



Constitutional dynamism of equal protection of law in India

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Abstract

The concept of equal protection of laws is enshrined in Article 14 of the Indian Constitution. It guarantees equality before the law and equal protection of the laws to all persons within the territory of India. However, the scope and meaning of Article 14 have evolved dynamically through judicial interpretation over the years. This article traces the progression of Article 14 jurisprudence in India and analyzes how the courts have expanded the concept of equality to move beyond just formal equality. It examines significant judgments that have shaped equal protection jurisprudence to include principles such as reasonable classification, prohibition of arbitrariness, and substantive equality. The dynamic judicial approach has led to the development of new grounds of discrimination while striking down discriminatory state action. This article argues that the transformative constitutionalism approach of the Indian judiciary has contributed to making Article 14 a vehicle for social change and justice. However, challenges remain in eliminating inequality and discrimination entirely. The courts need to further evolve the equality doctrine to meet these challenges.

Keywords: Equal protection, article 14, equality, reasonable classification doctrine, court

Introduction

The principle of equal protection of laws occupies a central place in the constitutional framework of most democracies. It reflects the basic idea that all persons should receive equal treatment under the law. India's founding fathers recognized the significance of enshrining the equal protection guarantee under the law through Article 14 of the Indian Constitution. Article 14 states "The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India"^[1]. This establishes equality as a fundamental right and prohibits discrimination by State actions.

However, the text of Article 14 does not elaborate on the scope and meaning of equality. The Indian judiciary has had to step in through judicial interpretation to expound on the concept of equal protection and evolves its scope^[2]. As a result, the journey of Article 14 in India has been dynamic rather than static. From focusing largely on formal equality in the early years, the courts have progressively moved towards substantive equality. Article 14 jurisprudence now includes varied facets like reasonable classification, prohibition on arbitrariness, affirmative action, horizontal application of rights, among others.

This article traces the progression of equal protection jurisprudence in India under Article 14 and examines key milestones. It analyzes how judicial interpretation has shaped and expanded the contours of equality before analyzing significant contemporary issues. The article concludes by arguing that while the courts have come a long way in upholding equality as a constitutional vision, the equality doctrine needs continuous evolution to deal with emerging situations.

Equality and reasonable classification

In the initial years after the Constitution's commencement, Article 14 jurisprudence predominantly focused on the doctrine of formal equality. The early approach centered on similar treatment of equals and different treatment of unequals^[3]. The Supreme Court generally examined if the

law differentiated between groups or individuals arbitrarily or if it was based on an intelligible differentia with a rational nexus to the object sought to be achieved^[4].

This approach was evident in the *State of West Bengal v. Anwar Ali Sarkar* case in 1952,^[5] where Section 140A of the Representation of People Act was struck down by the majority for violating Article 14^[5]. The Chief Justice observed that the impugned provision singled out a group based on religion alone. In his view, such a classification without a basis in reason or fact cannot be permitted under Article 14. However, Justice Vivian Bose dissented by upholding the classification as reasonable and emphasized that absolute equality among human beings is inconceivable. Over time, the dissenting view gained wider acceptance^[6].

The courts conceded that while equal protection requires equal treatment among equals, it permits reasonable classification among unequals. The classification should not be arbitrary but bear a rational nexus to achieving a valid state purpose^[7]. In the *Abbas v. Union of India* case in 1971,^[8] the constitutional validity of regulation of prize competitions was challenged under Article 14. Upholding the classification between prize competitions involving substantially skill and those involving pure chance, the Court enunciated the twin test of intelligible differentia and rational nexus^[8]. Only classifications that failed this test violated the equal protection clause.

Through the evolution of the reasonable classification doctrine, the Court marked a shift from mechanical formal equality towards substantive equality. Making classifications became constitutionally valid if the rationale behind the categorization was defensible and non-arbitrary. The courts also recognized that excessive rigour in judicial scrutiny can impede beneficial socio-economic legislation^[9]. Thus, Article 14 permitted affirmative action policies favouring weaker sections since assumptions of formal equality might be unrealistic or even unjust in India's context^[10].

Prohibition on arbitrariness

While reasonable classification represented one dimension of interpreting Article 14, the courts also began articulating the evolving doctrine against arbitrariness. This judicial innovation signalled moving away from mere rationality of classification to demanding reasonableness of state actions^[11].

In *E P Royappa v. State of Tamil Nadu* (1974), the Supreme Court comprehensively analyzed the scope and operation of equality before the law under Article 14. Justice Bhagwati asserted that “equality is antithetic to arbitrariness” and any state action that is arbitrary violates equality^[12]. Expanding further, *Maneka Gandhi v. Union of India* (1978) laid down that the procedure established by law must be fair, just, and reasonable to avoid falling foul of Article 14^[13]. Here, the Court emphasized that even executive actions qualify as 'law' and must comply with Part III to be valid. Through these cases, prohibition on arbitrariness beyond only legislation got firmly established as a constitutional mandate. It made equality more realistic by requiring reasonableness in restrictions imposed by. The courts also started scrutinizing closely the criteria for reasonable classification in this context. For instance, in *State of U.P. v Pradip Tandon* (1975), treating doctors as a single homogenous class was struck down^[19]. Following the *Champakam* principle, physicians could not be clubbed together irrespective of merit. This indicated that the basis for special provisions must have factual justifications since assumptions can undermine equality. At the same time, the judiciary refused to impose reservation quotas for judicial appointments to higher judiciary as that would undo merit-based selection, a valid classification aimed at efficiency^[20]. Overall, affirmative action judgments have continually enforced substantive equality concerns rather than rigid formal equality. They expanded Article 14 application in empowering weaker sections through reasonable state policies. But classifications do require sufficient basis in fact to avoid violating equal protection he states.

The arbitrariness test was eventually formally adopted in Royappa's case when *Maneka Gandhi* was overruled in *Ramana Dayaram Shetty v. International Airport Authority* (1979)^[14]. Any executive or legislative action lacking reasonableness and operating unequally was liable to be struck down as arbitrary. Justice Krishna Iyer stressed that ignoring reasonableness and permitting arbitrariness violate the essence of equality, rule of law, and even human dignity^[15]. Since then, courts examine state actions on the dual touchstone of reasonable classification and arbitrariness to test Article 14 validity. This expanded the equal protection doctrine significantly through judicial innovation.

Affirmative action policies

An early constitutional amendment incorporating Article 15(4) empowically validated affirmative action policies by the State. This exception to formal equality is another important milestone, demonstrating substantive equality concerns. Article 15(4) was a response to the Supreme Court striking down reservations in *State of Madras v Champakam Dorairajan* (1951) as violative of Article 29(2)^[16]. The First Amendment affirmed the State's power to make special provisions favouring socially and educationally backward classes, strengthening the social justice commitment.

Subsequently, reservations were continually upheld in decisions due to their immense transformative potential in remedying inequality. *MR Balaji v State of Mysore* (1963) refined this area by ruling that the total reservation cannot exceed 50 percent while ensuring backwardness is determined adequately^[17]. Through *Indra Sawhney v Union of India* (1993), the Court cemented that reservations as a form of protective discrimination are valid subject to maintaining efficiency^[18]. Justice Reddy declared that the policy aims to realize substantive equality to help backward groups advan

Horizontal application of rights

Earlier, Article 14 was largely understood as restricting only the 'State' in its activities. But judicial interpretation also expanded rights' horizontal application between non-state entities and individuals. This accorded wider reach to the equal protection guarantee.

The initial shift happened in *Excel Wear v Union of India* (1979), where the Court ruled that Article 14 can apply to non-state entities like associations and corporations^[21]. Subsequently, *Unnikrishnan v State of AP* (1993) firmly extended fundamental rights application horizontally between non-state parties^[22]. Making Article 14 binding mutually between individuals as well strengthened the broad commitment towards creating an egalitarian society. It enhanced the equal status of persons beyond just state actions.

Recently, the Kerala High Court's landmark decision in *Navtej Singh Johar v Union of India* (2018) on Section 377 refusing to discriminate based on sexual orientation reiterated this horizontality^[23]. By decriminalizing same-sex relations, the historical judgment upheld equal citizenship and treatment between individuals irrespective of identities. It gave fresh impetus to evolving dignity and equality that encompasses private non-state spheres. Overall, the expanded horizontal application of Article 14 to cover private discrimination significantly widened its protective ambit towards vulnerable groups.

New grounds of discrimination

The dynamic judicial approach meant continuously recognizing new impermissible grounds for discrimination as being violative of equal protection. Moving beyond the specified grounds under Article 15, several other bases have been held to be 'analogous', attracting equality protection.

For instance, place of origin was added as an analogous ground in *Anjan Kumar Gupta v State of West Bengal* (1997) for including domiciles under Article 16 reservations^[24]. Extending this, the Court ruled in *Air India Cabin Crew v Yeshaswinee Merchant* (2004) that discrimination based on both gender and marital status for air hostesses violated Article 14 and 15^[25]. It stressed that equality protection continually evolves to include new suspect classifications lacking reasonable nexus.

More recently, prohibiting discrimination due to one's sexual orientation represented an important milestone. In *Navtej Johar v Union of India* (2018), the Supreme Court overruled *Suresh Koushal* to partly strike down Section 377 IPC and decriminalize consensual same-sex relations^[26]. Emphasizing that sexual orientation grounds are analogous to prohibited categories under Article 15, Chief Justice Misra asserted that LGBT status attracts equal protection similar to other identities. Overall, progressive Article 14

interpretation continually questioning unreasonable classifications has expanded equality guarantees significantly. Judicial understanding of equality does not remain static but evolves as new situations and questions arise before courts. Affirmative action jurisprudence promoting substantive equal protection took firmer hold.

Substantive equality

The substantive conception of equality has come to dominate recent jurisprudence rather than insisting only on formal equality. Classification itself is no longer the sole test. Instead, there is greater focus on achieving real justice by eliminating unjustified discrimination that perpetuates inequality^[27]. Article 14 is seen as the 'lynchpin' for supporting the dignity of individuals while Article 15 and 16 represent specific instances calling for its application^[28].

Overall, arbitrariness, discrimination and inequality now represent distinct juristic concepts^[29]. A legislation borne out of arbitrariness is inherently unreasonable and violates Article 14. But inequality and discrimination require establishing distinct grounds under Articles 15 and 16 respectively that qualify as constitutionally prohibited categories^[30]. For other grounds, the twin test of Article 14 still needs to be satisfied. Disparate impact indicates discrimination while unequal treatment denotes inequality^[31]. This conceptual clarity has brought nuance into examining equal protection claims.

At the same time, the Supreme Court has emphasized that no precise definition of substantive equality can be laid down. Constitutionally prohibited grounds under Article 15 and 16 are not exhaustive but illustrative^[32]. Homosexuality was ruled as one such analogous ground demonstrating the anti-exclusion principle^[33]. Article 14 aims to prevent domination due to embedded structures rather than only individual dignity. Overall, substantive equality focuses on reducing group disadvantage perpetuated by unjust systems and institutionalized discrimination^[34]. The effects of the law rather than objects alone need to be evaluated from the standpoint of disadvantaged groups^[35]. This contextual and impact-based approach marks the current understanding.

While applying Article 14, the Supreme Court has also highlighted the transformative constitutionalism approach rather than just upholding the status quo. Social context assumes significance and historical injustice facing marginalized groups needs acknowledgment^[36]. Affirmative action benefits and progressive legislation are justified remedies to overcome structural barriers^[37]. In *NALSA v Union of India*, protection of transgender rights as a marginalized community was declared integral to substantive equality^[38]. Therefore, evolving the doctrine of equality as per changing realities has become critical. The ultimate quest is to achieve social and economic justice as promised in the Preamble^[39].

Conclusion

Tracing the progressive advance of equality through Article 14 reveals a strong transformative zeal animating the Indian higher judiciary. From predominantly espousing and enforcing formal equality, the jurisprudence has substantially moved towards infusing content into making substantive equality meaningful. General guarantee against discrimination now coexists with specific grounds to continually widen equal protection of laws. The dynamism also comes across in horizontal application against private

entities and recognizing new bases necessitating protection. Equality has become a vehicle leveraged by courts for articulating social change.

However, India continues to grapple with extensive inequality and social exclusion across multiple indicators like gender, caste, religion, disabilities that have yet not sufficiently achieved redressal^[40]. Eliminating arbitrariness entirely also remains a challenge, seen in selective state policies lacking constitutional defence^[41]. Moreover, affirmative action benefits remain circumscribed due to prevalent societal prejudices. As Amartya Sen argues economic and social disparities frustrate lives from lack of substantive opportunities despite equality rights^[42].

For the constitutional vision to be fully realized in practice, the jurisprudence needs to tackle manifestations lacking sufficient redress currently. Dominant social morality acting detrimentally to minorities' rights also requires neutralization^[43]. Effectiveness of the anti-discrimination legal framework itself depends considerably on transformation in social attitudes and behaviors beyond legislations and judgments alone. Courts need to enter deeper to probe societal biases and stereotyping that sustain discrimination in ways not addressed through existing doctrines. Infusing quality into formal pronouncements to make lived equality meaningful remains unfinished constitutional business. It necessitates grappling with not just state laws but societal mentalities at large.

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