

**“Right to Equality: It is Basic Feature of our Constitution”**

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**“When equality is the aim, Mediocrity is the result.  
When excellence is the aim, Equality finds it’s true.”**

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**ABSTRACT:**

Right to equality given under Article-14 of Indian Law. It is one of the Fundamental Right. It ensures the guarantees to every person the right to Equality Before Law and Equal Protection of Law. It is not only right of Indian citizens but also right of non-citizens. Article-14 says “The State shall of India”. Article-14 defines no one is above the law and all are equal in the eye of law. The word Right to Equality need no explanation because it till its meaning itself and it is one the our Fundamental Right. There are some hidden points which are needed to explain and this research project highlights those points and exceptions which are admissible by our Law of the Land.

**Keywords:** Equality, Equal Protection of Law, Equality Before Law, Fundamental Rights, Constitution

**INTRODUCTION:**

The Constitution of India guarantees the Right to Equality through Article 14 to 18.”Equality is one of the magnificent corner stone of Indian Democracy”. The general principle of “Right to Equality” needs no explanation as it defines itself.

“Right to Equality” is given under Article 14 of Indian law. It is one of the Fundamental Right. It ensures the guarantees to every person the Right to Equality before law and Equal protection of the laws. The Doctrine of Equality before law is a necessary corollary of “**RULE OF LAW**” which pervades the Indian constitution. The underlying object of Article 14 is to secure all persons, citizens or non-citizens, the equality of status and opportunity referrers Preamble to our constitution.

Article 14 out -laws discrimination in a general way and guarantees equality before law to all person. In view of a certain amount of indefiniteness attached to the general principle of equality enunciated in Article-14, separate provisions to cover specific discriminatory situations have been made by subsequent Article. The Supreme Court has said that the constitution lays down

provisions both for protective discrimination and for also affirmative action. The Right to Equality means every person, who lives within territory of India, has the equal right before the law. The meaning of this all are equal in same order. No discrimination based on religion, race, caste, sex and place of birth. It means that all are treated as Equal and no discrimination made based on lower or higher class.

According to **Dicey** the concept of legal equality as it operated in England, quoted “With us every official, from the Prime Minister down to a constable or a collector of taxes, is under the same responsibility for every act done without any legal justification as any other Citizen”.

Article-14 of the Constitution embodies the principles of “Non-Discrimination”. However, it is not a free standing provision. It has to be read in conjunction with rights conferred by other articles like Art-21 of the Constitution. Art-21 refers to “RIGHT TO LIFE” and embodies several aspects of life. It includes “Opportunity”. Art-21 and Art-14 are the heart of the chapter on Fundamental Rights. They cover myriad features of life.

Article-7 of Universal Declaration of Human Right,1948 declares that all are equal before the law and are entitled without any discrimination to the equal protection of laws. By and large the same concept of equality inheres in Art-14 of the Indian Constitution. Right to Equality has been declared by supreme Court as a basic features of the constitution. The Constitution is wedded to the concept of equality. The preamble to the Constitution emphasizes upon the principle of equality as basic to the Constitution. It means that even a constitutional amendment offending the right to equality will be declared invalid.

The Supreme Court in **BADAPPANAVAR CASE** held following words:-

“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 feature or structure of the constitution of India”

### **RIGHT TO EQUALITY:**

Article-14 of the Constitution of India reads as under:-

**“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 corresponds to the equal protection clause of the 14<sup>th</sup> Amendment of the US constitution which declares: “No state shall deny to any person within its jurisdiction the equal protection of the laws”. Art-14 confers rights on all persons whether citizens or foreigners. moreover, the word “Person” includes legal persons Viz, statutory corporation, companies, registered Societies or any other type of legal person.

The underlying object of this Article is to secure to all persons, citizens or non-citizens, the equality of status and of opportunity referred to in the Preamble of the Constitution. Article 14 which guarantees right to Equality in general may be related to the Preamble of the Constitution directly which embodies the ideal of equality. Article-14 stands for the establishment of a situation under which there is complete absence of any arbitrary discrimination by the laws themselves or in their administration.

Interpreting the scope of the Article, the Supreme Court of India held in

**Chiranjit Lal Choudhury vs Union of India** that:

- a. Equal Protection means equal protection under equal circumstances.
- b. The State can make reasonable classification for purposes of legislation.
- c. Presumption of reasonableness is in favor of legislation.
- d. The burden of proof is on those who challenge the legislation.

#### **EQUALITY BEFORE LAW AND EQUALITY PROTECTION OF LAW:**

The concept of “Equality Before Law” is the British origin. While the concept of “Equal Protection of Laws” has been taken from the American Constitution.

#### **EQUALITY BEFORE LAW CONNOTES:**

- The absence of any special privileges in favor of any person.
- The equal subjection of all persons to the ordinary law of the land administered by ordinary law courts.
- No person (whether rich or poor, high or low, official or non-official) is above the law.

#### **EQUAL PROTECTION OF LAW CONNOTES:**

- The Equality of treatment under equal circumstances, both in the privileges conferred and liabilities imposed by the laws.
- The similar application of the same laws to all persons who are similarly situated.
- The like should be treated alike without any discrimination.

Because of this reason Equality Before Law is negative concept. And Equal Protection of Law is positive concept. However, both of them aim at establishing equality of legal status, opportunity and justice.

Supreme court held that where equals and unequals are treated differently, Article-14 does not apply. Which Art-14 forbids class legislation; it permits reasonable classification of persons, objects and transaction by the law. But the classification should not be arbitrary artificial or evasive. Rather, it should be based on an intelligible differential and substantial distinction.

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. Classification to be reasonable should fulfill the following two tests:-

- 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.
- The differentia adopted as the basis of classification must have a rational or reasonable nexus with the object sought to be achieved by the status in question.

Article-14 in its ambit and sweep involves two facets, viz it permits reasonable classification which is founded on intelligible differentia and accommodates the practical needs of the society and the differential must have a rational relation to the objects sought to be achieved. Further, it does not allow any kind of arbitrariness and ensures fairness and equality of treatment. It is the “**fon juris**” of our Constitution, the fountain head of justice. Differential treatment does not per se amount to violation of article-14 of the Constitution and it violation of article-14 only when there is no reasonable basis and there are several tests to decide whether a classification is reasonable or not and one of the tests will be as to whether it is conducive to the functioning of modern society.

### **RULE OF LAW**

The concept of “Equality Before Law” is an element of the concept of “RULE OF LAW” propounded by “**A.V.DICEY**”, the British jurist. His concept has the following three elements or aspects:

- 1) Absence of arbitrary power, i.e., no man can be punished except for a breach of law.
- 2) 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.
- 3) The priority 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 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.

The Supreme Court held that the “**Rule of Law**” as embodied in Article-14 is a “**Basic Feature**” of the constitution. Hence, it cannot be destroyed even by an amendment.

**EXCEPTION TO RIGHT TO EQUALITY:**

The rule of equality before law is not absolute and there are Constitutional and other exceptions to it. These are as follows:

- ✓ The President or the Governor enjoy the following immunities (Article-361)
  - a) The President or Governor is not answerable to any court for the exercise and performance of the powers and duties of his office.
  - b) No criminal proceeding shall be instituted or continued against the President or the Governor in any court during his term of office.
  - c) No process for the arrest or imprisonment of the President or the Governor shall be issued from any court during his term of office.
  - d) No civil proceedings against the President or the Governor 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, until the expiration of two months next after notice has been delivered to him.
- ✓ No person shall be liable to any civil or criminal proceedings in any court in respect of the publication in a newspaper( or by radio or television) of a substantially true report of any proceedings of either house of Parliament or either house of the Legislature of a state.(Article 361A)
- ✓ No member of Parliament shall be liable to any proceedings in any court in respect of anything said or any vote given by him in Parliament or any committee thereof.(Article 105)
- ✓ No member of the Legislature of a state shall be liable to any proceedings in any court in respect of anything said or any vote given by him in the Legislature or any committee thereof (Article 194)
- ✓ Article 31-C is an exception to Article-14. It provides that the laws made by the state for implementing the Directive Principles contained in clause (b) or clause (c) of article 39 cannot be challenged on the ground that they are violative of Article 14. The Supreme Court held that “Where Article 31-C comes in, Article 14 goes out”.
- ✓ The foreign sovereigns (rulers), ambassadors and diplomats enjoy immunities from criminal and civil proceedings.
- ✓ The UNO and its agencies enjoy the diplomatic immunity.

**CONCLUSION:**

In its struggle for social and political freedom mankind has always tried to move towards the ideal of equality for all. The urge for equality and liberty has been the motive force of many revolutions. The Charter of the United Nations records the determination of the member nations

to reaffirms their faith in the equal rights of men and women. Indeed, real and effective democracy cannot be achieved unless equality in all spheres is realized in full measures. However, complete equality among men and women in all spheres of life is a distant ideal to be realized only by the march of humanity along the long and difficult path of economic, social and political progress. The Constitution and laws of a country can at best assure to its citizens only limited measures of Equality. The framers of the Indian Constitution were fully conscious of this. This is why while they give political and legal equality the status of a fundamental right, economic and social equality was largely left within the scope of Directive Principle of State Policy.

The Right to Equality affords protection not only against discriminatory laws passed by the legislatures but also prevents arbitrary discretion being vested in the executive. In the modern state, the executive is armed with vast powers in the matters of enforcing by-laws, rules and regulations as well as in the performance of a number of other functions. The equality clause prevents such power being exercised in a discriminatory manner.

Article-14 prevents discriminatory practices only by the state and not by individuals. For instance, if a private employer like the owner of a private business concern discriminates in choosing his employees or treats his employees unequally, the person discriminated against will have no judicial remedy. One might ask here, why the Constitution should not extend the scope of these right to private individuals also. There is good reason for not doing so. For such extension to individuals action may result in serious interference with the liberty of the individuals and in the process, fundamental right themselves may become meaningless. After all, real Democracy can be achieved only by a proper balance between the freedom of the individuals and the restrictions imposed on him in the interests of the community. Yet, even individual action in certain spheres has been restricted by the Constitution, as for example, the abolition of un-touchability and its practice in any form by any one being made an offence. Altogether, Article-14 lays down an important fundamental right which has to be closely and vigilantly guarded. The right to equality and equal protection of laws loses its reality if all citizens do not have equal facilities of access to the courts for the protection of their fundamental rights. The fact that these rights are guaranteed in the Constitution does not make them real unless legal assistance is available for all on reasonable terms. There cannot be any real equality in the right "To sue and be sued" unless the poorer sections of the community have equal access to courts as the richer section. There is a evidence that this point is widely appreciated in the country as a whole and the government of India in particular and that is why steps are now being taken to establish a system of legal aid to those who cannot afford the prohibitive legal cost that prevails in all parts of the country.

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