CHAPTER FOUR

'CONCEPT OF EQUALITY AS A LIMITATION ON DOCTRINE OF
OF PLEASURE – A CRITICAL ANALYSIS

I. Introduction

Fundamental Rights are ever-existing rights of citizens of India irrespective of any diversity among the citizens. Because civil servants are also one section of the citizens of India, therefore, they also have such rights or in other words, constitutional protections.

The chapter on fundamental rights, enshrined in the Constitution of India lays down a substantial control on the exercise of the President's or the Governor's power of pleasure.

Fundamental Rights cannot be the subject of waiver; on the same basis, it cannot be contended that, having accepted an appointment, a government servant would be stopped from questioning the constitutionality of such rules, which contravene fundamental rights.

It can hardly be contended that Government servants, while entering into a contract of employment under the State, have waived their fundamental rights.

Fundamental Rights are limitations on the exercise of pleasure of the President or of the Governor and hence,

are constitutional protections for civil servants. Whenever a termination of tenure of a civil servant is ordered on the grounds which are contrary to Fundamental Rights, such termination is controlled by Fundamental Rights. Hence, the pleasure is controlled by Fundamental Rights in general if in exercising the pleasure, the grounds taken are in clash with Fundamental Rights e.g. on the grounds of colour, caste, religion, race, slavery, speech and expression, etc.

Although all the Fundamental Rights have control over to doctrine of pleasure. President or Governor cannot violate any of the Fundamental Rights in exercise of doctrine of pleasure. Hence all the fundamental rights are general limitations to doctrine of pleasure. But Article 16 which embodies the concept of equality, has special limitation to the tenure at pleasure. Therefore indepth discussion is made of concept of equality in relation to the doctrine of pleasure.

In a leading case General Manager v. Rangachari, the Supreme Court held that the words ‘matters relating to employment or appointment’ under Article 16 must include all matters in relation to employment both ‘prior’ and ‘subsequent’. Hence the ‘tenure’ relates to the ‘subsequent’ matter to the employment. Therefore Article 16 alongwith Article 14 is applicable on pleasure tenure as a constitutional limitation.

II. Application of Article 16 on tenure at pleasure of civil servants

Article 16 which contains the concept of equality, controls the exercise of pleasure in extinction of tenure by way of termination, retrenchment and compulsory retirement. No discrimination is allowed while terminating or doing retrenchment or compulsory retirement. Termination, retrenchment and compulsory retirement affects the pleasure therefore, these orders will have to comply with the concept of equality as discussed in depth below:

1. Termination

(i) Article 16(1) is applicable to the matter of termination if such employment where there has been an arbitrary discrimination in terminating the services of a particular employee leaving his juniors. But where recruits from different sources have not been integrated into one service, the termination of services of one class while retaining the other would not involve a violation of Articles 14 and 16.

(ii) It is discriminatory as it enables the authority to pick and choose any employee and terminate his services without holding any inquiry in accordance with the prescribed rule. Such a rule is therefore


void as offending articles 14 and (16).  

(iii) If under the terms of employment the employees had agreed to be governed by the concerned service rules, it does not preclude an employee from questioning the Constitutional validity of the rule on the ground of violation of Articles 14 and 16 as those Articles are in the nature of an injunction to the State not to discriminate and that Constitutional obligation does not cease either by consent or acquiescence.

(iv) When it is proved that on assessment of suitability of the temporary employees concerned the services of a temporary employee who is found unsuitable are terminated retaining juniors who are found suitable, there is no violation of Article 16.

(v) Termination of service of the employee who is alleged to have been member of political or other organisation is hostile discrimination. Although the State may put condition that after joining the service, an employee is not to be a member of political organisation. The Supreme Court, in State of M.P. v. Ramashankar Raghuvansi, observed about this aspect as under:

7. Ibid.
"The right to freedom of speech and expression, the right to form associations and unions, right to assemble peaceably and without arms, the right to equality before the law and the equal protection of the law, the right to equality of opportunity in matters relating to employment or appointment to any office under the State are declared Fundamental Rights. Yet the Government of Madhya Pradesh seeks to deny employment to the respondent on the ground that the report of the Police Officer stated that he once belonged to some political organisation.

We do not have the slightest doubt that the whole business of seeking police reports about the political faith, belief and association and the past political activity of a candidate for public employment is repugnant to the basic rights guaranteed by the Constitution and entirely misplaced in a democratic republic dedicated to the ideas set forth in the preamble of the Constitution. We think it offends the Fundamental Rights guaranteed by Articles 14 and 16 to deny employment to an individual because of his past political affinities, unless such affinities are considered likely to affect the integrity and efficiency of the individual service. To hold otherwise would be to introduce 'McCarthyism' into India. 'McCarthyism' is obnoxious to the whole philosophy of our Constitution. We do not want it."

(vi) The mere fact that there were some juniors who are continued in service on the date when the service of a senior is terminated does not render the termination discriminatory, if the termination of the service of the senior temporary official is on account of his unsuitability for continuance in service.

(vii) Due to abolition of post or want of post due to reduction of establishment, the principle of last

come first go also should be applied in affecting termination unless on the ground personal to the officer (i.e. inefficiency, unsuitability, etc.) otherwise it would be discriminatory.\textsuperscript{11}

(viii) Where on the establishment of a project, directly recruited and on deputation from other departments, persons are employed, after completion of the project, termination of service of those directly recruited retaining the deputationists in service is no discrimination as the two classes of employment are dissimilarly situated.\textsuperscript{12}

(ix) Termination of service of a civil servant brought about consequent on the abolition of posts in a particular cadre is not violative of Article 14 and 16 unless persons who are exactly similarly situated are continued in service. But termination of service of persons who are seniors by retaining juniors in service consequent on the abolition of a few posts belonging to a particular cadre is violative of Article 14 and 16.


In cases of termination of ad hoc employees, Article 16 could not even remotely invoked.

A rule which lays down that the service of a temporary employee can be terminated by giving him one month's notice or one month's salary in lieu of notice cannot be said to deny equality of opportunity provided in Article 16. The State is entitled to frame such rule governing all the temporary employees.

In Champak Lal v. Union of India16, the Supreme Court held that the classification of government servants into temporary and permanent categories and providing different methods of termination of service for them, would not be discriminatory, and there is a valid classification. Furthermore whenever the termination is challenged on the ground of discrimination, it will be for the administration to explain, though it has no obligation to mention the reason, in the notice of termination how and in what circumstances the termination does not amount to discrimination against the person concerned.

Article 16 is violated, if termination takes place on the ground that he belongs to another State17 or he has a particular colour or height or caste etc.

(xiii) If there is a hostile discrimination in the application of the Rules in the matter of selection of the persons to be discharged, Article 16 will apply. 

(xiv) Termination of service of a temporary employee without valid reasons, while retaining his juniors in service is violative of Articles 14 and 16.

2. Retrenchment

(i) Article 16 has application where a temporary employee is retrenched owing to the abolition of one of several temporary posts of the same kind, qualifications, length of service, he may accordingly, complain of discrimination, if a person junior to him is retained, while he is retrenched.

(ii) Where the discharged employee alleges malafides or improper motive, the authority must disclose the reasons to the Court, except in cases falling under Article 311(2) Proviso (c). If no such information is supplied, it would be legitimate for the Court to conclude that the petitioner has been picked out whimsically and without any special reason which would put him in a class separate from his juniors who have been retained in service.


(iii) It is open to the government to take into account the policy of giving reservation benefit to members of Backward Classes who did not adequately represented the services under Article 16(4), while effecting retrenchment and hence, in that process if the principle of last come first go is not obeyed, it is no violation of Article 16(1).

(iv) When an employee is retrenched on the ground that he has been detained under the law of preventive detention or is engaged in subversive activities or acts indiscipline is not violative of Article 16 unless it is established that those employees who have been retained in service are similarly situated.

(v) The Government like all other masters has the undoubted right to reorganise its departments and otherwise take all such administrative steps that it may think proper to take from time to time. Such matters are purely administrative acts of the master.

In Kunja Behari v. State of Orissa, the court

observed that if the retrenched employees held substantive posts under the Government, it could be compelled to provide them with alternative employment of an equally remunerative character. Where the retrenched employees were not holding any substantive posts, there was no legal obligation on the part of the Government to provide them with alternative jobs when their existing posts were retrenched. In other words permanent and temporary civil servant can be retrenched but with the pre-condition of absorption on alternative job in case of only holder of permanent post (i.e. substantive post).

3. Compulsory Retirement

(i) Article 310 also apply to compulsory retirement in addition to termination.

(ii) A rule which empowers the government to retire a government servant after a reasonably long prescribed period of qualifying service or age, in public interest which is applicable to civil servants in the State, is not violative of Article 14.

(iii) A rule which empowers the government to retire a servant after 30 years of service by giving a notice


without providing any guidance for the exercise of the power under the said rule is violative of Article 14.

(iv) A rule which authorised compulsory retirement at any time by giving three month’s notice is violative of Article 14.

(v) There is difference between compulsory retirement and voluntary retirement, while in former case it is the Government who makes order of retirement compulsorily irrespective of the wishes of an employee under the force of statutory rule, whereas in the later case, it is the wish of an employee himself who prays for order of retirement after discharging services upto specified period in statutory rule. Hence, compulsory retirement is to be ordered by Government in public interest and voluntary retirement is sought without compulsion of Government. Therefore both types retirement have different basis. It was held that authorising voluntary retirement only after 30 years of qualifying service cannot be held to be discriminatory on the ground that the rule of compulsory retirement authorises the government to retire a government servant after

completion of 25 years of service.

But whenever, such termination retrenchment or compulsory retirement is ordered by way of penalty, then that order will be either dismissal or removal. And Article 16 would have no application rather procedural requirement provided under Article 311 shall have to be followed. The order of compulsory retirement by way of penalty is called 'removal'.

III. Application of Article 16 on tenure at pleasure of Defence services and Police services

Article 16 provides guarantee of equal opportunity to all citizens and hence, this guarantee extends to defence services also in matters relating to employment. But because Fundamental Rights can be curtailed of defence employees under Article 33, therefore Article 16 is subject to the provisions of Article 33. The reason of providing Article 33 in the Constitution of India is that the forces are maintained with the purpose of maintaining discipline, law and order in the country, but if the employees of these forces create indiscipline then position will be uncontrolled. Hence, a provision of law which penalises the creating of dissatisfaction among the members of the police force or to withhold their services from the government has to be sustained as having

been properly made in the interest of public order.\textsuperscript{33}

Any law relating to abridgement of fundamental rights relating to members of the police force must be a law made by Parliament in exercise of its powers under Article 33. A law made by the President in exercise of his delegated powers of a State Legislature is invalid, as it amounts only to a legislation by the State who has no competence to make such a law.\textsuperscript{34}

Section 21 of the Army Act also empowers the central government to restrict to such extent and in such a manner the right of a member of a Military service. This provision cannot be held to be invalid on the ground of violation of Articles 14 and 19 in view of the express power conferred under Article 33 to exclude the application of the Fundamental Rights to the members of military service.\textsuperscript{35}

IV. Relationship between 'Doctrine of Pleasure' and 'concept of equality'

Whether Article 16 is applicable on matters 'prior' and 'subsequent' to employment or appointment. The Supreme Court clearly established in General Manager v. Rangachari\textsuperscript{36} that the words 'matters relating to employment or appointment' must include all matters in relation to employment both

\textsuperscript{36} A.I.R. 1962 S.C. 36 (40-41).
'prior' and 'subsequent'. In other words, equality is guaranteed in matters relating to the recruitment hereinafter called 'prior' to the employment or appointment. Simultaneously, the equality is guaranteed in matters 'subsequent' to the appointment or employment e.g. pay-scale, seniority, promotion, increment, termination, retrenchment, compulsory retirement, superannuation and pension. Hence, termination, retrenchment and compulsory retirement directly relate and affect the tenure. In this way, whenever a tenure of a civil servant is finished by method of termination or retrenchment or compulsory retirement, the concept of equality will have to follow. It means, concept of equality which is embodied in Article 16 and 14 has limitation on doctrine of pleasure, so that pleasure of the President or Governor as the case may be, may not be exercised arbitrarily.

The Author M.P. Jain also opined that the chapter on fundamental rights enshrined in the Constitution of India lays down a substantial control on the exercise of the President's or the Governor's power of pleasure. The concept of equality has been granted in the form of one of the fundamental rights in the Indian Constitution, available for every citizen of India. The sense of equality is necessary for existence of human society and particularly in a

democratic society. It appears that the sense of equality differentiates the human society and animal society where sense of 'might is right' prevails. Hence, this valuable sense of equality has been placed in the Constitution of India in valuable Part III, as one of the Fundamental Rights, embodied in Article 14 of the Constitution. It follows:

Article 14 Equality before Law:

''The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.''

The Article provides Guarantee or protection of equality to each and every citizen of India in every respects. Every respect, here means from the stage of taking birth, during survival and upto death of a Indian citizen, he would enjoy the fundamental right of equality in comparison with equals. Therefore, where a citizen of India is serving the Country as civil servant under the pleasure of the President or Governor (as the case may be), must be treated with equality and can not be discriminated during his service period in the matter of promotion, disciplinary action, suspension, termination, retrenchment, compulsory retirement, salary, pension, etc.

The doctrine of equality does not mean that every law must be applicable - universally upon all persons. Because all persons are not in the same position due to their different classes which deserve to be treated distinctly. With this aim, Article 15 was enacted in the Constitution which
permits classification based on various classes. In other words, there are limitations of the doctrine of equal protection.

Every classification is in some degree likely to produce some inequality, and mere production of inequality is not enough. Hence, State has power of classifying persons for legitimate purposes. This Article corresponds to the equal protection clause of the 14th Amendment of the U.S. Constitution which declares: "No State shall deny to any person within its jurisdiction the equal protection of the laws." Hence in interpreting this clause, it is permissible to refer to the decision of the American Courts upon the Equal Protection Clause of the American Constitution.

Article 14 consists of two concepts viz., 'equality before law' and 'equal protection of laws.' The first is negative concept which means there is no special privilege in favour of any one. All are equally subject to the ordinary law of the land. And no one is above to law, irrespective of his rank or condition. Hence, this first concept is equivalent to the second corollary of the Decean concept of the Rule of Law in England.

The second concept, 'equal protection of laws', is positive concept. It does not mean that a law should apply to all persons equally, irrespective of difference of circumstances. Rather, it adheres the application of the same laws alike and without discrimination to all persons similarly situated. It implies that among equals the law should be equal and equally administered, that the like should be treated alike without distinction of race, religion, wealth, social status or political influence.

In other words, equal protection means the right to equal treatment in similar circumstances, in conferment of privileges and in imposition of liabilities.

Whether the words 'appointment' and 'employment' are two different concepts. While 'appointment' refers to appointment to an 'office' and therefore implies the conception of recruitment, salary, promotion, tenure, and duties and obligations, etc, fixed by law or some rule having the force of law, these elements are absent in the case of 'employment' - which means a contract for temporary purpose, e.g. the engagement of labourers or professional experts by bilateral contracts. The word 'employment or appointment' covers all posts under the State, permanent or temporary.

As regards definition of State, for Part XIV of the Constitution, the definition under Article 12 has no application unless there is a relationship of employer and employee between the State and its employee. In other words, the employer must be a state or local authority as mentioned in clause (3) or there must be an element of subordination to the State.*

Concept of equality dictates that where two different services or cadres are integrated into one, any subsequent discrimination amongst the two groups would be violative of Article 16(1).*

While making reasonable classification de facto equality is needed and not merely de-jure equality is effected. The Supreme Court emphasised the duty of State to grant de-facto equality. It was held:

"Equality must become a living reality for the large masses of the people. Those who are unequal, in fact, cannot be treated by identical standards; that may be equality in law but it would certainly not be real equality.... The State must, therefore, resort to compensatory State action for the purpose of making people who are factually unequal in their wealth, education or social environment, equal in specified areas. It is necessary to take into account de facto inequalities which exist in the society and to take affirmative action by way of giving preference to the social and economically disadvantaged persons or inflicting handicaps on those more advantageously placed, in order to bring about real equality. Such affirmative action though apparently discriminatory is calculated to produce equality on a broader basis by eliminating


de facto inequalities and placing the weaker sections of the community on a footing of equality with the stronger and more powerful sections so that each member of the community, whatever is his birth, occupation or social position may enjoy equal opportunity of using to the full his natural endowments of physique, of character and of intelligence. 49

An important question came before the Supreme Court in State of Kerala v. N.M. Thomas about relationship among Articles 14, 15 and 16. Whether equality under Article 16 have a different content from equality under Article 14. The Supreme Court observed that Article 14, 15 and 16 form part of a string of constitutionally guaranteed rights supplementing each other. Clause (1) of Article 16 affirmatively guarantees whereas clause (2) negatively guarantees equality of opportunity and hence, the words 'in respect of any employment' used in clause(2) must, therefore, include all 'matters relating 'employment' or 'appointment' as specified in clause (1). 50 Therefore scope of both clauses is coextensive.

Hence, Article 14 is a general law of equality whereas Article 16 specifically, guarantees equality only in respect of appointment or employment to any office under the State. Therefore Article 14 is the source of Article 16. The guidance would be provided by Article 14, whenever the interpretation of Article 16 is needed. Article 16 is only an

49A. AIR 1976 SC 460.
50. General Manager v. Rangachari, A. 1962 S.C. 36 (41.).
incident of the general concept of equality enshrined in Article 14. The Provisions in Article 14 and 16 are supplementary to each other, thus to be read together. Equality guaranteed by Article 16(1) is only an equality between members of the same class of employees.

For the application of concept of equality as control over extinction of tenure by way of termination or compulsory retrenchment, the pleasure must not be exercised arbitrarily. If the pleasure is exercised on classification, it must be based on reasons in which de-facto equality is to be achieved. If any provision of any Statute provides about termination of tenure, the Statute must not be unconstitutional on the basis of equality. The test of arbitrariness in discretion, test of reasonable classification, test to determine constitutionality of a provision on the basis of equality which are various necessary issues for proper application of concept of equality, are discussed below:

1. Test of arbitrariness in discretion

In Bachan Singh v. State of Punjab, Bhagwati J. observed:

"Every form of arbitrariness or irrationality is anathema in our constitutional scheme. It is now a basic requirement of Article 14 that the exercise of discretion must always be guided by some standards or norms so that

it does not degenerate into arbitrariness and operate unequally on persons similarly situated. Where unguided and unfettered discretion is conferred on any authority, whether it be the executive or the judiciary, it can be exercised arbitrarily or capriciously by such authority. There can be no equal protection without equal principles in exercise of discretion whether vested in the executive or in the judiciary.'

Hence, Article 14 requires observance of Rule of law and disregards arbitrary and unfettered discretion. It is called test of arbitrariness to find out the specific action or legislation is violative of Article 14. For instance, providing for dismissing an employee without assigning any reason or making any inquiry or a service rule providing for termination of services of permanent employees by giving notice and without assigning any reason.

Article 14 requires rules of natural justice to be followed unless expressly excluded as opined by the Supreme Court in Tulsiram Patel's case.

In a landmark judgement, the Supreme Court (Bhagwati, J., Chandrachud, J., Krishna Iyer, J.) observed:

".... equality is dynamic concept with many aspects and dimensions and it cannot be cribbed, cabined and confined within traditional and doctrinaire limits. From a positivistic point of view, equality is antithesis to arbitrariness. In fact, equality and arbitrariness are sworn enemies; one belongs to the rule of law in are public while the other, to the

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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. and if it affects any matter relating to employment, it is also violative of Article 16. Articles 14 and 16 strike at arbitrariness in State action and ensure fairness and equality of treatment.'

In another case, Maneka Gandhi v. Union of India58, the Supreme Court about the content and reach of the great equalising principle enunciated in Article 14. It was held:

'Article 14 strikes at arbitrariness in State action and ensures fairness and equality of treatment. The principle of reasonableness, which legally as well as philosophically, is an essential element of equality or non-arbitrariness pervades article 14 like a brooding omnipresence.'

In other words, Article 14 and 16 checks the executive or legislative organs of the government in matters relating to the employment.

2. Test of reasonable classification

The Supreme Court opined that the classification must not be arbitrary but must be rational, that is to say, it must not only be based on some qualities or characteristics which are to be found in all the persons grouped together and not in others who are left out but those qualities or characteristics must have a reasonable relation to the object of the legislation. In order to pass the test, two conditions must be fulfilled, namely, (i) that the classification must be

founded on an intelligible differentia which distinguishes those that are grouped together from others and (ii) that differentia must have a rational relation to the object to be achieved by the Act. The differentia which is the basis of the classification and the object of the Act are distinct things and what is necessary is that there must be a nexus between them. In short, while Article 14 forbids class discrimination by conferring privileges or imposing liabilities upon persons arbitrarily selected out of a large number of other persons similarly situated in relation to the privileges sought to be conferred or the liabilities proposed to be imposed, it does not forbid classification for the purpose of legislation, provided such classification is not arbitrary in the sense above-mentioned.

Whenever therefore, there is arbitrariness in State action, whether it be of the legislature or of the executive or of an 'authority' under Article 12, Article 14 immediately springs into action and strike down such State action. The Supreme Court also observed that minor classifi-

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fication is not objectionable. It was observed:

"reasonable classification according to some principle to recognise intelligible inequalities or to avoid or correct inequality is allowed, but not minor classifications which create inequality among the similarly circumstanced members of the same class or group."

Therefore classification of service as permanent and temporary is valid. The very fact that the service of a government servant is temporary makes him a class apart from those in permanent service and such government servants cannot necessarily claim all the advantages which a permanent servant has in the matter relating to conditions of service.63

Similarly, the State is free to constitute services into different classes for doing same kind of work. And for different classes of government servants, different sets of rules and conditions of service may be provided. To impose restraints on the manner of administration was not intended by the Constitution. But when two classes of civil servants are grouped together irrespective of the method by which they were recruited there can be no discrimination in the matter of further promotion. Therefore, any rule framed under proviso to Article 309 subsequently with retrospective effect with the object of validating such promotions by disintegrating

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the two classes of government servants who had already formed one class is also void as offending Articles 14 and 16 (1).

One cadre can be split into two cadres. The classification of judicial service into civil and criminal wings has a rational basis and therefore valid.

Even a State may be divided into different recruitment units. For instance, three tier system exists in State of Rajasthan in police department. Accordingly, for promotion upto the cadre of head constable on districtwise basis and promotion to the cadres of sub-inspectors on a rangewise basis and thereafter promotion on a statewide basis is provided which is valid division even though at times it may happen, because of the system, a junior head constable in one range may get promotion as officiating sub inspector while in another range a senior head constable may have to wait for some time. Any disparity in relation to chances of promotion as between officials belonging to different recruitment units cannot be termed discriminatory.

Following grounds have not been held to be reasonable and proper in making classification:

(a) Where one is discriminated on the ground that he is a political sufferer or due to his political views.

(b) Where discrimination is affected being mere member of a political organisation which has not been banned. But classification based on the requirement of knowledge of the State language in the case of State service, was held to be valid. But the condition of residence, will be void, unless imposed by Parliament under Article 16(3).

Where the methods or sources of recruitment are different, this Article would not debar the Government from prescribing different pay-scales for the two classes of employees, though holding the same post. But Article 16(1) will be violated where equal opportunity for promotion is denied to Government servants holding different posts in the same grade or integrated grade consisting of recruits from different sources absorbed into one cadre, or recruits from the same source.

In a recent case State of Sikkim v. Surendra Prasad Sharma, the Supreme Court opined that classification can be made but discrimination between the equals is prohibited.

76. 1994(2) S.L.R. 685 (S.C.).
However, classification can be made if it is based on intelligible differentia. The Supreme Court held:

"It is well settled that while Article 14 prohibits discrimination and requires that all persons subjected to any legislation shall be treated alike, it does not forbid classification for implementing the right of equality guaranteed by it provided the classification is based on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group and that the said differentia has a rational nexus to the object sought to be achieved by the said legislation. Of course, the classification must not be arbitrary but must be based on some distinct qualities and characteristics peculiar to the persons included in the group and absent from those excluded and those peculiarities must have a reasonable nexus to the object proposed to be achieved.... The emphasis is not only on de-jure equality but also on de-facto equality.

Article 16 is an instance of Article 14 and therefore Article 16 must be construed according to the guidance and soul of Article 14. Yet classification is permitted but such classification must be made with reference to the objective to be achieved. In *Union of India v. Kohli* 77, the Supreme Court held that classification must be with the reference to the objective to be achieved and the Court will interfere where there is no reasonable basis for the classification. The guarantee is also violated where there is no reasonable nexus between the differences. The burden of showing that the classification is unreasonable is on the person who

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challenges it. In other words, equal treatment must be among equals and unequal treatment may be done away unequals for achieving the object of equality in opportunity.

3. Test to determine constitutionality of a provision on the basis of equality

The equality clause contained in Article 14 requires that all persons subjected to any legislation should be treated alike under like circumstances and conditions. Equals have to be treated equally and unequals ought not to be treated equally. While that article forbids class legislation, it does not forbid classification for purposes in implementing the right of equality guaranteed by it. In order, however, to pass the test of permissible classification two conditions must be fulfilled, namely, (i) that 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, (ii) that differentia must have a rational relation to the object sought to be achieved by the statute in question. While the classification may be founded on different basis what is necessary is that there must be a nexus between the basis of classification and the object of the Act under consideration.\textsuperscript{78}

Legislation enacted for the achievement of a particular object or purpose need not be all embracing. It is for the legislature to determine what categories it would embrace within the scope of legislation\textsuperscript{79}
