

# **Constitutional Law and Public Administration in India**

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## **Right to Equality – I**

The fundamental rights enshrined in the Constitution of India are rights that are core to the principles of any state, and they describe what the state really aspires and stands for in terms of protecting the rights of citizens. These are essential rights, they are inalienable rights, they are rights that cannot be infringed or compromised except in the very rarest of rarest extent, but it can be done only through the procedure established by law and nothing more than that. Fundamental rights under part III of the Constitution of India can be in the outlook of an overview. Article 14 till Article 32 are all fundamental rights and the right to equality stands from Article 14 till Article 18 which talks about abolition of titles. This chapter deals with the right to equality.

Then there is Article 19 that talks about freedoms, and Articles 20 and 22 that talk about the rights of detainees or those who are convicted of offences. Article 21 talks about right to life and personal liberty and one of the new additions to the fundamental rights chapter is the right to education, Article 21A. Article 23 talks about trafficking of human beings and forced labour and the Constitution prohibits it. These are all mostly prohibited kinds of activities. So, they protect a person's rights in a negative context. But rights can have a positive connotation as well. There is the freedom of conscience in terms of exercising your religion, profession and practice and you also have the freedom to manage religious affairs. Article 25 onwards speaks about the freedom of religion and management of religious institutions or educational institutions by religious entities. Article 29 is about the protection of the interests of minorities. Articles 29 and 30 give minorities even the right to manage their educational institutions. The class of minorities means religious minorities. Religious institutions have a certain degree of autonomy and freedom and protection of rights under the Constitution as well. And hence the very aspect of the secular character of India gets promoted by some of these Articles. The fundamental rights chapter gets closed by Article 32 which is about the Constitutional remedies.

The right to equality under Article 14 to Article 18 are bulky Articles that speak a lot about the rule of equality under the Constitution of India. This whole process is about equality before law and equal protection of the law. Equality before law is a British concept,

whereas equal protection of the law comes from the American Constitution. What Equality before law means, must be understood. It means you are equal before the law, and means the following things. First, it means that there is an absence of any special privilege in favour of any person. Everyone has the right to be treated equally before the law. This is the rule but there are exceptions that are provided in the Constitution itself in terms of certain Constitutional authorities who have been granted certain privileges under the Constitution. While the rule says everyone will be treated equally, it means that there is absence of any special privilege in favour of any person.

Second, all individuals shall be subjected to the ordinary law of the land. So, for certain people, you cannot make certain laws or give them certain kinds of entitlements. This is the normal rule that all persons shall be subject to the ordinary law of the land and every person is below the law, law is above. This is what equal protection of the law would mean. But again, this is the rule; this is an assumption. The Constitution itself makes certain exceptions in terms of scheduled areas. Scheduled areas are the places where there are people living who need certain kinds of protection and hence, while everyone is subject to the general law of the land, there may be special law for that kind of special area. Such law may for example, exclude Indians from buying land in a scheduled area, which is notified and designated as such. So while it is said that everyone is subject to the ordinary law of the land, in special circumstances, there could be special privileges that can be granted, but this is a rule and the exceptions have to be followed as well.

The third connotation of equality before law also means that however rich or high a person is in the economic strata, or however high official power a person is holding, every such person is supposed to be below the law and law is above. Irrespective of whether a person is rich or powerful, he will be subject to the same treatment before the law, and everyone has the right to be treated fairly before the law. This is meant by equality before the law. The concept of equal protection of the law has the following entitlements. First, is equality of treatment under equal circumstances. Equal protection, means, when talking about certain treatment that a person should be entitled to, two people should be treated equally in terms of protection. One person may be accused of a particular kind of crime and there would be someone else who may be a privileged kind of a criminal. Here, both have the duty to claim equal protection of the law in the prison. The state ought to take care of them. So, while we talk about VIP prison and so on, there are concepts where equal protection of the law gets infringed even for an accused. So equal treatment of equal persons. Speaking of equal persons, women and children are not necessarily treated equally, they may have different circumstances as well. So equal protection of the law also means that when the government in public administration receives an application, every applicant is treated equally and there is no aspect of favoritism or nepotism. Every man or woman in the nation has the privilege to be treated equally before the public administration. So, similar applications should be treated similarly, dissimilar applications can be treated dissimilarly.

That is the normal rule. It is always said that there is a very interesting rule in equal protection of the law and that is the 'likes should be treated alike' without any kind of a discrimination. The equality rule is a positive assertion of a right. It expects law to give you a right in terms of what you can positively utilize. Equals cannot be treated unequally. However, likes should be treated alike. These are certain phrases that describe the equal protection of the law principle.

Article 14 lays down that the state shall not deny to any person, equality before the law or the equal protection of law within the territories of India. Article 14, the rule of equality, protection and equal treatment of the law is available to both citizens as well as non-citizens. So, Article 14 is not exclusively for citizens. Also, according to Article 14, the rule of equality applies to all kinds of persons, be it natural persons, legal persons or a juristic corporation like a company, partnership, cooperative society, or a university. It could be a company which is private in nature, or it could be a one-man company. So, if you are a person in the eyes of law, you can demand equality because companies make applications to the government sometimes for licenses and privileges in terms of extraction of coal and other natural resources.

And again, equals must be treated alike. As soon as you are treated unequally, then you feel that your rights are going to be infringed. There is discrimination by the government and hence, such kind of actions, whether administrative or otherwise can be challenged in the court of law as being violative of Article 14. Wherever government discretion is abused, that is an allegation of unequal treatment, and usually it is challenged in the court of law and that is how judicial review of governmental actions, especially on the grounds of discrimination which are generally challenged as in a violation of Article 14.

So, Article 14, is a control on government power and government regulation and it expects the government to be fair in treatment of all treated citizens and the rule is in terms of treating them equally as well. Why should equality be important or what is the need for us to discuss the rule of equality under Article 14 or why should the government look at non-arbitrariness in its public administration? When all members of the population are treated fairly and without any kind of a bias, that is only when democracies can prosper. Democracies cannot have privileges granted to a certain section of the community. That section of the community may be majority community or a minority community, it could be a religious denomination, or it could be a privileged powerful denomination. That is the process and hence, a democratic Constitution expects every member of the population, be it how high or low, economic, social, or other kinds of considerations should not apply, and everyone has the right to be treated equally, fairly and without any kind of a bias from public administration.

That is where the rule of equality plays a very important role and it is one of the basic features of the Indian Constitution. It is so important in terms of upliftment of different

sections of the community, be it those who are economically weaker or socially who are backward. So, in terms of expectation of growth, in terms of expectation of government schemes and policies, equal treatment and providing equal opportunity of treatment becomes very critical in the developmental agenda of the state. Every state must be the guardian of the rule of equality. Take the instance of the farmers being treated unequally by the state. It will result in an agrarian crisis, there will be a shortage of food supply, it can result in farmer suicide, and so on and so forth. Notably, Article 15 also brings in the rule of equality and it says that discrimination, if any, cannot be done on the ground of religion. That is, religion cannot be used to discriminate, religion cannot be a ground to have equality. Secondly race; India has so many races, from the Northeast to Southern India. Can there be discrimination on the grounds of race? Can there be discrimination on the grounds of caste? India is so divided based on caste. Can there be discrimination on the grounds of sex, women treated differently than men? There is an interesting connotation of a principle called equal pay for equal work. So, men cannot be paid more just because they are men, if women are contributing to the same type and the content of work. The economic discrimination on the place of birth as well. The state should not follow this, and this is clearly established under Article 15. But place of birth and other issues can only be accessed by Indian citizens and reasonable restrictions can be imposed on some of these races.

In certain areas in the territory of India, it becomes necessary to impose certain restrictions for the protection of local communities and for reasons of security and strategic interests as the case may be. So, Article 15 and Article 16 are critical. Article 16 guarantees equal opportunity for all citizens in the matter of employment and in the appointment of any office under the state. So, no citizen shall be discriminated against in public employment on the grounds of religion, race, caste, sex, descent and place of birth or residence. However, the question is can the state provide for reservation of appointments or can certain kinds of posts be reserved in favour of the backward class that is not adequately represented in the state service? Yes, the State can do so under the reservation policy and the state is permitted to make a certain percentage of reservation for posts that may favour economically weaker sections of the community. So, generally up to 10% reservation in certain appointments and posts for economically weaker sections of the community is permitted. Please note this is the reservation on economic consideration, not on social consideration. So, today whether reservation is based on a social parameter or economic parameter, the answer could be that it could be on both. The economic reservation angle is a very recent introduction, and it was done through the 103<sup>rd</sup> Constitutional Amendment that was made in the year 2019. And this is specially called the Economically Weaker Section (EWS) category in public service of the government of India. Up to 10% now is given based on your income, it is based on a person's economic dimension, not social dimension, which was the traditional original reservation rule in terms of backwardness. The backwardness here was on social and caste dimension. This 10% reservation that was

brought about by the 103<sup>rd</sup> Amendment is on the economic backwardness, not on the social backwardness. So, this has now been provided under Article 16 of the Constitution.

The doctrine of basic structure came up in the case of *Kesavananda Bharati v. State of Kerala*. In 2023, 50 years of the basic structure doctrine was celebrated. Because of this doctrine in 1973, there was a limitation that was imposed on the power of the parliament to amend the Constitution. The Constitution should be a dynamic document, it cannot be a completely static document. However, it cannot be so dynamic that it gives one party in the parliament that has a majority to change the basic dimension or structure of the Constitution. The Constitution should have consistency and uniformity or predictability and should have certain basic values that no government irrespective of whichever ideology or party or thinking that they come from, should have the ability to change the same. Is the rule on equality a basic structure of the Constitution? The answer is in the affirmative. The principle of equality is not in the same way in what is written in Articles 14 and 15 or 16. For example, reservation criteria can change from social to economic and from economic to some other criteria. From 10 percent it can increase to 30 percent. There is some flexibility that can be brought about.

But the core principle of equality, which is there in Article 14 of equal treatment and equal protection, is the basic principle and the basic structure of the Constitution. So, privileges and immunity should be rare, and they should be something that cannot be granted to all from time to time. Protection on the ground of equality is the basic rule of the public administration. So, public administration has to treat equals equally, likes alike. This is the basic foundational rule, and it is part of the basic structure of the Constitution. There cannot be any compromise. And how fairly you treat or apply this equality principle is how fairly you can judge good governance. It is as simple as that.