CHAPTER-III

RIGHT TO EQUALITY : CONSTITUTIONAL FRAMEWORK

A. GENERAL

Constitution of India contains a long list of ‘Fundamental Rights’. The aim of having a declaration of these fundamental rights in the Constitution is the certain elementary rights, such as right to equality, right to life, liberty, freedom of speech, freedom of faith and religion should be regarded as inviolable under all the conditions. These rights were deemed essential to protect the rights and liberty of the people against the encroachment of the power delegated by them to their Government. Speaking about the importance of fundamental rights in historical decision of Maneka Gandhi v. Union of India. Bhagwati, J., observed:

These fundamental right represent the basic values cherished by the people of country (India) since the Vedic times and they are calculated to protect the dignity of the individual and create conditions in which every human being can develop his personality to the fullest extent. They have a 'pattern of guarantee' on the basic structure of human rights, and impose negative obligations on the State not to encourage on individual liberty in its various dimensions.

State can not make any law which takes away or abridges fundamental rights guaranteed to a citizen and these rights can be enforced through the Courts. The provisions relating to equality are contained in the part dealing with fundamental rights.

Liberty, equality and fraternity was the cry of French Revolution. It is also the motto or our constitution, with the concept of ‘justice – social, Economic and Political’ the sum total of modern political thought super-added to it. Equality has been and is the single greatest craving of all human beings at all points of time. It has inspired many a great thinkers and philosophers. All religious and political schools of thoughts swear by it, including the Hindu religious though, if one looks to it ignoring the later crudities and distortions.

1 AIR 1978 SC 597
Liberty of thought, expression, belief, faith and worship has equally been an abiding faith with all human beings, and at all times in this country in particular. The doctrine of equality has many facets. It is a dynamic and an evolving concept. Its main facets, relevant to Indian Society, have been referred to in the Preamble and the Articles under the sub-heading ‘right to equality’ – (Articles 14 to 18 of the constitution of India). In short the goal is equality of status and of opportunity. Articles 14 to 18 the Constitution must be understood not merely with reference to what they say but also in the light of the several Articles in Part IV (directive Principles of State Policy). “Justice, Social, Economic and Political”, is the sum total of the aspirations incorporated in Part IV of the constitution.

(B) EQUALITY BEFORE LAW

All men are created equal\(^2\). Equality and liberty are two cherished words of passion and power and they find paramount place in the preamble and in the body of the Indian constitution. Equality has two aspects – negative and positive i.e. where equality is achieved to some extent by removing inequality, i.e. slavery, which was the most fragrant denial of equality of human beings. The abolition of ‘untouchably’ by the Indian Constitution like the abolition of slavery in the united States secured to the crores of India, equality of status as human beings. Article 14 of the constitution of India is the general Article on equality which provides that the State shall not deny to any person equality before the law or the equal protection of the law. The first is the negative concept and the second is a positive concept. If all men are created equal and remained equal, it would mean the guarantee of the laws for all.

Provisions relating to right to equality were discussed in great detail in the constitutional Assembly. The Advisory committee on fundamental rights provided only for the ‘equal treatment of the laws’ and combined it with the ‘due process’ clause regarding the right to life and liberty.\(^3\) The Drafting Committee replaced the words ‘the equality before the law’ and added a new clauses,

\(^2\) Lincoln’s Gettysburg Address : “………….Four scores and seven years ago our fathers brought forth on this continent a new nation conceived in liberty and dedicated to the proposition that all mean are created equal.” Quoted in G.P. Verma, Caste Reservation in India (1980) at p.3.

\(^3\) Advisory Committee, Fundamental right : Interim Report (Delhi, 1948), Cl.21.
namely, ‘equal protection of the laws’. But even in Draft Constitution, the right to equality before the law and the right to personal liberty were combined in one Article. However, after the second reading stage, it was decided to incorporate the right to equality before law in a separate Article.

Article 14 enjoins upon the State not to deny to any person “equality before the law” or “the equal protection of the laws” within the territory of India. Most Constitutions speak of either “equality before the law” or “the equal protection of the laws”, but every few of both. Section 1 of the XIV Amendment to the U.S. Constitution uses only the latter expression while the Austrian Constitution (1920). The Irish Constitution (1937) and the West German Constitution (1949) use the expression “equal before the law” (Article 7 of the universal declaration that “all the equal before the law and are entitled without any discrimination to equal protection of the law”). The content and sweep of these two concepts is not the same though there may be much in common. The content of expression “equality before the law” is illustrated not only by Articles 14 to 18 but also by the several Articles in Part IV, in particular, Articles 39, 39, 39A, 41 and 46. Among others, the concept of equality before the law contemplates minimizing the inequalities in income and eliminating the inequalities in status, facilities and opportunities not only amongst individuals but also amongst groups of people, securing adequate means of livelihood to its citizens and to promote with special care the educational and economic interests of the weaker sections of the people, including in particular the Scheduled Castes and Scheduled Tribes and to protect them from social injustice and all forms of exploitation. Indeed in a society where equality of status and opportunity do not obtain and where there are glaring inequalities in incomes, there is no room for equality – either equality before law or equality in other respect.

Article 14 of the constitution of India enshrines the rule of equality which prohibits the state from denying to all persons, whether citizens or foreigners equality before the law or the equal protection of the laws. ‘Equality before the law’ is an expression of English common Law and according to Dicey, it may be

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5 Ibid.
defined “as the equal subjection of all persons to the ordinary law the ordinary law of the land administered by the ordinary law courts.”

Equality before the law does not mean absolute equality but it postulates that there shall not be any special privilege by reason of birth, religion, race or the like in favor of an individual. It means further that among equal the law shall be equal and shall be equally administered. Absolute equality among human being is an impossibility.

It can only mean that among equals of law should be equal and equally administered and that the like should be treated alike. The right to sue and be sued, to prosecute and be prosecuted for the same kind of action should be same for all citizens of full age and understanding without distinction of race, religion, wealth social status or political influence. Dicey wrote “every official from the Prime minister down to constable or a collector of taxes is under the same responsibility for every act done without legal justification as any other citizen.”

The phrase “equality before law” is English in origin. It is a familiar feature of what Dicey called the “Rule of Law”. “Rule of Law” 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. He observes : 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 legal justification as any other citizen.

Dr. Ivor Jennings explains: “Equality before the law means that among equals the law should be equal and should be equally administered, that like should be treated alike.”

“Equality before law”, thus, means absence of any special privileges for any particular person. In K.C. Sarkar v. Rajesh Rajan, a three-judge of the Bench of the Apex Court ruled that MPs/Influential politicians were not above

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8 AIR 1953 SC 250.
12 SCC, 307, 2005 (3).
the law and while in custody, where to be kept in a prison cell like any other normal prisoner.

The concept “equality before law” also strikes at arbitrary power on the part of the Government. It is, therefore, a negative concept.

(C) EQUAL PROTECTION OF LAW

Equal protection of laws means subjection to equal law, applying to all in same circumstances.13 It only means that all persons similarly circumstanced shall be treated alike both in the privileges conferred and liabilities imposed by the laws. Thus the rule is that the like should be treated alike and not that unlike should be treated alike.14 The protection of Article 14 of the constitution extends to both citizens and non-citizens and to natural persons as well as legal persons. The equality before the law is guaranteed to all without regard to race, colour or nationality. Corporations being juristic persons are also entitled to the benefit of Article 14.15

Moreover, Article 14 of the Constitution does not mean that all laws must be uniform and must universally be applicable. Since all persons are not by nature, attainment or circumstances equal and the varying needs of the different classes of persons often require separate treatment. Article 14 prohibits improper distinction created by conferring rights or privileges upon a particular group to the exclusion of other groups without any valid reason. Thus under this article, there cannot be unfair discrimination between one group of citizens and another in relation to the same matter or between citizens and foreigners.

The phrase “equal protection of laws” is based on Section 1 of the Fourteenth Amendment of the Constitution of the United States of America adopted on July 28, 1868,16 which runs as : “nor shall any State—deny to any person within its jurisdiction the equal protection of laws”.  

14 V.N. Shukla, Constitution of India at p.27.
15 AIR 1951 SC 41.
This phrase is interpreted to mean “subjection of equal laws applying to all in the same circumstances”. It means that all persons have the right to equal treatment in similar circumstances, both in the privileges conferred and in the liabilities imposed by laws. It requires that equal laws should be applied to all in the same situation and that there should be no discrimination between one person and another. 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.” It is known to be positive concept.

Article 7 of the universal Declaration of Human rights, proclaimed on December 10, 1948, uses both the expressions. It says : “All are equal before the law and are entitled without any discrimination to equal protection of the law.”

In *Indra Sawhney v. Union of India,*,17 Thommen, J., on the concept of equality under the constitution observed:18

> The constitution seeds to secure to all its citizens Justice, Liberty, Equality and Fraternity. These are the basic pillar on which the grand concept of India as Sovereign, Socialist, Secular, Democratic Republic rests, This splendor that is India rests on these magnificent concept, each of which supporting the other, upholds the dignity and freedom of individual and secures the integrity and unity of nation.

Equality is one of the magnificent cornerstone of Indian democracy.19 Articles 14, 15, 16 embody facets of the many sided grandeur of equality.20 Article 14 prohibits the state from denying to any person within the territory of India equality before the law or the equal protection of the laws. All persons in like circumstances must be treated equally. Equality is between equals. It is parity of treatment under parity of conditions. The constitution permits valid classification founded on an intelligible differentia distinguishing persons or things grouped together from others left out of the group. And such differentia must have a rational relation to the object sought to be achieved by the law.

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17 AIR 1975 SC 2299  
18 AIR 1980 SC 1789.  
19 AIR 1975 SC 2299; AIR 1980 S.  
20 AIR 1962 SC 36; AIR 1976 SC 490.
Any state action distinguishing classes of persons is liable to be condemned as invidious and unconstitutional unless justified as a benign classification rationally addressed to the legitimate aim of qualitative and relative equality by means of affirmative action programmers of protective measures with a view to uplifting identified is advantaged grounds. All such measures must bear a reasonable proportion between their aim the means adopted and must terminate on accomplishment of their object. Any legitimate affirmative action rationally and reasonably administered is an aid to the attainment of equality. In the words of Judge Tanaka of the International court of justice.21

The principle is that what is equal is to be treated equally and what is different is to be treated differently, namely proportionately to the factual difference. This is what was indicated by Aristotle as justitia cumulative and justitia disruptive. The principle equality before the law does not mean the absolute equality, namely equal treatment of men without regard to individual, concrete circumstances, but it means the relative equality, namely the principle to treat equally what are equal and unequally what are unequal. To treat unequal matters differently according to their inequality is not only permitted but required.

The significance attached by the founding fathers to the right to equality is evident not only from the fact that they employed both the expressions equality before the law and ‘equal protection of the laws’ in Article 14.

D. REASONABLE CLASSIFICATION AND PROHIBITION ON CLASS LEGISLATIONS

Article 14 prohibits class legislation. “Class legislation” means legislation differentiating between the same class of persons. When persons belong to the same class or that they are equal among themselves in certain respects, they have to be treated equally in such matters. Law would be violative of Article 14 if it treats these persons differently. For instance, in D.S. Nakara v. Union of India,22 the Supreme Court struck down as violative of Article 14, a Pension Rule classifying between Government pensioners retiring before March 31, 1979 and

21 Ibid.
22 AIR 1983 SC 130.
those retiring on or after that date, since they belonged to the same class for the purpose of computation of their pension. Likewise, the classification between the students coming from common rural schools and those coming from the urban schools, for the purpose of admission to M.B.B.S. and B.D.S. courses, was held arbitrary and violative of Article 14 in *Suneel Jatley v. State of Haryana*.23

In *V.B. Mishra v. State of Maharashtra*,24 the Apex Court held Section 1(4) of the Terrorist and Disruptive Activities (Prevention) Act, 1987 as clearly ultra vires Article 14. The Impugned Section provided that the offence created by Section 3 of the Act would be punishable as a crime if the act was committed on or before 24-5-1995, but if the same act was committed after 24-5-1995, the Act, 1987 lapsed on 24-5-1995, it would not be a crime. The differentiation was held to be ex facie violative of Article 14.

Seervai says if all men are created equal and remained throughout their lives, then the same law would apply to all men.25 But we know that men are unequal; consequently a right conferred on persons that they should not be denied the equal protection of the laws cannot mean the protection of the same laws for all. It is here that the doctrine of classification steps in, and gives content and significance to the guarantee of the equal protection of laws. Though article 14 is absolute in its language, following the view of the Supreme Court of the united Stated, the Indian Courts evolved the doctrine of reasonable classification.26

The Supreme Court in a large number of cases has upheld the view that Article 14 of the Constitution does not rule out classification for the purpose of legislation. In *Kedar Nath Bajoria Vs State of West Bengal*27 the principle was explained as follows:

The equal protection of laws guaranteed by Article 14 of the Constitution does not mean that all the laws must be general in character and universal in application and that the State is no

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23 AIR 1984 SC 1534.
24 AIR 2008 SC 961.
25 Ibid.
26 Ibid.
27 AIR 1953 SC 404.
longer to have the power of distinguishing and classifying persons or things from the purpose of legislation.

Professor Wills dealing with the Fourteenth Amendment of the Constitution of United States, which guarantees equal protection of the laws, sums up the law as prevailing in that country in these words:

The guarantee of the equal protection of the law means the protection of equal laws.

It forbids class legislation, but does not forbid classification which rests upon reasonable grounds of distinction. It does not prohibit legislation, which is limited either in the objects to which it is directed or by territory within which it is to operate. It merely requires that all persons subjected to such legislation shall be treated alike under like circumstances and conditions both in the privileges conferred and in the liabilities imposed. The inhibition of the amendment … was designed to prevent any person or class of persons from being singled out as a special subject for discriminating and hostile legislation. It does not take from the discriminating and hostile legislation. It does not take from the states the power to classify either in the adoption of the police laws or tax laws eminent domain laws, but permits to them the exercise of wide scope of discretion and mollifies what they do only when it is without any reasonable basis. Mathematical nicety and perfect equality are not required. Similarly, not identity of treatment is enough. If any state of facts can reasonably be conceived to sustain a classification, the existence of that state of facts must be assumed. One who assail a classification must carry the burden of showing that it does not rest upon any reasonable basis.

In Charanjit Lal Chowdhury v. Union of India the Governor-General of India promulgated the Sholapur Spinning and Weaving Company (Emergency Provisions) Ordinance, 1950, empowering the Central Government to take over the management and administration of the Sholapur Spinning and Weaving Co.

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28 Prof. Wills, *Constitutional Law* (1st Edition) at p. 578.
29 Ibid.
30 Ibid.
31 AIR 1951 SC 41.
Ltd., which was closed down due to disputes between the management and the employees.

Upholding the constitutionality of the impugned Act and the action taken against the Company, the Supreme Court observed that the law would be constitutional, even if it applied to one person or one class of persons, if there was sufficient basis or reason for it.

In *Ram Krishan Dalmia v. Justice S.R. Tendolkar*, the Central Government appointed a Commission of inquiry, with Justice S.R. Tendolkar as its Chairman, against one of the Dalmia concerns, on the ground of mismanagement in the said concern, apprehending considerable loss to the Investing public. The Commission was appointed under the Commission of Inquiry Act, 1952, which empowered the Government to appoint a Commission “to enquire into any definite matter of public importance.”

The Court upheld the action taken against the petitioner and laid down that while Article 14 forbade class legislation, it did not forbid reasonable classification for the purposes of legislation.

The Court laid down the following tests to determine the question of reasonableness of a classification. These have been held to be the central tests for permissible classification.

(E) **TEST OF REASONABLE CLASSIFICATION**

Article 14 of the Indian Constitution and Fourteenth Amendment of the American Constitution forbids class legislation, it does not forbid reasonable classification for the purpose of legislation. In order, however, to pass the test of permissible classification two conditions must be fulfilled:

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; and

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32 AIR 1958 SC 538.
33 AIR 2007 SC 1948.
2. That the classification must have a rational relation to the object sought to be achieved by the status in question.

When a statute is challenged on the ground of the violation of guarantee of equality under Article 14, first time policy underlying the statute and the object intended to be achieved by the statute should be ascertained by the Court and, thereafter it is to be ascertained by the Court, whether the classification is rational and founded on an intelligible differentia which distinguished persons or things that are grouped together from others that are left out of the group and whether the basis of differentia has any rational nexus or relation with the policy or objects sought, to be achieved by the statute. It is to be noted that there is difference between the differentia and object sought to be achieved by the statute and, therefore, the object by itself cannot be the basis of classification.

Thus, if the classification is founded on an intelligible differentia which distinguishes persons or things that are grouped together from other left out of the group and the differentia has a rational to the objects sought to be achieved by the statute in question, the classification will be reasonable classification. For example, classification of films into U films and A films is a reasonable classification. Similarly, classification of prisoners on the basis of their age or sex or nature of crime and separate arrangement for them is reasonable classification. Classification of persons on the basis of capacity to pay for the purpose of taxation has also been held to be reasonable classification. Likewise, classification on the basis of regional differentiation or on territorial basis has also been held to be reasonable classification.

There are many cases where laws have been held volatile of Article 14 of the Constitution because there was a classification without a difference or the basis of classification was irrelevant to the purposes of the Act.

35 AIR 1970 SC 1453.
37 K.A. Abbas v. Union of India, AIR 1971 SC 481.
40 Gopi Chand v. Delhi Administration, AIR 1959 SC 609.
In case of *P. Rajendran v. State of Madras*\(^41\) the Supreme Court struck down a provision which laid down district wise distribution of seats in the State medical college on the basis of population of a district to the total population of the State. For a classification to be valid under Article 14 of the Constitution, there has to be a nexus between the classification and the object sought to be achieved. Any scheme of admission rules should be devised so as to select the best available talent for admission to medical colleges in the State. However, district wise selection does not promote this object. It is, in fact, discriminatory as a better qualified candidate from one district may be rejected while a less qualified candidate from another district may be admitted. Nevertheless, consideration such as backwardness of a region or the exigencies of a special occupation can be valid criterion in the matter of admission to educational institutions. Yet classification based on language, religion, race, sex or place of birth is not permissible.\(^42\) However, University wise distribution of seats will not be violative of Article 14. But University-wise distribution of seats subject, however, to the ratio of candidates registered in the two universities is discriminatory as there is no nexus between the registered students’ strength and the seats to be allotted.\(^43\) Nevertheless there is no discrimination involved in attributing parity to marks of examinees in pre-degree courses of one university with those of another for purpose of combined selection for admission as there is no such substantial difference in pre-degree courses and evaluation between the sister universities with the same State so that the breach of Article 14 by equal treatment of the marks unequally secured by examinees in the two universities may be spelt out.

Equality is violated when equals are allotted unequal shares and when un-equals are allotted shares. The later principle, namely, that equality is violate when un-equals are allotted equal shares is also reflected in judicial decisions. In *Bennett Coleman & Co. v. Union of India*\(^44\) to conserve foreign exchange, the Central Government imposed restrictions on import of newsprint. The order prohibited the newspaper to acquire or consume newsprints in excess of the limits

\(^{41}\) AIR 1968 SC 1012.

\(^{42}\) *Chitra Ghose v. Union of India*, AIR SC 35.


\(^{44}\) AIR (1972) 2 SCC 788.
prescribed by the controller. The main object of the rules frames under the was to curtail the growth of newspapers with a circulation above 100000. Newspapers with a circulation less than 100000 were given a 10% increase in the basic entitlement of newsprint. In 1972-73 newspapers having less than 10 pages were given 20% increases in the newsprint entitlement. The Supreme Court stated that the ceiling of the pagers imposed by the order was arbitrary; that it discriminated against those newspapers who by virtue of their efficiency secured larger circulations and that it treated un-equals as equals. The Court held the order void under Article 14 of the Constitution.

(i) **Principles for Determining Reasonable Classification**

(a) The presumption is always in favour of the Constitutionality of an enactment, since it must be assumed that the legislature understands and correctly appreciates the needs of its own people, that its laws are directed to problems made manifest by experience and its discrimination are based on adequate grounds.

(b) The presumption may be rebutted in certain cases by showing that on the face of the Status there is no classification at all and no difference peculiar to any individual or class and not applicable to any other individual or class and yet the law hits only a particular individual or class.

(c) The principle of equality does not mean that every law must have universal application for all persons who are not by nature, attainment or circumstances in the same position, and the varying needs of different classes of persons often require separate treatment.

(d) The Principle does not take away from the State the power of classifying persons for legitimate purposes.
(e) Every classification is in some degree likely to produce some inequality, and mere production of inequality is not enough.

(f) If a law deals equally with members of a well defined class, it is not obnoxious and it is not open to the charge of denial of equal protection on the ground that it has no application to other persons.

(g) While reasonable classification is permissible such classification must be based upon some real and substantial distinction bearing a reasonable and just relation to the object sought to be attained, and the classification basis.

K. Thimmappa and others Vs Chairman Central Bd. Of Directors, Sbi and others.\(^45\) The supreme court held that equality clause does not prohibit reasonable classification but classification must have nexus with the object of legislation. That art. 14 prohibits is class legislation and not reasonable classification for the purpose of legislation.

(F) BASIS OF CLASSIFICATION

A classification may properly be made on geographical or territorial basis if that is germane to the purposes of the enactment. Thus a tenancy law may be necessary only for a part of the state because the conditions of tenants vary from locality to locality, and, as such, tenants in other areas may not challenge the validity of the law.\(^46\) Similarly a rule is not volatile of Article 14 of the Constitution, if it imposes a capitation fee on the non-resident students of a State and exempts the resident students from the payment there of because the State has to contribute for the upkeep and running of the educational institutions. In the matter of recovery of land revenue different States have prescribed different machinery of procedure and penalty. Section 46(2) of the Income Tax Act authorizes the Collectors in different States, to adopt the State machinery for recovery of land revenue and recovery of arrears of income tax. The validity of section 46(2) was attached on the ground that in authorizing the use of different

\(^{45}\) AIR 2001 SC 467.

machinery in different States the defaulters were not treated equally in different States. The supreme Court held firstly, that each State is well within its rights to devise its own machinery for the recovery of its own public demand and secondly, that no person belonging to one State can complain that the law of his State is more rigorous than that of the neighboring State. The reason is obvious, for the people of one State are not similarly situated as people of another State. Their needs, as understood by their own legislatures, are different from those of the people of other States. Secondly, on the same principle section 46 (20 of the Income Tax Act is not unconstitutional if it classifies the defaulters State wise, and applies the same mode for recovery of its demands which are prevailing in the State for recovery of land revenue. In State of M.P. v. G.C. Mandawar⁴⁷ it was ruled by the Supreme Court that no law may be struck down on the ground that it contrasted with the law prevailing in another State.

In Ameerunnissa Begum and Other v. Mehboob Begum and Others,⁴⁸ the Supreme Court held that the nature and the scope of the guarantee that is implied in the equal protection clause of the Constitution have been explained and discussed in more than one decision of this court and do not require repetition.

Mukherjee, J. Observed:

It is well settled that a legislature who has to deal with diverse problems arising out of an infinite variety of human relations must, of necessity, have the power of making special laws to attain particular objects, and for that purpose it must have large powers of selection or classification of persons and things upon which such laws are to operate. Mere differentiation or inequality of treatment does not per se amount to discrimination within the inhibition of the equal protection clause. To attract the operation of the clause it is necessary to show that the selection or differentiation is unreasonable or arbitrary; that it does not rest on any rational basis having regard to the object which the legislature has in view.

⁴⁷ AIR 1954 SC 493
⁴⁸ SCR 404, 1953.
In *Shri Krishan Singh and others v. State of Rajasthan and others*⁴⁹ the petitioners who were jagirdars of Marwar, sought to impugn the constitutional validity of sections 81 to 88 of the Marwar Land Revenue Act which embody a scheme for fixing fair and equitable rents payable by cultivating tenants on the ground that they infringed their fundamental rights under Articles 14, 19 (1) (f) and 31 920 of the constitution.

The supreme court held that Article 14 of the constitution only prohibits unequal treatment of persons similarly situated and a classification might properly be made on territorial basis, if that was germane to the purpose of the enactment and no tenancy legislation can held to contravene the Article solely on the grounds that it does not apply to the petitioners could succeed it was incumbent on them to show that conditions obtaining in other parts of the state were similar to those in Marwar and this they had failed to do.

In *Yusuf v. State of Bombay*,⁵⁰ the question before the Supreme Court was whether Section 497 of Indian Penal Code contravenes Articles 14 and 15 of the constitution. The Supreme Court held that Article 14 is general and must be read with the other provisions which set out the ambit of fundamental rights. Sex is a sound classification and although there can be no discrimination in general on that ground, the Constitution itself providers for special provisions in case of women and children. The two Articles read together validate the impugned clause in section 497 of Indian Penal Code.

Similarly in *Ram Krishan Dalmia and others v. Justice S.R. Tendolkar and others*,⁵¹ the rule of classification was further elaborated. In this case the commission of Enquiry Act, 1952 empowered the government to appoint a commission to enquire into any definite matter of public importance. Under this Act, a commission was appointed to inquire into one of the Dalmia concerns affairs on the ground of mismanagement. The appellants contended that the Act and the appointment of the commission infringed the equality clause. It was also alleged that notification appointing the commission was discriminatory. In *Indian

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⁴⁹ SCR 531, 1955.
⁵⁰ SCR 930, 1954.
⁵¹ AIR 1958 Sc 538.
Express Newspaper v. Union of India,\textsuperscript{52} it has been held that the classification of newspapers into small, medium and big newspapers on the basis of their circulation for the purpose of levying customs duty on news print is not violative of Article 14. The object of exempting all small newspapers from payment of customs duty while levying full customs duty on big newspapers is to assist the small and medium newspapers is bringing down their cost of production. Such papers do nor command large advertisement revenue. Their area of circulation is limited and majority of them are in Indian languages catering to rural sector.

(i) **Grounds of Classification**:

(a) **Age**

Age may be the ground of classification, i.e., classification on the basis of age may be a reasonable classification. For example, Section 11 of the Indian Contract Act provides that a major can enter into a contract but a minor cannot enter into a contract. This discrimination between major and minor on the basis of age is reasonable because a minor may not be able to understand the effect of the contract on his interest.

(b) **Sex**

Sex may be a basis of reasonable classification. Article 15(1) provides that the State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India. However, Article 15(30 makes it clear that the provision of Article 15 shall not prevent the State from making any special provisions for women and children. Sex, thus may be provides that adultery may be committed only by men and provides punishment only for men and not for women has been held to be valid.\textsuperscript{53}

\textsuperscript{52} AIR 1958, I SCC 641.

(c) **Geographical or Territorial Basis**

Article 14 does not require that uniform laws be enacted for the whole of the territory of India. A classification may be, therefore, properly made, on geographical basis.

In *Ram Chandra v. State of Orissa*,\(^\text{54}\) the State made two Acts for nationalization of road transport business. One of the Acts applied to the part of the State which was previously a part of British India and the other Act applied to that part of the State which was previously a Princely State. As the conditions in the two parts were materially different, the Acts were upheld as not violative of Article 14.

(d) **Historical Consideration**

A classification may be made on the basis of historical reasons. Section 87-B of the Civil Procedure Code, 1908, granted immunity from civil process to the ex-rulers of Indian Princely States. This Section was upheld in *Mohanlal Jain v. Man Singhji*,\(^\text{55}\) as the ex-Rulers constituted a separate class on account of historical consideration.

(e) **Business or Profession**

The Gold (Control), Act, 1968 distinguished between incensed dealers in gold and certified goldsmiths. It was held in *Harakchand Ratanchand Banthia v. Union of India*,\(^\text{56}\) that the Act was not violative of Article 14 since the licensed dealers essentially were traders doing business of buying and selling ornaments, while the goldsmiths were essentially craftsmen doing the actual manufacture of ornaments.

\(^{54}\) AIR 1956 SC 298, In this case the Marwar Land Revenue Act, 1949 applicable only to the Marwar portion of the State was held not violative of Article 14. It was said that conditions of tenants might vary from locality to locality necessitating special laws for a particular area.


\(^{56}\) AIR 1970 SC 1453.
(f) **Educational Qualifications**

Classification on the basis of educational qualifications has been held to be reasonable said to satisfy the doctrine of equality as adumbrated in Article 14. The State, as an employer, therefore, is entitled to fix separate quota of promotion for the degree holders, diploma-holders and certificate-holders, separately, in the exercise of its rule making power under Article 309.”

(g) **Control of Government**

The term “person” in Article 14 does not include “State”. Therefore, a classification which treats the State, differently from persons, may not be violative of the rule of equal protection of law.

In *Baburao v. Bombay Housing Board*, a la which exempted the factories run by the Government from operation but applied to other factories, was held not to be discriminatory.

(h) **Single Individual or Body as a Class**

In *Chiranjit Lal Chaudhry v. Union of India*, the Supreme Court had held that a law would be constitutional even though it related to a single individual if, on account of some special circumstances, or reasons applicable to him and not applicable to others, that single individual could be treated a class by himself.

An individual may constitute a class by himself for the purpose of Article 14, but when the singling out of the individuals results in a hostile discrimination, Article 14 would be deemed to have been violated.

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57 AIR 1954 SC 153.
58 AIR 1951 SC 41.
Thus, in *P. Venugopal v. Union of India*, a provision aimed at the petitioner only, in curtailing tenure of his appointment, thus creating “naked discrimination”, against him, was held to be unconstitutional. Such a provision is held to create invidious discrimination, an instance of over-classification and hence held invalid.

(i) **Classification on Time**

A classification may be made with reference to time. A law may exempt the houses built after a particular date from the operation of the Rent Control Act, for encouraging the constitution of new houses. Likewise different dates may be fixed for holding general election in various Parliamentary constituencies, depending upon weather conditions prevailing there.

(j) **Cut-Off Date**

A cut-off date for granting service benefits may not be necessarily tantamount to a violation of Article 14 and will be upheld if there is some reasonable explanation in support of that date. It has been held that so long as such date is specified in a reasonable manner, no interference is called for by the Court in that behalf.

In *Hari Ram Gupta v. State of U.P.*, the Supreme Court has reiterated that whenever the State frames a scheme for persons who have superannuated from service, due to many constraints, it is not always possible to extend the same benefits to one and all, irrespective of the dates of superannuation.

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(k) Nature of Persons

Public officials and non-public officials belong to different classes. Law may validly distinguish between citizens and aliens, between civil population and military personnel, in-service employees and retired employees, persons having two living children and those having more than two. Employees of Central Government and State Government on the one hand and other employees, i.e. employees of companies, corporations or other public sector undertakings on the other hand.

In *Dhirendra Pandua v. State of Orissa*, persons who have been or have become of unsound mind or leprosy or tuberculosis patients, were held to belong to separate class. The Orissa Municipal Act, 1959, which disqualified such persons from contesting or continuing as councilors, was upheld by the Apex Court.

(l) Offences and Offender

Gravity of the offence can form the basis of valid classification.

Section 62(5) of the Representation of people Act, 1951 denies the right to vote to, persons in prison, except those under preventive detention. Upholding the validity of this Section in *Anukul Chandra Pradhan v. Union of India*, the Supreme Court held that the object of classification was to promote free and fair elections and to act against criminalization of politics. The Court explained that preventive detention differed from imprisonment on conviction.

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Footnotes:

63 *Matajog Dobey v. H.C. Bhari*, AIR 1956 SC 44.
64 *Union of India v. S.C. Bagari*, AIR 1999 SC 1412.
68 *State of Haryana v. Jai Singh*, AIR 2003 SC 3057, wherein the Apex Court upheld a notification issued under Section 432, of the Cr. P.C., 1974, granting remission of prison sentence to all convicts except those excluded in the said Notification.
69 AIR 1997 SC 2814.
G. SPECIAL COURTS AND PROCEDURAL CLASSIFICATION

Article 14 requires that classification to be constitutionally valid, must be reasonable not only substantially but also from the procedural stand-point.\(^{70}\)

In *Kathi Rani Rani Rawat v. State of Saurashtra*,\(^{71}\) the Supreme Court upheld the validity of the Saurashtra State Public Safety Measures (Third Amendment) Ordinance, 1949, which also provided for the trial of certain offences before the special courts. The object as mentioned in the Ordinance was “to provide for public safety, public order and preservation of peace and tranquility in the State”. However, the Court held, a similar law, the West Bengal Courts Act, 1950, as violative of Article 14, since it did not satisfy the nexus test.\(^{72}\)

H. WEDNESBURY TEST

It is a trite that all exercise of statutory discretion must be based on reasonable grounds and cannot lapse into arbitrariness or caprice, which is said to be anathema to the Rule of Law envisaged in Article 14.\(^{73}\)

Although discretionary powers are not beyond the pale of judicial review, the Courts, it is trite, allow the public authorities sufficient elbow space/play in the joints for a proper exercise of discretion.\(^{74}\) In the matters of appointment or renewal of terms of a professional, such as Public Prosecutors/District Government Counsel, the jurisdiction of the Courts would be to invoke the test of unreasonableness, for judging the arbitrariness of the order, as laid down in *Associated Provincial Picture house v. Wednesbury Corporation*.\(^{75}\)

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\(^{70}\) In Re Special Courts Bill, 1978, AIR SC 478. See also J. Jayalalitha v. Union of India, AIR 1999 SC 1912.

\(^{71}\) AIR 1952 SC 123.


\(^{75}\) (1947) 2 All ER 640.
It is settled position that all actions of the State including its instrumentalities, including those in relation to contractual sphere, have to be tested not only on contractual basis but on the anvil of Article 14, as well.\textsuperscript{76}

It has been ruled that the Court that the Court should not interfere with the administrator’s decision unless it is in defiance of logic or moral standards. It is thus held that an administrative action is subject to control by judicial review on the following three grounds,\textsuperscript{77} namely—

(i) if it is illegal;

(ii) that it is irrational; or

(iii) that it suffers from procedural impropriety.

It has recently been ruled in \textit{Union of India v. M.S.M. Rawther},\textsuperscript{78} that if an order passed by the Executive is not justifiable on Wednesbury Principles, the Court can only set it aside and remit the matter back to the Executive for a fresh decision but the Court cannot assume the power of the Executive.

Article 14 prevents arbitrary discretion being vested in the executive. Equality is antithetic to arbitrariness.\textsuperscript{79} Article 14 strikes at arbitrariness in State action and ensures fairness and equality of treatment. Right to equality affords protection not only against discriminatory laws passed by legislature but also prevents arbitrary discretion being vested in the executive.\textsuperscript{80} Often executive or administrative officer or government is given wide discretion power. In such condition the statute which confers such discretion power on the administrative or executive officer or government should lay down some guidelines or principles according to which the executive or administrative officer or government has to exercise the discretion power. The statute should contain clear legislative policy for which the discretion is to be exercised. If the statute contained a clear definite legislative policy effectively the discretion is conferred by the statute on the government or administrative or executive officers.

\textsuperscript{76} Food Corp. of India v. SIEL Ltd., AIR 2008 SC 1101.

\textsuperscript{77} State of Kerala v. Manager, Nimala Public School, AIR 2008 Ker. 197.

\textsuperscript{78} AIR 2007 SC 3017.

\textsuperscript{79} AIR 1978 SC 597.

to make selective application of the law to certain classes or group of persons, the statute cannot be treated as discriminatory because in such condition it is the duty of the government or administrative or executive officer to classify the statute and if he does not do so, his action can be annulled but statute will not be treated as violative of Article 14. But if the statute does not contain a clear legislative policy or guidelines for the exercise of the discretion conferred by it or the government or administrative or executive officer the statute itself will be discriminatory and, therefore, against Article 14 and the involves the negation of equality.  

For example, in the case of State of Punjab v. Khemchand the statute authorized the government of requisition any movable properly, it considers it necessary or expedient and pay the owner such compensation as it might determine. The statute did not disclose the purpose for which the requisition was to be made. There was no guidelines for the exercise of the discretion conferred by the statute on the government. The statute, thus, conferred on the government uncontrolled and unguided discretionary power and, therefore, it was violative of Article 14.

I. POLICY DECISIONS

It is settled legal proposition that the policy decision taken by the State or its authorities/instrumentalities is beyond the purview of judicial review unless the same is found to be arbitrary, unreasonable, in contravention of the statutory provisions or violates the rights of the individual guaranteed under the Statute. A decision, involving a question of policy, must, therefore, be left to the judgement of the Executive and the Legislature.

Holding that the State was entitled to make pragmatic adjustments and policy decisions, for instance, in the light of financial constraints and limited means available, which might to necessary or call for, under the prevalent circumstances, the Court in Netaj Bag v. State of W.B., held that violation of a statutory provision would not render the State action arbitrary or illegal in each and every case. Each individual case has to be examined in the light of the facts

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82 AIR 1974 SC 543.
84 AIR 2000 SC 3313. See also Heena Kausar v. Competent Authority, AIR 2008 SC 2427.
and circumstances thereof. The Courts do not ordinarily interfere with the policy decision of the Executive—

- Merely because there is variation or contradiction;
- That, in its opinion it is not a wise or prudent policy, but is even a foolish one; or
- That, it will not really serve to effectuate the purpose of the Act; or
- That, another decision would have been forthcoming or better or more scientific or logical; or
- That, it may affect business interests of a party.

However, the wide sweep of Article 14 and the requirement of every State action qualifying for its validity on this touchstone, irrespective of the field of activity of the State, has been held to be an accepted tenet.\textsuperscript{85}

\textbf{J. HORIZONTAL AND VERTICAL RESERVATIONS}

The Supreme Court in \textit{Indra Sawhney v. Union of India},\textsuperscript{86} recognized the concept of horizontal reservation and explained:

All reservations are not of the same nature. There are two types of reservations, which may, for the sake of convenience, be referred to as ‘vertical reservations’ and ‘horizontal reservations’. The reservations in favour of Scheduled Castes, Scheduled Tribes and Other backward Classes [under Article 16(4)] may be called vertical reservations whereas reservations in favour of physically handicapped (under clause (10 of Article 16) can be referred to as horizontal reservations. Horizontal reservations cut-across the vertical reservations — what is called inter-locking reservations. To be more precise, suppose 3\% of the vacancies are reserved in favour of physically handicapped persons; this would be a reservation relation relatable to clause (1) of Article 16. The persons selected against the quota will be placed in that quota by making necessary adjustments; similarly, if he belongs to open

\textsuperscript{85} \textit{I.T.C. Ltd. V. State of U.P.} AIR 2009 (NOC) 100 (All.)

\textsuperscript{86} AIR 1993 SC 477.
competition (OC) category, he will be placed in that category by making necessary adjustments. Even after providing for these horizontal reservations, the percentage of reservations in favour of backward class of citizens remains – and should remain – the same. A special provision for women made under Article 15(3) in respect of employment, is a special reservation\(^{87}\) as contrasted from the social reservation under Article 16(4).

The Apex Court in *R.K. Daria v. Rajasthan Public Service Commission*,\(^ {88}\) ruled that reservation for women in the State Judicial Services, being horizontal (special) reservation, would be counted within the vertical reservation. Thus women selected on merit within the vertical reservation quota would be counted against the horizontal reservation for women.

**K. COMMON ENTRANCE TEST**

The Apex Court in *Preeti Srivastava v. State of Madhya Pradesh*,\(^ {89}\) explaining the desirability of holding a Common Entrance Examination (CEE) observed\(^ {90}\):

> the provision for a common entrance examination, provides a uniform criterion for judging the merit of all candidates, who come from different Universities. The purpose of such an examination is, not merely to grade candidates for selection, but also to evaluate all candidates by a common yardstick… the most legal and equitable way of selecting students for admission to Post-Graduate Courses.

In State of *M.P. v. Gopal D. Tirtham*,\(^ {91}\) the Medical Council Act, 1956 enable the University/Institution to adopt different selection processes for determining the academic merit of in-service and open category candidates, for admission to P.G. Course. There being, five Universities in the State, the standards of different Universities and their assessment methods not being

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\(^{87}\) Anil Kumar Gupta v. State of U.P. (19950 5 SCC 173.  
\(^{88}\) AIR 2007 SC 3127.  
\(^{89}\) AIR 1999 SC 2894.  
\(^{90}\) A similar view was taken in *Narayan Sharma v. Pankaj Kr. Lakhar*, AIR 2000 SC 72.  
\(^{91}\) AIR 2003 SC 2952.
uniform, the Apex Court ruled that CEC would have to be adopted for both categories.

Merely taking the common entrance examination (CEE) is however not sufficient to ensure admission. The compliance of the Regulations for the purpose is necessary. In Profession Examination Board, M.P. v. Prashant Agarwal, the respondent having successfully taken the CET and having secured a place in the waiting list, was denied admission to MBBS for not possessing 50% marks in qualifying examination for CET. The Apex Court upheld the denial of admission as valid and ruled that the University had no option but to follow the Regulation and that the Court could not direct the disobedience of law.

L. ALL INDIA QUOTA

In case of Parag Gupta v. University of Delhi, the controversy before the Supreme Court was in relation to students, who had qualified for medical degree course got admission under All India quota of 15% and migrated to different States outside their home State to pursue the course of study. Such students sought admission into Postgraduate Courses. Their grievance was that the State or concerned authorities had framed admission rules in such a way that they could neither pursue their Postgraduate studies in the migrated State nor in their home State.

In order to set right the imbalance arising thereby, the Court evolved an equitable principle and directed the States to allow such students to participate in the entrance examination held in their home State, irrespective of any kind of preference that might have been adopted for selection to Postgraduate medical course.

Pursuant to Parag Gupta’s case, the scheme formulated by Delhi University, providing institutional preference for admission to Post-graduate courses in medical colleges was upheld by the Supreme Court in Abhinav Aggarwal v. Union of India.

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92 JT 2002(8) SC 84.
94 AIR 2001 SC 961.
Later, in *Dr. Prachi Almeida v. Dean, Goa Medical College*, the Supreme Court relied upon the law laid down in Dr. Parag Gupta’s case and further stated that the petitioner having been selected in the 15% all-India quota, allowed to study in the State of Goa, obtained graduation, should be allowed to participate in the entrance test for admission to post-graduate medical courses irrespective of the rule of 10 years residence in the State of Goa.

It may be stated that students admitted in medical colleges in the State under the 15% all-India quota, on completion of studies, would be entitled to prefer to return to their home State on take 15% all-India quota entrance examination, or participate in the entrance test for admission to Post-graduate medical course in States from where they graduated without fulfilling the residential requirement.

M. ORAL INTERVIEW

In *Ajay Hasia v. Khalid Mujib*, the Supreme Court observed that oral interview test could not be regarded a very satisfactory test for assessing and evaluating the capacity and caliber of candidates, as it was subjective and based on first impression and its result was influenced by many uncertain factors and that it was capable of being abused.

The Court held that oral interview test should be resorted to only as an additional or supplementary test. Under the existing circumstances, the Court said that allocation of more than 15% of the total marks for the oral interview, would be arbitrary and unreasonable and liable to be struck down as constitutionally invalid.

In *D.V. Bakshi v. Union of India*, the Customs House Agents Licensing Regulations, 1984, made under the Customs Act, 1962, provided for the grant of licence as Customs House Agents to act as agent for the transaction of any business relating to the entry or departure of conveyance or the import or export of goods at any customs station. The Regulations provided for holding of a written and an oral examination for that purpose. Each examination was to be of

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95 AIR 2001 SC 3418.
96 AIR 1981 SC 487.
97 AIR 1993 SC 2374.
100 marks. The Regulations further enjoined the securing of at least 50 marks out of 100 total marks in the examination.

The Supreme Court distinguished Ajay Hasia’s case and held the Regulation not suffering from arbitrariness. The Court said that distinction would have to be drawn in interview held for competitive examination or admission to educational institutions and selection for higher posts. In the case of educational institutions, the candidates being young and their personality had yet to develop and therefore, greater weight had to be given to their performance at the written examinations rather than at the oral examination.

The duties, responsibilities and functions of a Customs House Agent, the Court said, being very special, demanding not only a high degree of probity and integrity, but also intellectual skills, adaptability, judgment and capacity to take prompt decisions in conformity with the law, rules and regulations, the selection was, therefore, to be done through those conversant with the working of customs stations and the nature of an agent’s job.

It may, therefore, be stated that no hard and fast rule can be laid down, which would meet the requirements of all cases and much would depend on the nature of performance expected for the responsibility to be handled by a candidate after his selection.98

N. RIGHT OF EXAMINERS

The permissibility of re-assessment of the answer scripts, in the absence of statutory provision has been dealt with by the Courts. It has been said that finality had to be attached to the result of public examination and that in the absence of statutory provision, the Court could not direct re-assessment/re-examination of answer scripts.99

In Pramod Kumar Srivastava v. Chairman, B.P.S.C., Patna,100 the appellant could not qualify the written examination held by the Commission for selection to the judicial services of the State. On receiving the marks-sheet, he

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98 Hemani Malhotra v. Delhi High Court, AIR 2008 SC 2103.
100 AIR 2004 SC 4116.
applied for scrutiny of his marks in General-Science paper, wherein he had scored 35 marks. The Commission, after scrutiny, intimated the appellant that there was found no mistake. On that he preferred a writ petition in the High Court praying for an order for re-evaluation of the script. On the direction of the Court, the script was re-evaluated by two experts and the re-evaluators awarded him 63 marks. The High Court, thereafter, directed the Commission to reconsider the case of the appellant after treating his marks in the General Science Paper as 63.

Setting aside the order of the High Court, a three-Judge Bench of Apex Court, headed by learned C.J.I., ruled that in the absence of any provision in the Rules, no candidate would have any right to seek re-evaluation of answer scripts. The examination in question being a competitive examination, where the comparative merit of a candidate had to be judged. It was, therefore, absolutely necessary that a uniform standard was applied in examining the answer books of all the candidates, the Court said.

O. EQUAL PAY FOR EQUAL WORK

Article 39(d) contains directive principle of equal pay for equal work for both men and women. According to Article 39(d) the State shall direct its policy toward securing that there is equal pay for equal work for both men and women.

In *Randhir Singh v. Union of India*, the Supreme Court has expressed the view that the principle of equal pay for equal work is not expressly declared in the Constitution to be Fundamental Right but it is certainly a constitutional goal. In this case the Supreme Court read the guarantee of equal pay for equal work in Articles 14 and 16. The Court has made it clear that construing Articles 14 and 16 in the light of the Preamble and Article 39(d) the principle of equal pay for equal work is deducible there from and it may be properly applied to cases of unequal scales of pay based on irrational classification, or no classification. The case of Randhir Singh has been affirmed by the Supreme Court in *D.S. Nakara v. Union of India*. In this case the Supreme Court has observed that Article 31(d) enjoys a duty to see that there is equal pay for equal work. The principle

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1. AIR 1982 SC 879.
2. AIR 1982 SC 879.
3. AIR 1983 SC 130; see also *St. Anthony Public School Employee’s Association v. Union of India*, AIR 1987 SC 311.
laid down in *Randhir Singh’s case* has been followed and applied in several cases.\(^{104}\)

In *State of U.P. v. J.P. Chaurasia*,\(^{105}\) the court has observed that it is the duty of the state to see that the underprivileged or weaker section get their dues. Even if they have been voluntarily accepted the employment of unequal terms the State should not deny their basis rights of equal treatment. The court has made it clear that the principle of equal pay for equal work is read in Article 14 but it has no mechanical application. Article 14 permits reasonable classification founded on different basis. The classification can be based on some qualities or characteristics of persons grouped together and not in others who are left out. Those qualities or characteristics must, of course, have a reasonable relation to the objects sought to be achieved. In service matters merit or experience can be the proper basis for classification to promote efficiency in administration. The classification should not be arbitrary otherwise it would be against Article 14.\(^{106}\) For example, order to pay the temporary teachers fixed salary ten rupees less that the minimum salary payable to the regular teachers have been held to be arbitrary and against Article 14. It is violative of the principle of equal pay for equal work.\(^{107}\)

In *Employees Welfare Association v. Union of India*,\(^{108}\) the Court has held that if any classification is made relating to the pay-scales and such classification is unreasonable or unequal pay is based on no classification then Article 14 will, at once, be attracted and such classification should be set at naught and equal pay may be directed to be given for equal work.

In a case\(^{109}\) the Supreme Court has made it clear that if the females are doing the same work as their male counterparts, they cannot be given less pay.


\(^{105}\) AIR 1989 SC 19.

\(^{106}\) *Karnataka State Private College Stop Gap Lecturer’s Association v. State of Karnataka*, AIR 1992 SC 677.

\(^{107}\) Ibid.

\(^{108}\) AIR 1990 SC 334.

In State of Rajasthan v. Gopi Kishan Sen,\textsuperscript{110} the Court has held that the rule making a distinction in the pay of trained and untrained teachers performing identical duties cannot be struck down on ground of illegal discrimination. The additional qualification of being trained is of such a nature as to enable the teacher to do his duty better.

In Jagannath v. Union of India,\textsuperscript{111} the Court has made it clear that classification or categorization of employees on the basis of seniority and experience can be reasonable basis for classification of the employees. Experience itself is a merit and can be a valid basis for classification.

In the case of National Federation of State N.F.C. (Physical Education) Teachers’ Association v. Union of India,\textsuperscript{112} the court has made it clear that the principle of equal pay for equal work is not applicable where the nature of duties, responsibilities and educational qualifications are different.

The Supreme Court has made it clear that equal pay for equal work is not applicable to the contract labour or worker. Where a person is employed under a contract, it is the contract which will govern the terms and conditions of service.\textsuperscript{113}

In State of Haryana v. Charanjit Singh\textsuperscript{114} the Supreme Court has made it clear that principle of equal pay for equal work has no mechanical application in every case. The party who claims its benefit has to make necessary averments and prove that all things are equal. The persons appointed on contract cannot claim equal pay on the basis of the principle equal pay for equal work. Where a person is employed under a contract, it is the contract which will govern the terms and conditions of the service. Such person is not entitled to the same pay as regular employee by claiming that they are discharging same duties.

\textsuperscript{110} AIR 1992 SC 1754.
\textsuperscript{111} AIR 1992 SC 126.
\textsuperscript{113} State of Haryana v. Charanjit Singh, 2006 (9) SCC 321; Steel Authority of India v. State of West Bengal, AIR 2009 SC 120.
\textsuperscript{114} AIR 2006 SC 161.
P. JUDICIAL DISCRETION

Discretion vested in the judicial officer is not arbitrary and does not amount to denial of equality because the law provides for revision by superior courts of the orders passed by the subordinate Courts.  

Q. BURDEN OF PROOF

When a statute is challenged on the ground that it is violative of Article 14, the onus of proving unconstitutionality of the statute lies upon the person who challenges it. Thus the burden of proving hostile discrimination is on the person who challenges the statute. It is presumed that the legislature understands and correctly appreciates the need of its own people and its discriminations are based on adequate grounds and therefore burden of showing hostile discrimination is on the person who alleges it.

In A.V. Nachane v. Union of India, L.I.C. (Amendment) Act, 1981 and the rules made thereunder relating to bonus payable to the employees of the Life Insurance Corporation were challenged on the ground that they were violative of Article 14, as they were exempted from the provisions of the Industrial Disputes Act. The Court held that the petitioners were to prove that they and the employees of other establishment to whom the Industrial Disputes Act applied were similarly circumstanced and therefore there was hostile discrimination. The petitioners (the employees of the Life Insurance Corporation) failed to discharge the burden of proof and, therefore, the Act and the rules made thereunder were not regarded as violative of Article 14.

R. ADMISSION POLICY : FEE STRUCTURE

In Mohini Jain v. State of Karnataka, the Supreme Court held that charging capitation fee in consideration of admission to the educational institution is patent denial of a citizen’s right to education and the State action in

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118 AIR 1982 SC 1126.
119 AIR 1992 SC 1858.
permitting capitation fee to be charged by the State recognized educational institutions is wholly arbitrary and in violation of Article 14. In this case, the court has made it clear that the right to education flows directly from the right to life under Article 21.

In the case of *Unni Krishnan v. State of A.P.*, the Supreme Court has accepted the view expressed in *Mohini Jain v. State of Karnataka*, that the right to education flows directly from right to life under Article 21 but the Supreme Court has not accepted the view expressed in Mohini Jain’s case as to the contents to this right. In this case the Court has made it clear that the right to education which is implicit in the right to life and personal liberty guaranteed by Article 21 must be construed in the light of the directive principle in Part IV supplementary and complementary to each other. In the context of Articles 45 and 41 the right to education means that every citizen of this country has a right to free education until he completes the age of fourteen years and after the completion of the age of fourteen years, his right to education is circumscribed by the limits of the economic capacity of the State and its development. Thus, the Court has made it clear that the right to free education is available only to children until they complete the age of fourteen years. There is no fundamental right to education for a professional degree that flows from Article 21. In the case of *Unni Krishnan* it has been made clear that capitation fee should not be taken to mean charging or collecting an amount higher that the amount charged in similar government educational institutions. In this case the Court has observed that ‘capitation fee’ means charging or collecting amount beyond what is permitted by law. Charging the permitted fees by the private educational institutions which is bound to be higher than the fee charged in similar government institutions cannot, by itself, characterized as capitation fees. The fee should be prescribed and such prescribed fees may be called permitted fees and there should be bar from collecting anything other than the permitted fees.

In the case of *Unni Krishnan*, the Supreme Court has made it clear that the private educational bodies receiving grant from the Government are obliged

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121 AIR 1992 SC 1858
122 Ibid.
to act fairly in consonance with Part III of the Constitution (Fundamental Rights) as well as rules and regulations framed by the Government. The grants being public fund such educational bodies are bound by all the rules and regulations framed by the Government and/or recognizing/affiliating authorities in the matter of recruitment of teachers and staff, their conditions of service, syllabus, standard of teaching and so on. In the matter of admission they have to follow the rule of merit and merit alone, subject to any reservations made under Article 15.

The Private educational institutions receiving grants from the Government cannot charge any fees higher than what is charged in the Government institutions for similar course. These are and shall be understood to be the conditions of grant of aid. Public funds, when given as grant (not as loan) carry the public character wherever they go. The element of public character necessarily means a fair conduct in all respects consistent with the Constitutional mandate of Articles 14 and 15. The granting recognition or affiliation being authorities of State are under obligation to insist upon such conditions as are appropriate to ensure not only education of requisite standard but also fairness and equal treatment in the matter of admission of students. Since the recognizing or affiliating authority is the State, it is under an obligation to impose such conditions as part of its duty enjoined upon it under Article 14. Right to establish educational institution does not carry with it the right to recognition or affiliation. Affiliation or recognition is life-blood of private educational institution. The bodies which grant recognition and/or affiliation are the authorities of the State and therefore it is obligatory—in the interest of general public upon them to insist upon such conditions as are appropriate to ensure not only education of requisite standard but also fairness and equal treatment in the matter of admission of students. In this case\(^\text{124}\) the Supreme Court has evolved a scheme which every authority granting recognition or affiliation is required to impose upon the institutions seeking such recognition or affiliation. This scheme has been confined to the Professional Colleges. The expression “professional colleges” includes :

(i) medical colleges, dental colleges and other institutions and colleges imparting Nursing, Pharmacy and other courses allied to

\(^{124}\) Ibid.
medicine established and/or run by private educational institutions;

(ii) colleges of engineering and colleges and institutions imparting technical education including electronics, Computer Science established and/or run by private educational institutions; and

(iii) such other colleges to which this scheme is made applicable by the Government, recognizing and/or affiliating authority.

For the purposes of this scheme the expression “appropriate authority” means the Government, University or other authority as is competent to grant permission to establish or to grant recognition to a professional college and the expression “competent authority” means the Government/University or other authority, as may be designated by the Government/university or by law as is competent to allot students for admission to various professional colleges in the given State.

**Scheme of Free Seats and Payment Seats**

According to this scheme, at least 50% of the seats in every professional college shall be filled by the nominees of the Government or University as the case may be hereinafter referred to as “free seats”. These students shall be selected on the basis of merit determined on the basis of a common entrance examination where it is held or in the absence of an entrance examination, by such criteria as may be determined by the competent authority or the appropriate authority, as the case may be. It is, however, desirable and appropriate to have a common entrance examination for regulating admission to these colleges or institution.

The remaining 50 per cent seats (called payment seats) shall be filled by those candidates who are prepared to pay the fee prescribed therefore and who have complied with instructions regarding deposit and furnishing of cash security/bank guarantee for the balance of the amount. The allotment of students against payment seats shall also be done on the basis of inter se merit determined on the same basis as in the case of free seats. There shall be no quota reserved for the management or for any
family, caste or community which have established such college. The criteria of eligibility and all other conditions shall be the same in respect of both free seats and payment seats. The only distinction shall be the requirement of higher fee by the payment students. The management of a professional college shall not be entitled to impose or prescribe any other and further eligibility criteria or condition for admission either to free seats or to payment seats. It shall be open to a professional college to provide for reservation of seats for constitutionally permissible classes within the approval of the affiliating University. The rule of merit is required to be followed even in such reserved categories.

The number of seats available in the professional colleges to which the scheme is made applicable shall be fixed by the appropriate authority.

The fee chargeable in each professional college shall be subject to the ceiling prescribed by the appropriate authority or by a competent court. According to this scheme every State Government shall constitute a committee to fix the ceiling on the fees chargeable by a professional college or class of professional colleges, as the case may be. The committee shall consist of a Vice-Chancellor, Secretary for Education or such Joint Secretary as he may nominate and Director, medical Education/Director Technical Education. The committee shall make such enquiry as it thinks appropriate. The committee shall fix the fee once every three years or at much longer intervals as it may think appropriate. However, the Supreme Court\(^\text{125}\) has expressed the view that it would be appropriate if the U.G.C. frames regulations under Section 12A(3) of the U.G.C. Act regulating the fee which the affiliated colleges operating on no-grant-in-aid basis are entitled to charge. The Council to Technical Education may also consider the admissibility of issuing directions under Section 10 of the A.I.C.T.E. Act regulating the fees that may be charged in private unaided educational institutions imparting technical education. The Indian Medical Council and the Central Government may also consider the admissibility of such regulation as a condition for grant of

permission to new medical colleges under Section 10-C. The aforesaid authorities shall decide whether a private educational institution is entitled to charge only that fee as is required to run the college or whether the capital cost involved in establishing a college can also be passed on the students and if so, in what manner. Keeping in view the need, interest of general people and of the nation, a policy decision may be taken. Until the Central Government, U.G.C., IMC and A.I.C.T.E. issue orders or regulation in this behalf, the Committee referred to above, shall be operated.

S. NATURAL JUSTICE AND ARTICLE 14

The principles of natural justice are considered a part of the guarantee contained in Article 14. In Maneka Gandhi case, the principle that no one should be condemned unheard or hear the other side and that no man shall be a judge in his own cause are now-a-days given much importance and protected under Article 14. In addition, even the requirement to give reason in support of the decision is also considered as one of the principles of the natural justice. As to the principle that no man shall be judge in his own case or rule against bias the court has held that probability of bias, possibility of bias and reasonable suspicion that bias might have affected the decision are terms of different connotations. They broadly fall under two categories i.e. suspicion of bias and likelihood of bias. Likelihood of bias would be the possibility of bias or the reasonable suspicion of bias. The former lead to vitiation of action while the latter could hardly be the foundation of further examination of action, with reference to the facts and circumstances of a given case. The correct test would be to examine whether there appears to be a real danger of bias or whether there is only a probability or even a preponderance of probability of such bias in circumstances of a given case. If it falls in the prior category, the decision would attract judicial castecism but if it falls in the latter, it would hardly affect the decision much less adversely. The Court has made it clear that a law which gives power to the authority to take a decision affecting the rights of persons without assigning any

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126 AIR 1978 SC 597.
127 Ibid.
reason cannot be said laying down a procedure which is just fair and reasonable and consequently, such a law will be treated as violative of Article 14 and 21.

In recent decisions, the rules of natural justice have been held to form an essential component of Article 14.\textsuperscript{129} Even in criminal matters.\textsuperscript{130}

In \textit{Dev Dutt v. Union of India},\textsuperscript{131} the Apex Court held that non-communication of entries in the Annual Confidential Report of the appellant, affecting his chance of for promotion, was arbitrary and as such violative of Article 14.

In \textit{Delhi Transport Corporation v. D.T.C. Mazdoor Congress},\textsuperscript{132} the Supreme Court held that Regulation 9(b) of the Delhi Road Transport Authority (Condition of Appointment and Service) Regulations, 1952, which conferred power on the Authority, to terminate the services of a permanent employee by issuing a notice without assigning any reason and without giving him any opportunity of hearing, was wholly arbitrary, unjust, unfair and unreasonable, violating principles of natural justice as well as Article 14.

\textbf{T. GENDER EQUALITY AND ARTICLE 14}

The Supreme Court, in \textit{Githa Hariharan v. Reserve Bank of India},\textsuperscript{133} invoked the rule of harmonious construction\textsuperscript{134} for securing the constitutional guarantee of gender equality.

After enunciating the above rule, the Apex Court upheld the validity of Section 6(9) of the Hindu Minority and Guardianship Act, 1956 and held that mother could act as natural guardian of minor even when father was alive. The Court said that the word after in this Section did necessarily not mean “after the lifetime” but it meant “in the absence of”. So, interpreted, the Court said that if the father was absent, from the care of the minor’s property or person, for any reason whatever, (though alive), mother of the minor, being a recognized natural guardian, could act validity on behalf of the minor as the guardian.

\textsuperscript{129} \textit{Dev Dutt v. Union of India}, AIR 2008 SC 2513.
\textsuperscript{132} AIR 1991 SC 101.
\textsuperscript{133} AIR 199 SC 1149.
\textsuperscript{134} \textit{Kerala S.E. Board v. Saratchandran}, AIR 2009 SC 191.
U. RIGHT AGAINST ARBITRARINESS: A DYNAMIC APPROACH

The doctrine of reasonable classification has been for long, the undisputed touchstone to determine the scope and content of Article 14. The Supreme Court in *E.P. Royappa v. State of Tamil Nadu* however, has given a dynamic connotation to the equalizing principle enunciated in the Article. The Supreme Court declared this equalizing principle contained in Article 14 as a “founding faith”, “a way of life” and for that reason it must not be subjected to a narrow pedantic or lexicographic approach. “Bhagwati, J speaking for himself, Chandrachud and Krishna lyer, JJ propounded the new concept of equality from a positivistic point of view and observed:

Equality of a dynamic concept with may aspects and dimensions and it cannot be “cribbed, cabined and confined” within ‘traditional and doctrinaire limits. From a positivistic point of view, equality is antithetic to arbitrariness. In fact equality and arbitrariness are shown enemies; one belong to the rule of law in a republic while the other, to the whim and caprice of an absolute monarch. Where an act is arbitrary, it is implicit in it that it is unequal both according to political logic and constitutional law and is therefore violative of Article 14…

*Mohd. Shujat Ali v. Union of India*135 the Supreme Court warned that the doctrine of classification should not be earned to a point which instead of being a useful servant, it became a dangerous master. The Court observed: “Over emphasis on the doctrine of classification or an anxious and sustained attempt to discover some basis for classification may gradually and imperceptibly deprive the guarantee of equality of its spacious content:

Again in *Maneka Gandhi v. Union of India*,136 the Supreme Court emphasized on the content and reach of the great equalizing principle enunciated in Article 14. Warning against any attempt to truncate its all embracing scope and meaning which might violate its activist magnitude, the Supreme Court observed;

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135 AIR 1974 SC 1631
136 AIR 1978 SC 597
Equality is a dynamic concept with many aspects and dimensions and it can be imprisoned within traditional and doctrinaire limits.

V. EXCEPTIONS AND EXCLUSIONS

(i) Statutory Provisions

The principle of natural justice may be excluded by the statutory provisions. Where the statute expressly provides for the observance of the principles of natural justice, the provision is treated as mandatory and the authority is bound by it. Where the statute is silent as to the observance of the principles of natural justice, such silence is taken to imply the observance thereto. Thus, where the statute is silent as to the observance of the principles of natural justice, the courts read into the provisions of the statute the observance of the principles of natural justice. However, the principles of natural justice are not incapable of exclusion. These principles supplement the law and they do not supplant or by necessary implication excludes the application of the principles of natural justice, the courts do not ignore the statutory mandate.\(^\text{137}\)

Thus, if a statutory provision either specifically or by necessary implication excludes the application of any or all the principles of natural justice, then the court cannot ignore the mandate of the legislature or the statutory authority and cannot read into the concerned provisions the principles of natural justice.\(^\text{138}\) Whether the exercise of a power conferred should be made in accordance with any of the principles of natural justice or not depends upon the express words of the provision conferring the power, the nature of power conferred, the purpose for which it is conferred and the effect of the exercise of that power.\(^\text{139}\) However the statutory provisions excluding the application of the principles of natural justice must not be violative of the Constitutional provisions.\(^\text{140}\)

\(^\text{138}\) Ibid.
\(^\text{139}\) Ibid.
\(^\text{140}\) Gullapalli Nageshwar Rao v. A.P. State Road Transport Corporation, AIR 1959 SC 1376.
Constitutional provisions

The principles of natural justice may be excluded by the Constitutional provisions. Second Proviso to Article 311 (2) creates some exceptions to the rule of audi alteram partem. According to this proviso the aforesaid provisions of Article 311 (2) are not applicable in the conditions stated below:-

(a) Where a person is dismissed or removed or reduced in rank on the ground of conduct which has led his conviction on a criminal charge; or

(b) Where an authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that for some reason to be recorded by that authority in writing, it is not reasonably practicable to hold such inquiry; or

(c) Where the President or Governor, as the case may be, satisfied that in the interest of the security of the State, it is not expedient to hold such inquiry.

In none of the above conditions there is any need to hold any inquiry or to provide the servant reasonable opportunity of being heard. (See also under Chapter 31).

Legislative Act

It is well established that legislative function or legislative act is not subject to the principles of natural justice.141 The legislative act or function includes making of rules and regulations (i.e. the delegated or subordinate legislation). According to Paul Sackson142 a Minister or any other body, in making legislation is not subject to the rule of natural justice. Wade, in his book,143 Administrative Law, has also stated that

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141 Union of India v. Cynamide India Ltd., AIR 1987 SC 1802; Prag Ice and Oil Mills v. Union of India, AIR 1987 SC 1768; Chorav Lal Sahu v. Union of India, AIR 1990 SC 1490; Sri Sita Ram Sugar Co. v. Union of India, AIR 1990 SC 2128.
142 Natural Justice, p. 169.
143 H.W.R. Wade, Administrative Law, p. 482 (4th Edn.)
there is no right to be heard before the making of legislation, whether primary or delegated, unless it is provided by the statute.

We may, thus, conclude that in making the legislation, whether primary or subordinate, no hearing is required to be given unless the statute makes provision for providing hearing before making such legislation. The legislative function including the function of making subordinate or delegated legislation is not subject to the rules of natural justice but if there is a provision in the statute requiring the observance of the rules of natural justice, the provision must be complied with and thus in such condition the rules of natural justice would be required to be observed.

(iv) Public Interest

The observance of the principles of natural justice may be excluded in case such observance would cause injury to the public interest. In *Union of India v. Tulsi Ram Patel*, the Supreme Court has made it clear that the rules of natural justice can be avoided if its observance will paralyze the administrative process. The case of public interest include the defence of the country and maintenance of State secret. Thus the rules of natural justice may be excluded or avoided in the interest of the defence of the country or keeping of State secret. In *Satyavir Singh v. Union of India*, the Supreme Court has expressed the view that natural justice must be confined within their proper limits and must not be allowed to run wild.

It is to be noted that public interest is a justiciable issue. The determination of the authority that the exclusion of the rule of natural justice is in public interest is not final and the court may examine whether the exclusion is necessary for the protection of the public interest. The court can determine whether the exclusion is in public interest or not.

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144 AIR 1985 SC 1416.
145 AIR 1986 SC 555.
146 Ibid.
A disciplinary authority is not expected to dispense with a disciplinary inquiry illegally or arbitrarily or out of ulterior motive or merely in order to avoid the holding of inquiry or because the Department’s case against the Government servant is weak and must fail.\(^{147}\)

(v) **Necessity or Emergency**

The rules of natural justice may be excluded where prompt action is required to be taken in the interest of public safety or public morality or public health. Thus, the predecisional hearing may be excluded where the prompt action is required to be taken in the interest of the public safety or public morality, etc, For example, where a person who is dangerous to peace in the society is required to be detained or externed,\(^{148}\) or where a building which is dangerous to the human lives is required to be demolished,\(^{149}\) or a trade which is dangerous to the society,\(^{150}\) is required to be prohibited, a prompt action is required to be taken in the interest of public and hearing before the action may delay the administrative action and thereby cause injury to the public interest and public safety etc. Thus in such situation dire social necessity requires exclusion of the predecisional hearing. However, the determination of the situation requiring the exclusion of the rules of natural justice by the administrative authorities is not final and such determination may be reviewed by the Court. The administrative determination is thus, subject to the judicial review. In *Swadeshi Cotton Mill v. Union of India*,\(^{151}\) the Supreme Court has held that the word “immediate” in Section 18-AA of the Industries (Development and Regulation) Act does not imply that the rule of natural justice can be excluded.

In *Swadeshi Cotton Mills v. Union of India*,\(^{152}\) the Supreme Court has held that the audi alteram partem rule is very flexible and adaptable

\(^{147}\) *Union of India v. Tulsiram Patel*, AIR 1985 SC 1416.


\(^{149}\) *Nathu Bhai v. Municipal Corporation*, AIR 1959 Bom 333.

\(^{150}\) *Cooverji v. Excise Commissioner*, 1954 SCR 873.

\(^{151}\) AIR 1981 SC 818.

\(^{152}\) Ibid.
concept of natural justice. It can be modified to adjust and harmonise the need for speed and obligation to act fairly and thus the measure of its application may be cut short in reasonable proportion to the exigencies of the situation.

(vi) **Exclusion of Impracticability**

Where the authority deals with a large number of persons it is not practicable to give all of them opportunity of being heard and therefore in such condition the court does not insist on the observance of the rules of natural justice. For example in a case\(^ {153} \) the entire B.A. entrance examination was cancelled on the ground of mass copying. The court held that it was not possible to give all the examinees the opportunity of being heard before the cancellation of the examination. Similarly in *Bihar School Examination Board v. Subhash Chandra*,\(^ {154} \) the examination of all subjects at one centre was cancelled on the ground of mass copying and the examinees were permitted to reappear at a supplementary examination. Before this order opportunity of hearing was not given to the examinees concerned. The court held that the number of the examinees was very large and it was not practicable to give all of them opportunity of hearing before passing the order. The examination of all the examinees at the centre was cancelled and no particular examinee was charged for using unfair means. The examination was cancelled on the ground of mass copying. In such condition it was not genuine to insist the Board of mass copying. In such condition it was not genuine to insist the Board to give opportunity of being heard to all the examinees and examine each individual case to satisfy itself which of the candidate had used unfair means.

(vii) **Confidentiality**

Sometimes the observance of the rule of natural justice is excluded in the case of confidentiality. For example, in the case of surveillance register maintained by the police is a confidential document and neither

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154 AIR 1970 SC 1269.
the person whose name has been entered into the Register nor any other person can claim access to it. The observance of the rule of natural justice in such a case would defeat the very purpose of surveillance and there is every possibility of the end of justice being defeated instead of being served.\(155\)

(viii) Academic Adjudication

In the case of Jawahar Lal Nehru University v. B.S. Narwal,\(156\) the Supreme Court has held that the very nature of the academic adjudication appears to negative any right of hearing. In this case a student of the university was removed from the Roll on the ground of unsatisfactory academic performance without giving him the opportunity of being heard. It was held valid. The Supreme Court has made it clear that if the competent academic authority assess the work of a student over a period of time and thereafter declare his work unsatisfactory the rule of natural justice may be excluded. It is to be noted that this exclusion does not apply in the case of disciplinary matters.

(ix) Infringed

If the right of a person is not prejudicially affected, the application of the rules of natural justice is not attracted. For example, under the Delhi Rent Control Act limited tenancy can be created and it can be terminated on the expiry of its term. If the term of the limited tenancy is expired and warrant of possession is issued to the tenant without any notice of hearing to him, the warrant of possession cannot be held to be invalid on the ground that no hearing has been given to the tenant before the issue of the said warrant. Its reason is that after the expiry of the period of limited tenancy, a person has no right to retain the possession and therefore by the issue of the said warrant no right has been violated and as a result the application of the rules of natural justice is not attracted.\(157\)

\(156\) AIR 1980 SC 1666.
(x) **Interim Preventive**

The rules of natural justice is not attracted in the case of interim preventive orders. For example, the order of suspension of an employee pending an inquiry against him is not final but interim order and the application of the rules of natural justice is not attracted in the case of such order. For example in a case\(^{158}\) an order was passed by the College authority debarring the student from entering the premise of the college and attending the classes till the pendency of a criminal case against him for stabbing a student. The court held that the order was interim and not final. It was preventive in nature. It was passed with the object to maintain peace in the campus. The rules of natural justice were not applicable in the case of such order.

(xi) **Fraud Case**

In the case of *U.P. Junior Doctors’ Action Committee v. Dr. B. Sheetal Nandwani*,\(^ {159}\) the admission obtained by fraud was cancelled without providing opportunity of hearing to the affected candidates was held valid by the Supreme Court as the rule of natural justice was not attracted. In this case some students secured admission in the post graduate Medical course in the Medical Colleges by producing fake order of the Court. Their admission was cancelled without giving him opportunity of being heard. The court held that the circumstances in which such benefit has been taken by the candidates concerned do not justify the attraction of the application of the rule of natural justice and therefore the cancellation of the admission could not be challenged on the ground that no opportunity of hearing was given to the affected candidates before passing the order of cancellation of admission. In this case\(^ {160}\) the Supreme Court has made it clear that opportunity of hearing is not necessary before passing the order cancelling the admission of the candidates when such admission has been secured by fraud.

\(^{158}\) Abhay Kumar v. K. Srinivasan, AIR 1981 Delhi 381.

\(^{159}\) AIR 1991 SC 909.

\(^{160}\) Ibid.
W. REVIEW

The study of equality in Chapter III under this thesis reveals that the doctrine of equality has many faces. It is a dynamic and an evolving concept. Its main facets, relevant to Indian society, have been referred to in the Preamble and the Articles under the sub-heading ‘Right to Equality’ – Articles 14 to 18 of the Constitution. In short the goal is ‘equality of status and of opportunity’, Articles 14 to 18 of the Constitution must be understood not merely with reference to what they say but also in the light of the several Articles in Part IV (Directive Principles of State Policy). Article 14 of the Constitution of India lays down that State shall not deny to any person equality before the law and equal protection of laws within the territory of India. Article 15 prohibits discriminating by the State against a citizen only on the grounds of religion, race, caste, sex or place of birth. Article 16 of the Constitution provides equality of opportunity in matters of public employment, subject to reservation in favour of deprived groups. Article 17 prohibits untouchability and makes it an offence punishable by law. Article 18(1) lays down that the State shall not confer any title not being a military or academic distinction. Article 14 of the Constitution of India is the general Article on equality which provides that the State shall not deny to any person equality before the law or the equal protection of the laws. The first is the negative concept and the second is a positive concept. If all men are created equals and remained equal, it would mean the guarantee of the same laws for all. The content of expression ‘equality before the law’ is illustrated not only by Articles 14 to 18 but also by several Articles in part-IV, in particular Articles 38, 39, 39A, 41 and 46 of the Constitution. Among others the concept of equality before the law contemplates minising the inequalities in income and eliminating the inequalities in status, facilities and opportunities not only amongst individuals but also amongst groups of people, securing adequate means of livelihood to its citizens and to promote with special care the educational and economic interests of the weaker sections of the people, including in particular the scheduled castes and scheduled tribes and to protect them from social injustice and all forms of exploitation. Indeed in a society where equality of status and opportunity do not obtain and where there are glaring inequalities in income, there is no room for equality – either equality before law or equality in other respect.
It is submitted that the abstract equality is neither the theme nor philosophy of our constitution. Real equality through practical means is the avowed objective. Atoning for the past injustices on backward. Classes through Constitutional mechanism were morality raised to legal plain. Principle of equal protection of laws 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 and the varying needs of different classes of persons require special treatment. The Constitution permits valid classification founded on an intelligible differentia distinguishing persons or things grouped together must have a rational relation to the object sought to be achieved by the law.

Article 14 of the Constitution of India guarantees the general rule of equality and Articles 15 and 16 are instances of the same right in favour of citizens in some special circumstances. It is submitted that Article 15 is more general than Article 16 of the Constitution, the later being confined to matters relating to employment or appointment to any office under the State. In Fact, Article 16(1) of the Constitution is the specific application of Articles 14 and 15, with special reference to the equal opportunity of employment to any office under the State. The State is prohibited to discriminate between citizens on grounds only of religion, race, caste, sex or place of birth or any of them under Article 15. However, under Article 15 (4) of the Constitution the State is empowered to make special provisions for the advancement of socially and educationally backward classes of citizens or for the Scheduled Castes and Scheduled Tribes.

Article 46 of the constitution directs that the State shall promote with special care the educational and economic interests of the weaker sections of the people, and in particular, of the scheduled castes and scheduled tribes, and shall protect them from social injustice and all forms of exploitation.

The Constitution of India does not specify the tribes or the castes which are to be called as the scheduled castes or scheduled tribes. But the President of India is empowered under Article 366 (24) and 341 of the Constitution of notify the castes, recess, or tribes or groups thereof, in each State and Union Territory’s the scheduled castes for the purposes of the reservation. In the same way, scheduled tribes, according to Article 366(25) of the Constitution read with
Article 342 of the Constitution are those tribes or tribal communities, or parts or groups thereof, as the President may notify. In the same way backward classes have not been specified in the Constitution. To identify the backward classes and laying down criteria for the purpose of reservation, Article 340 empowers the President of India to appoint a Commission. The First backward class Commission was appointed on January 29, 1953 under the Chairmanship of Mr. Kaka Kalekar. There was a divergence of opinion among its members a failed to specify any easily discernible objective test to define ‘backwardness’. On December 20, 1978 the Second backward Classes Commission was appointed under the Chairmanship of Mr. B.P. Mandal to probe the conditions of socially and educationally backward classes. The Commission held that (besides Scheduled Castes and Scheduled Tribes who amount to 22.56% of the total population), 52 percent of total Indian population can be characterized as backward. It is submitted that both the aforesaid Commissions have taken caste as the dominant if not the sole factor in determining the backwardness, but no formula has yet been found. Regarding identification of socially and educationally backward classes, the Apex Court has held that caste neither can be the sole criteria nor can it be equated with ‘class’ for the purpose of Article 16(4) for ascertaining the social and educational backwardness of any section or group of people. The apex Court has also held that there is not set or recognized method for identification of backward class. The ultimate idea is to survey the entire populace. One can well begin caste which represents explicit identifiable social classes/groupings. Besides caste there may be other communities, groups, classes and determinations which may qualify as backward class of citizens. The Apex Court has held that Clause (4) of Article 16 is exhaustive of the special provisions ‘that can be made in favour of the backward class of citizens.

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161 Indra Sawhney v. Union of India, AIR 1993 SC 477.
162 Ibid.