The rule of equality is, however, not an absolute one and there are a number of exceptions to it.

In Article 361, the President and Governor are both given certain immunities against civil and criminal matters. During their tenure, the President and Governor are not accountable and answerable for anything they do in exercising their powers as per the granted capacity.

Article 105 of the Constitution states that members of Parliament have also been granted some privileges regarding speech and expression in Parliamentary proceedings.

Article 194 grants the same privileges to the members of the State Legislative Assembly as are provided to members of Parliament to protect them against any civil or criminal liability.

Foreign diplomats and sovereigns are also entitled to immunity from civil and criminal proceedings in India as per Article 31 of the Vienna Convention on Diplomatic Relations, 1961.

Reasonable Classification

Article 14 permits classification. Classification is merely a systematic arrangement of things into groups or classes, usually in accordance with some definite scheme. But the classification permitted by Article 14 must rest upon 'reasonable grounds of distinction.' It must not be arbitrary, artificial or evasive. The principle of equality does not mean that every law must have universal application to all persons who are not by nature, attainment or circumstances in the same position.

Test of Reasonable Classification

While 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. But classification must not be "arbitrary, artificial or evasive." It must always rest upon some real and substantial distinction bearing a just and reasonable relation to the object sought to be achieved by the legislation.

Classification to be reasonable must fulfil the following two conditions:

- 1) The classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group.
- 2) The differentia must have a rational relation to the object sought to be achieved by the Act.
- 3) This was given in the case of *R.K. Dalmia v. Justice Tendolkar*.

Judicial Interpretation of Article 14

The concept of equality has been held basic to the fundamental rule of law and is regarded as the most fundamental postulate of republicanism. In India, the Supreme Court in *Nehru Gandhi v. Raj Narain* held that the right to equality conferred by Article 14 is a basic structure of democracy and an essential feature of the Constitution and rule of law.

The Doctrine of Anti-Arbitrariness

The scope of Article 14 was drastically increased by the Supreme Court by including the executive discretion under its ambit.

E.P. Royappa v. State of Tamil Nadu (1974) — The Court said that Article 14 gives a guarantee against the arbitrariness of the action of the State. The Right to Equality is against arbitrariness; they both are enemies to each other.

The first landmark judgment which actually spotted the virtue of non-arbitrariness in Article 14 was *S.G. Jaisinghani v. Union of India* — The Court for the first time held "absence of arbitrary power" as sine qua non to rule of law with confined and defined discretion, both of which are essential facets of Article 14.

In the *Maneka Gandhi v. UOI* (1978), Justice Bhagwati said that equality is against the arbitrariness of State action. So this doctrine ensures equality of treatment. The Seven Judge Bench held that a trinity exists between Article 14, Article 19, and Article 21. All these articles have to be read together. Any law interfering with personal liberty of a person must satisfy a triple test:

- 1) It must prescribe a procedure;
- 2) The procedure must withstand the test of one or more of the Fundamental Rights conferred under Article 19 which may be applicable in a given situation;
- 3) It must also be liable to be tested with reference to Article 14.

Natural Justice as a Part of Article 14

From the case *A.K. Kraipak v. UOI*, it is evident that natural justice is an integral part of Article 14. The Court held that the principle of natural justice held in the prevention of miscarriage of justice. These principles also check arbitrary power of the State.

Classification Test

In the case of *Ram Krishna Dalmia v. Justice Tendolkar* (1959), the Supreme Court described

the jurisprudence of equality before the law. It simply permits the State to make differential classification of subjects provided that the classification is founded on intelligible differentia (i.e. objects within the class are clearly distinguishable from those that are outside) and has a rational nexus with the objective sought to be achieved by the classification.

In the case of *Indra Sawhney v. UOI* (1993), which is a landmark judgment on aspects of reservation in India, the Court interpreted the relation between Article 14 and 16. It was held that Article 16(1) is a facet of reasonable classification of Article 14. Just as Article 14 permits a classification, so does Article 16(1). A classification may involve reservation of seats or vacancies. The principal aim of Article 14 and Clause (4) of Article 16 is equality and equality of opportunity, and Clause (4) of Article 16 is a means of achieving that very same objective.

Expansion of Article 14 in Terms of Defining Gender

National Legal Service Authority (NALSA) v. Union of India (2014) — This case was filed by the NALSA to legally recognise persons who fall outside the male/female binary gender, including persons who identify as third gender, "including persons who were drawing attention to the fact that transgender persons were subject to extreme discrimination in all spheres of society." The court held that the right to equality forms the right to equality also. Consequently, the right to equality — in gender terms — would also extend to transgender persons.

Further in *Shayara Bano v. UOI* (2016), the 5 Judge Bench of the Supreme Court pronounced its decision in the triple talaq case, declaring that the practice of instantaneous triple talaq was unconstitutional. The Bench held that Article 14 is a fundamental right to equality and gender equality of status; equity and gender equality values enshrined in the guarantee of equality.

Article 15: Prohibition of Discrimination on Grounds of Religion, Race, Caste, Sex or Place of Birth

We have covered Article 14 regarding the right to equality for every individual against the grounds mentioned under Supreme law. Now we have another aspect of equality under Article 15.

Clause 1: Article 15(1) bars the State from discriminating against any citizen of India on ground only of religion, race, caste, sex, place of birth or any of them. The word 'discrimination' signifies to form an unfriendly demarcation or to acknowledge the less fortunate from others.

Clause 2: Article 15(2) prohibits subjection of a citizen to any disability, liability, restriction or condition on grounds only of religion, race, caste, sex or place of birth with regard to access

to public restaurants, hotels and places of entertainment. It is to be noticed that while Clause (1) of Article 15 disallows discrimination by the State, provision (2) restricts both the State and personal people from making any discrimination.

Clause 3: This clause is an exception to the rule against discrimination embodied in Clause (1) as well as Clause (2). While both these clauses prohibit discrimination on the ground of sex, Clause (3) enables the State to confer special rights upon women.

Article 42 of the Constitution enjoins the State to make provision for securing just and humane conditions of work and for maternity relief.

Quantum and Impact of Reservation

Article 15(4) is another special case which is an exception to provision (1) and (2) of Article 15. This was included by the Constitution (First Amendment Act) 1951, due to the judgment in State of Madras v. Champakam Dorairajan. Clause (4) of Article 15 enables the State to make special provisions. 'Special provision for the advancement' in Clause (4) is a wide expression and should not be construed in a restricted sense as meaning only social and educational advancement. It may be by way of financial assistance, free medical, education and hostel facilities, scholarship, free transport, concessional or free housing.

Some Landmark Cases on Article 15 Clause (3)(4)

In the interpretation of the scope of Clause (4) of Article 15, the following two issues have arisen:

- i) What shall be the basis to determine a class to be socially and educationally backward; and
- ii) What can be the extent or quantum of the special provision.

In M.R. Balaji v. State of Mysore, the Supreme Court held that backwardness under Clause (4) of Article 15 must be both socially and educationally. Social backwardness must be both. The court held that as regards, poverty would be the main determining factor.

However, in P. Rajendran v. State of Madras, the Supreme Court upheld the test of backwardness which was solely based on caste. The Supreme Court observed it must not be forgotten that a caste is also a class of citizen and if the caste as a whole is socially and educationally backward, reservation can be made in favour of such a caste.

In Indra Sawhney v. UOI, commonly known as the Mandal Commission case, the matter seems to have been settled by the majority of the Supreme Court, holding that caste can be the sole factor in determining social backwardness and that poverty alone cannot be such a criterion.

Quantum of Special Provision

In *M.R. Balaji v. State of Mysore*, the Supreme Court held that Clause (4) of Article 15 enabled the State to make special provisions and not exclusive provisions. The Supreme Court thus laid down that special provision or reservation for weaker sections of the society must not exceed 50 per cent limit.

Article 16: Right to Equality of Opportunity in Matter of Public Employment

Article 16 applies to only citizens — not to non-citizens.

Clause 1: Article 16(1) guarantees equality of opportunity in matters of employment for all citizens to any office or post under the State.

Clause 2: According to Article 16(2), no citizen can be declared ineligible or treated unfairly in matters of government employment only on the basis of religion, race, caste, sex, descent, place of birth, or residence. Clause

(1) and (2) together establish the general rule that everyone must be given equal opportunity in public employment, and discrimination on the above grounds is not allowed. However, these provisions apply only to jobs or offices under the State. Clauses (3), (4), (4-A), (4-B) provide certain exceptions to this general rule of equality.

Clause 3: Article 16(3) allows Parliament to make laws requiring residence within a State or Union Territory as a condition for certain government jobs or appointments under that State or local authority.

Clause 4: Article 16(4) empowers the State to make provisions for reservation in government jobs for backward classes of citizens who, in the opinion of the State, are not adequately represented in public services. Article 16 ensures equality of opportunity in problems with selection in State services. However, this doesn't keep the State from recommending the edge for enrollment for State administration.

Cases on the Basis of Article 16 Clause (1)(2)(3)(4)

- 1) *J.K. Public Service Commission v. Dr. Narinder* (1994) 2 SCC 630 — The Supreme Court said back-door ad hoc appointments at the behest of power source or otherwise and recruitment according to rules are mutually antagonistic and strange bed partners. They cannot coexist in the same sheath. The former is in negation of fair play and the latter are the product of order and regularity.
- 2) *Balaji v. State of Mysore*, AIR 1963 — The Court held that caste cannot be the sole

determining criteria for gauging the backwardness of a community. It can be their poverty or the place where they live also.

- 3) *Indra Sawhney v. Union of India*, AIR 1993 — In landmark judgment, the Mandal case — the Supreme Court dealt with the issue of carrying forward reservations. The Second Backward Classes Committee, headed by B.P. Mandal, submitted its report which recommended 27% reservation for Other Backward Classes (OBCs), 22.5% for the Scheduled Caste/Scheduled Tribes.

Abolition of Untouchability (Article 17)

Article 17 completely prohibits "untouchability" and bans its practice in every form. If any kind of disability or discrimination arises on the basis of untouchability, it will be treated as an offence and punished according to law. The Article does not merely declare untouchability illegal, but also strictly forbids its practice in any manner. If such practices continue, they will attract legal punishment.

The term "untouchability" is not specifically defined either in the Constitution or in the Protection of Civil Court. It has been clarified that the term should not be understood in its literal sense. Where individuals are treated as untouchables either temporarily or permanently for difference region, in all such cases, the affected person can claim protection under Article 17 and the 1955 Act. Article 15 (Clause 2) supports the abolition of untouchability.

In *State of Karnataka v. Appa Balu Ingale*, the Supreme Court held that untouchability was an indirect form of slavery and only an extension of the caste system. Caste system and untouchability, the court stated, has stood together and would fall together.

This Article is similar to the Thirteenth Amendment of the Constitution of the United States of America, 1865, which abolished slavery and empowers the Congress to enforce the abolition by appropriate means.

Abolition of Titles (Article 18)

Clause 1: Article 18 abolishes titles. It prohibits the State (as defined by Article 12) from conferring titles except military or academic distinction on any person — whether a citizen or a non-citizen.

Clause 2: Article 18 prohibits a citizen of India from accepting any title from a foreign State.

Clause 3: It provides that a foreigner who is holding any office of profit or trust under the Indian State cannot accept any title from a foreign country without the consent of the President.

Clause 4: This clause states that no person holding any office of profit or trust under the State shall accept any gift, salary, or office from a foreign State without the approval of the President. However, national awards such as Bharat Ratna, Padma Vibhushan, and Padma Shri are not considered "titles" under Article 18. In the landmark case of *Balaji Raghavan v. Union of India*, the validity of these national awards was challenged. The Supreme Court held that such awards do not violate Article 18 or the principle of equality. The Court stated that these awards are necessary to recognise excellence, which is also supported by the fundamental duties under Article 51-A.

Conclusion

The Right to Equality, enshrined in Articles 14 to 18, forms the backbone of Indian democracy by ensuring fairness, justice, and equal treatment for all individuals. While Article 14 establishes the core principle of equality before the law and prohibits arbitrary state action, it allows for "reasonable classification" to ensure that "like are treated alike". This framework is further specialized through Article 15's prohibition of discrimination and Article 16's guarantee of equal opportunity in public employment, both of which permit "positive discrimination" to advance socially and educationally backward classes. The judiciary has continuously expanded this right, establishing it as a "basic structure" of the Constitution that protects against arbitrariness, ensures gender justice—including rights for transgender individuals—and mandates the abolition of social evils like untouchability. Ultimately, these articles, when read together with the rights to liberty and life, create a "golden trinity" that safeguards the moral and legal dignity of every person in India. At last the Right to Equality is an adaptive and moral value that strengthens national unity. While it provides for certain exceptions—such as immunities for the President and Governors to ensure stable governance—its primary goal remains the eradication of social hierarchies and the assurance of equal opportunity for all individuals, regardless of their status or identity.