CHAPTER - III

JUSTICE BHAGWATI'S ENRICHMENT OF FUNDAMENTAL RIGHTS:
STATE- EQUALITY- RESERVATIONS
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3.1 General

Fundamental Rights are the freedoms guaranteed to the individual under Articles 12 to 35 in Part III of the constitution of India. Fundamental Rights constitute the Magna Carta of the essential freedoms of the Indian people. It contains a very comprehensive list of the rights that have a justiciable character in spite of the fact that the 'state' may impose reasonable restrictions on their exercise and enjoyment and their enforcement may be suspended by the President during the period of Emergency and may impose restrictions on their exercise and enjoyment under Article 359.

Since the rise of the nation state system in modern times, the idea has been veering round that man has some particular rights which cannot be abridged or taken away by any power including the state itself. The doctrine of natural rights as it came to be known is based on the premise that man has some basic and inalienable rights or freedoms which cannot be taken away by any power including the state itself. To Hobbes it is right to life; to Locke it means rights to life, liberty and property; to the leaders of the French revolution it is signified rights to equality, liberty and fraternity. The function of the State is to protect these rights so that a man may lead his life well and seek the best possible development of his personality. In course of time, it was also felt by the intellectuals and nation builders that such rights be incorporated in to the fundamental law of the land for the sake of their proper protection by the state. Thus, the


35
new thinking informed that such rights be entrenched in such a way that they may not be violated, tampered or interfered with by an oppressive government.

The Prime intendment of the constitution is to constitute India into a Sovereign Socialist, Secular Democratic Republic and to secure all its citizens; justice-social, economic and political; liberty of thought, expression, belief, faith and worship—equality of status and of opportunity. And it emphasizes the dignity of individual, the unity of Nation. The longer the arm of Fundamental Rights, the larger would be its wings, the greater the area they would shade, the more would be its effective protectiveness.

Fundamental Rights were deemed essential to protect the rights and liberties of the people against the encroachment of the power delegated by them to their government. They are limitations upon all the powers of the government, legislative as well as executive. In welfare state there may not be and cannot exist absolute and unrestricted individual rights. If individuals are allowed to have absolute freedom of speech and action the result would be chaos. If the state has absolute power to determine the extent of personal liberty the result would be tyranny.

In a welfare state like India the question is how to make a balance between the conflicting interests of individuals and of the society. The Indian constitution attempts to do that by enumerating fundamental rights and the extent of their limits. Accordingly these fundamental rights

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available against state action and not against private individuals, where the state is performing through other authorities for the sake of convenience of administration i.e., administrative bodies, and then the fundamental question would be that whether the people are entitled to avail their fundamental rights against these bodies also. These issues were adjudicated by Justice Bhagwati very effectively.

Equality is antithetic to arbitrariness, where an act is arbitrary, it is implicit in it that it is unequal both according to political logic and constitutional law is the concept of Justice Bhagwati on the equality clause. The basic postulate of the rule of Law is that justice should not only be done but it must also be seen to be done. Reservation of seats in a professional college should be on the basis of merit. Residential or domicile requirement of students may deterrent to the national integrity, as India is a unique in its diversifications not only in cultural but also in its geographical. The above can be witnessed through the adjudications of Justice P.N. Bhagwati in this study.

3.2. Definition and Scope of the term ‘State’ under Article 12

The term State used in the Indian constitution includes executive as well as Legislative organs of the Union and States. It is given very wide meaning of Art. 12 that unless the context otherwise requires, “the State” includes the Government and Parliament of India and the Government and the Legislature of each of the States and all local or other authorities with in the territory of India or under the control of the Central Government. The ambit and scope of the expression other authorities under Article12 is very wide and the development and growth of law shows that the said phrase has been interpreted more and more liberally so as to include with in its ‘sweep more and more authorities with a view to giving protection to the aggrieved persons against the actions taken by those authorities.
Article 12 clarifies that the term state occurring in Art 13(2) or any other provision concerning Fundamental Rights, has been given an expansive meaning. In respect of political science, the 'State' represents only country meaning thereby sovereign territory and the government holding control over the people living in that territory. But in respect of the Indian constitution the word 'state' used to represent the authority which may be in the form of legislative, executive, judicial or administrative authorities.

The importance to define the term 'state' lies in the sense that the language used in Art. 32 is very wide and the powers of the Supreme Court in India extend to issuing directions, orders or writs to any person or authority. Therefore while deciding whether a writ would lie in given circumstances, first inquiry to be made is against whom a writ can be issued. As a general rule, a writ lies against the 'state', as defined in Art. 12 of the Constitution.¹

As Fundamental Rights are available to only individual against the state, they can be challenged only when violated by the state. Barring few exceptions, the Fundamental Rights secured to the individual are limitations on the state action. They are not meant to protect persons against the conduct of private persons.

One can understand well the importance of Article 12 and its meaning by the words of the Drafting Committee Chairman of the constitution. He defended the draft of the Article and scope vehemently as to why Article 72 must stand as part of the Constitution:

² Corresponding to present Article 12
“The object of the Fundamental Right is two-fold. First, that every citizen must be in a position to claim those rights; second, they must be binding upon every authority — the word authority means — every authority which has got either the power to make laws or the power to have discretion vested in it. Therefore, it is quite clear that if the Fundamental Rights are to be clear, then they must be binding not only upon the Central Government, they must not only be binding upon the Governments established in the Indian states, they must also be binding upon District Local Boards, Municipalities, even Village Panchayat and Taluk Boards, in fact, every authority which has been created by law and which has got certain power to make laws, to make rules or to make bye-laws”.

3.2.1. Bhagwati’s Contribution in extending the Meaning and Scope of the term ‘State’.

The Founding Fathers in their zeal to afford protection to Fundamental Rights against the state action defined the term state in part III of the constitution of India. The guardians of the fundamental rights in their zeal have been mindful and conscious of the changed concept of state and have accordingly enlarged and widened the scope of ‘state’ in Article 12. The Government of a nation or the state performs not only bureaucratically through its own officers but also through Public Sector Corporations.

In India the Government performs a large number of functions because of the prevailing philosophy of a ‘welfare state’. The Government acts through natural persons or judicial persons. Also, the fundamental rights which are enshrined in part III of the constitution are rights enforceable against the state. While the government acting departmentally or through officials, undoubtedly falls with in the definition of state under

Article 12. But what happens when the state acts through a public sector corporation, like- Life Insurance Corporation, General Insurance Corporation, International Airport Authority, Air India and a host of other public sector corporations, and whether they could be regarded as authorities under Article 12.

The similar questions came for consideration before the Supreme Court in Rajasthan State Electricity Board V. Mohanlal's case. In this case the apex court ruled that a state electricity board, set up by the state having some commercial functions, would be an authority under Article 12. Again in the very next year in Umesh V. N. Singh's case, the Patna High Court, following the decision of the Supreme Court, has held that the Patna University is a 'state' over ruling the Madras High Court's decision in 'Santa Bai v. University of Madras' that university not to be "the state".

In Sukh Dev V. Bhagatram the apex court held that three statutory bodies viz., Oil and Natural Gas Corporation, Life Insurance Corporation and Industrial Finance Corporation are fall within the term state under Article 12.

A case of great import where justice advanced the law for the benefit of the citizens at large is the case of Ramana Dayaram Shetty v. International Airport Authority: In which Justice Bhagwati has considered thoroughly that why should fundamental rights, not be enforceable against these corporations too, though there are some cases prior to this case. In this case the Director of the International Airport Authority, a body corporate constituted under the International Airport Authority Act, 1971,

1. AIR 1967 SC 1857
2. AIR 1968 SC 3
3. AIR 1954 Mad. 67
4. AIR 1975 SC 1331
5. AIR 1979 SC 1628
had issued a notice inviting tenders on or about 3rd January 1977 for putting up and running a II Class restaurant and two snack bars at the International Airport at Bombay, for the period of three years.

The International Airport Authority had laid down various conditions of eligibility they are in Para 1, the notice stated that sealed tenders in the prescribed form are hereby invited from Registered II Class Hotelier having at least Five years experience. And in Para (8) of the notice made clear that “the acceptance of the tender will rest with the Airport Director who does not bind himself to accept any tender and reserves to himself the right to reject all or any of the tenders received without assigning any reason therefore.”

Though the fourth respondent’s tender offered the highest license fee he did not satisfy the requisite pre-conditions, as he was not a Registered II Class Hotelier having at least 5 years experience but had considerable experience in running canteens for big corporations. After correspondence between the fourth respondent and the Director of the Authority i.e., the 1st Respondent, the Director accepted the fourth respondent’s tender.

The main contention urged on behalf of the appellant was that in paragraph (1) of the notice inviting tenders the 1st respondent (the Airport Authority) had stipulated a condition of eligibility by providing that a person submitting a tender must be a “registered II class Hotelier having at least 5 years experience”. And the 1st Respondent, being a ‘state’ with in the meaning of Article 12 of the Constitution or in any event a public Authority, was bound to give effect to the condition of eligibility set up by it and was not entitled to deport from it at its own sweet will without rational justification.
The Airport Authority and the 4th respondent argument was 'that the appellant had no locus standi to maintain the writ petition since no tender was submitted by him and he was a mere stranger, and how could a person who never tendered and who was at no time in the field put forward such a complaint'.

The grievance of the appellant was not that his tender was rejected as a result of improper acceptance of the tender of the 4th respondents, but that he was differentially treated and denied equality of opportunity with the 4th respondents in submitting a tender. His complaint was that if it were known that non-fulfilment of the condition of eligibility would be no bar to consideration of a tender, he also would have submitted a tender and competed for obtaining a contract.

The Supreme Court found first that it was a condition for the acceptance of a tender that the person tendering must be a registered II class Hotelier of at least Five years experience and the 4th respondent did not satisfy that condition and his tender could not have been accepted. For this the contention of the Authority was that it is not bound to accept any tender and it could have rejected all the tenders and given the license to the 4th Respondent by private negotiations as there are no rules for inviting tenders.

In the above state of affairs one main thrust is upon the question whether the Airport Authority is a 'state' under Article 12 or not. It was the Supreme Court which had to lay down the law for administering justice and this had to be achieved keeping in mind the guardian principle of social justice as the very core of Indian Jurisprudence.

In the above context, Justice Bhagwati preferred and held that if a body is an agency or instrumentality of government it may be an authority with in the meaning of Art.12, and the International Airport Authority
which had been created by an Act of Parliament was the “state” with the
meaning of Article 12 and he reasoned that; A corporation may be created
in one or two ways. It may be either established by statute or incorporated
under a law such as the Companies’ Act 1956 or the Societies Registration
Act 1860. Where a Corporation is wholly controlled by Government not
only in its policy making but also in carrying out the functions entrusted to
it by the law establishing it or by the Charter of its incorporation, it would
be an instrumentality or agency of Government. When a public sector
corporation acts in exercise of its function, it must also be subject to the
discipline of fundamental rights and the corporation is really and truly
only an instrumentality of the state, fundamental rights must be
enforceable against the public sector corporation too. It was a great step
forward to make fundamental rights enforceable against various agencies
of the state, so that the citizen could get the desired protection and the
state could not escape or shirk its responsibility under the guise of
agencies which are there merely for better administration. There are
various fundamental rights guaranteed by the constitution of India, like the
right to equality, the right to speech and expression, right to free assembly,
the right to life and personal liberty and so on. If all these rights had not
been enforceable against the public sector corporations, much of the
benefit of these fundamental rights would have been just a dead letter in
the constitution1.

Further, following earlier judgments in Rajasthan Electricity
Board and Sukh Dev Singh cases, Justice Bhagwati laid down certain tests
for determining whether a body is an agency or instrumentality of the
government in the following way;

1. Ramana Dayaram Shetty v. International Airport Authority : AIR 1979 SC 1628
• "If the entire share capital of the corporation is held by Government it would go a long way towards indicating that the corporation is an instrumentality or agency of Government.

• Where the financial assistance of the State is so much as to meet almost entire expenditure of the corporation, it would afford some indication of the corporation being impregnated with governmental character.

• Whether the corporation enjoys monopoly status which is the State conferred or State protected.

• Existence of deep and pervasive State control may afford an indication that the Corporation is a State agency or instrumentality.

• If the functions of the corporation are of public importance and closely related to governmental functions it would be a relevant factor in classifying the corporation as an instrumentality or agency of government.

• Specifically, if a department of Government is transferred to a corporation, it would be a strong factor supportive of this inference" of the corporation being an instrumentality or agency of Government".

However, Justice Bhagwati stated that, these tests are not conclusive but illustrative only and will have to be used with care and caution.

In spite of laying down significant principles of law in this regard, Justice refused to grant any relief to Shetty because of his conduct, including delay in filing the petition and also because it was doubtful whether the petition filed was bona fide. Also in the intermediate time gap, the fourth respondent had already incurred considerable experience and
had in fact put up the restaurant and the snack bars. The court held that in these circumstances, it would not be proper to set aside the contract.

The next key note decision delivered by Justice Bhagwati, was in the case of Ajay Hasia v. Khalid Mujib Sehravardi¹, where the writ petition was filed under Article 32 of the constitution of India, challenging the validity of the admissions made to the Regional Engineering College, Shrinagar for the academic year 1979-80.² In this case where the petitioners felt aggrieved by the mode of selection by giving thirty three percent weightage for oral interview for the admission in to the R.E.College of J&K, filed the present writ petitions challenging the validity of the admissions made to the college on various grounds along with the oral interview.

To understand the case as it involves much importance in defining the term some facts are necessary, they are as follows. The Regional Engineering College, Srinagar, is one of the fifteen Engineering Colleges in the Country sponsored by the Government of India. The College is established and its administration and management are carried on by a Society registered under the Jammu and Kashmir Registration of Societies Act, 1898. The Memorandum of Association of the Society in clause 3 sets out the objects of the Society Establishment of the college, creation of the Board of Governors, management of the society, procedure of the admissions. Amongst other rules clause (IV) of Rules 15 confers powers on the Board to make bye-laws for students to various courses pursuant to the above rule the Board of Governors laid down the procedure to students for admission in to various courses in the college by resolution on 4-6-1974....Under this Resolution admissions to the candidates belonging to the State of Jammu and Kashmir were to be given on the basis of

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¹ AIR 1980 SC 487
comparative merit to be determined by holding a written entrance test and a *viva voce* examination and the marks allocated for the written test in the subjects of English, Physics, Chemistry and Mathematics were 100, while for *viva voce* examination, the marks allocated were 50 divided as follows:

(I) General Knowledge and Awareness-15;

(ii) Broad understanding of Specific phenomenon-15;

(iii) Extra-curricular activities-10 and

(iv) General Personality Trait-10, making up in the aggregate-50.

The admissions to the college were governed by the procedure laid down in this Regulation until the academic year 1979-80, when the procedure was slightly changed and it was decided that out of 250 seats, which were available for admission, 50 Per Cent of the seats shall be reserved for candidates belonging to the Jammu and Kashmir State and the remaining 50 Per Cent for candidates belonging to other States including 15 seats reserved for certain categories of students.

In or about April 1979, the college issued a notice inviting applications for admission to the first semester of the B. E. course in various branches of engineering and the notice set out the above admission procedure to be followed in granting admissions for the academic year 1979-80. The petitioners in the present writ petitions applied for admission to the first semester of the B. E. course in one or the other branches of engineering and they appeared in the written test which was held on 16th and 17/06/1979. The petitioners were thereafter required to appear before a Committee consisting of three persons for *viva voce* test and they were interviewed by the Committee. The case of the petitioners was that the interview of each of them did not last for more than 2 or 3 minutes per candidate on an average and the question which
were asked to them were formal questions relating to their parentage and residence and hardly any question was asked which would be relevant to any of the four factors for which marks were allocated at the viva voce examination.

When the admissions were announced, the petitioners found that though they had obtained very good marks in the qualifying examination they had not been able to secure admission to the college because the marks awarded to them at the viva voce examination were very low and candidates who had much less marks at the qualifying examination, had succeeded in obtaining very high marks at the viva voce examination and thereby managed to secure admission in preference to the petitioners.

The successful candidates whose marks are given in the chart which was shown to the court, had obtained fairly low marks at the qualifying examination as also in the written test, but they had been able to score over the petitioners only on account of very high marks obtained by them at the viva voce examination.

With regard to the maintainability of the writ petition the respondents contended that the college is run by a society which is not a corporation created by a statute but is a society registered under the Jammu and Kashmir Societies Registration Act, 1898 and it is therefore not an 'authority' within the meaning of Art. 12 of the Constitution and no writ petition can be maintained against it, nor can any complaint be made that it has acted arbitrarily in the matter of granting admissions and violated the equality clause of the Constitution.

For the above state of affairs Justice Bhagwati held that, Now it is obvious that the only ground on which the validity of the admissions to the college can be assailed is that the society adopted an arbitrary procedure
for selecting candidates for admission to the college and this resulted in
denial of equality to the petitioners in the matter of admission violative of
Article 14 of the Constitution. It would appear that *prima facie* protection
against infraction of Art. 14 is available only against the State and
complaint of arbitrariness and denial of equality can therefore be sustained
against the society only if the society can be shown to be State for the
purpose of Art. 14. "Now 'state' is defined in Art. 12 to include *inter alia*
the Government of India and the Government of each of the States and all
local or other authorities within the territory of India or under the control
of the Government of India and the question therefore is whether the
Society can be said to be 'state' within the meaning of this definition.
Obviously the Society cannot be equated with the Government of India or
the Government of any State nor can it be said to be a local authority and
therefore, it must come within the expression "other authorities" if it is to
fall within the definition of 'state'. That immediately leads us to a
consideration of the question as to what are the "other authorities"
contemplated in the definition of 'state' in Article 12".

In consideration of the question that as to what are the "other
authorities" contemplated in the definition of 'state' in Article 12, by
giving an interpretation to the expression "other authorities" *Justice*
observed that: "While considering this question it is necessary to bear in
mind that an authority falling within the expression "other authorities" is,
by reason of its inclusion within the definition of 'state in Article 12,
subject to the same constitutional limitations as the Government and is
equally bound by the basic obligation to obey the constitutional mandate
of the Fundamental Rights enshrined in Part III of the Constitution. We
must therefore give such an interpretation to the expression "other
authorities" as will not stultify the operation and reach of the fundamental
rights by enabling the Government to its obligation in relation to the
Fundamental Rights by setting up an authority to act as its instrumentality or agency for carrying out its functions. Where constitutional fundamentals vital to the maintenance to human rights are at stake, functional realism and not facial cosmetics must be the diagnostic tool, for constitutional law must seek the substance and not the form. The Government may act through the instrumentality or agency of natural persons or it may employ the instrumentality - or agency of juridical persons to carry out its functions.  

Now it is obvious that if a corporation is 'an instrumentality or agency of the Government, it must be subject to the same limitations in the field of constitutional law as the Government itself, though in the eye of the law it would be a distinct and independent legal entity. 'If the Government acting through its officers is subject to certain constitutional limitations, it must follow a fortiori that the Government acting through the instrumentality or agency of a corporation should equally be subject to the same limitations and basic obligation, other wise the Government would be enabled to override the Fundamental Rights by adopting the stratagem of carrying out its functions through the instrumentality or agency of a corporation, while retaining control over it. In that event the Fundamental Rights would then be reduced to little more than an idle dream or a promise of unreality'.

Again Justice pointed out that 'it is immaterial for this purpose whether the corporation is created by a statute or under a statute. The test is whether it is an instrumentality or agency of the Government and not as to how it is created. The inquiry has to be not as to how the juristic person is born but why it has been brought into existence. The corporation may be a statutory corporation created by a statute or it may be a Government

1. Ajay Hasia v. Khalid Mujib; AIR 1979 SC 487
company or a company formed under the Companies Act, 1956 or it may be a society registered under the Societies Registration Act, 1860 or any other similar statute. Whatever be its genetical origin, it would be an "authority" within the meaning of Article 12 if it is an instrumentality or agency of the Government. The concept of instrumentality or agency of the Government is not limited to a corporation created by a statute but is equally applicable to a company or society. It is also necessary to add that merely because a juristic entity may be an "authority" and therefore 'state' within the meaning of Article 12'. (It may not be elevated to the position of "state for the purpose of Articles 209, 310 and 311 which find a place in Part XIV").

The definition of "state" in Article 12 which includes an "authority" within the territory of India or under the control of the Government of India is not limited in its application only to Part III and by virtue of Article 36 it extends to Part IV. But it does not extend to the other provisions of the Constitution and hence a juristic entity which may be "state" for the purpose of Parts III and IV would not be so for the purpose of Part XIV or any other provision of the Constitution. If the Society is an "authority" and therefore "state" within the meaning of Article 12, it must follow that it is subject to the constitutional obligation under Article 14.

In conclusion Justice opined that "if the marks allocated for the oral interview do not exceed 15 Per Cent of the total marks and the candidates are properly interviewed and relevant questions are asked with a view to assessing their suitability with reference to the factors required to be taken into consideration, the oral interview test would satisfy the criterion of reasonableness and non-arbitrariness."
The next important case came before the Supreme Court is the case of *Dinesh Kumar V. Motilal Nehru Medical College, Allahabad* in which, the issue for consideration is whether Medical colleges run by the Municipal Corporations are states under article 12 of the constitution. In this case the observations of Justice Bhagwati, CJI, are similar as earlier that every municipal corporation is a local authority and hence a state with in the meaning of Article 12 of the constitution and therefore the medical colleges run by Municipal Corporation are bound by the directions given by the same court in earlier cases.

Again in *Sheela Barse vs. Secretary, Children's Aid Society, Bombay* where in Justice Bhagwati had dealt with whether the public trust registered under the Societies Registration Act, 1860 was an instrumentality of the State and fall within the expression “the state” with in the meaning of Article 12 of the constitution. In this case He observed that, “the society is a public trust under the Bombay Public Transports Act of 1950. The society is receives grants from the state. The Chief Minister of the State is its ex-officio president. Hence the society is an instrumentality of the state and fell with in the expression the ‘state’ with in the meaning of Article 12”.

*During the tenure of Justice Bhagwati as CJI, in M.C. Mehta v Union of India* the most important question raised before the apex court was whether a private corporation causing public grievances fell with in the ambit of Article 12. In this case the facts are that, on 24th December, 1985 major leak of Oleum gas took place in from one of the units of Shri Ram food and fertilizer Industries which caused enormous damage to the life and health of the workers and the public. Though this question was not

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1. AIR 1985 SC 1415
2. AIR 1987 (3) SCC 50
3. AIR 1987 (1) SCC 395
decided by the court in an unanimous opinion of the Supreme Court Justice Bhagwati has advanced the arguments for including even the non-government companies within the meaning of state, if for reasons of State control and regulation and the kind of public function they are performing, they satisfy the test of being an instrumentality of agency of the government.

Some other cases decided by the Supreme Court which are on the similar views expressed by Justice Bhagwati regarding the meaning of the term state as follows;

In Ajay Kumar, v. Steel Authority of India Ltd., Allahabad High Court held that SAIL is a state within Art. 12. The decision of the central government to disinvest 48% of the share capital in a phased manner under the new economic policy of liberalization is not sufficient to declare SAIL as not coming with in 'state' under article 12.

In Chandra Mohan Khanna v NCERT, the Apex Court held that 'the NCERT is a society registered under the Societies Registration Act, 1860, but its object is to assist and advise the Ministry of Education and social Welfare in the implementation of the Governmental Policies and major programmes in the field of education particularly school education only. As the government business is not undertaken by the society, the government control is confined only to proper utilization of grant only. Hence, it does not come in the purview of Article. 12'.

But in Pradeep Kumar Biswas v. Indian Institute of Chemical Biology, the Apex Court has held that, CSIR is a 'state' where it was set

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1. AIR 1994 All. 182
2. AIR 1992 SC 76
3. (2002) 5 SCC 1

52
up in the national interest to further the economic welfare of the society by fostering planned development in the country and hence, the CSIR is an instrumentality of the state with the meaning of Article 12.

3.3 Equality

Equality is the third objective enshrined in the Preamble of the Constitution of India. The Constitution guarantees Equality - not in general but equality of status and of opportunity. The founding fathers of the Indian Constitution not only put Liberty and Equality in the Preamble to the Constitution but gave them practical effect in Article 14 which provides that "the state shall not deny to any person equality before the Law and the equal protection of the Laws in the territory of India". Right to equality are grouped Articles from 14 to 18.

This is the combination of two expressions. The first expression "equality before the law" has been taken from the Eirish Constitution and "Equal protection of the Laws" from that of the United States of America". But the scope of the guarantee in the constitution of India extends for beyond either or both, the English and US guarantees taken together².

Liberty and equality are the words of passion and power. They were the watch words of the French Revolution and inspired the unforgettable words of Abraham Lincoln’s Gettysburg address... and the US Congress abolished the slavery in 13th Amendment and the 14th Amendment of it provided that “the state shall not deny to any person with in its Jurisdiction, the equal protection of the Laws”³

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1. (CSIR) Council of Scientific and Industrial Research, The Hindustan Times, April 19, 2002

2. Tripathi, P.K. – Some insights in to Fundamental Rights – University of Bombay, 1972, page 47,


53
The phrase equality before the law is present in almost every written Constitution of the world and the Universal Declaration of the Human Rights under Article 7,\(^1\) and Article 20(1) of the Covenant of Human Rights, 1950\(^2\) provides the same.

The concept of equality does not mean absolute equality among human beings but it is a concept implying absence of any special privilege by reason of birth, creed or the like in favour of any individual, and also the equal subject of all individuals and classes to the ordinary law of the land. Dr. Jennings stated that “Equality before the Law means among equals the Law should be equal and should be equally administered, that like should be treated alike.”\(^3\)

3.3.1. Rule of Law

The principle of rule of Law means in its first aspect that no person shall be arbitrarily, that is without the authority of Law, deprived of his life, liberty, property or reputation.\(^4\) And in the second aspect it means, in the words of Professor A.V. Dicey, equality before the Law or the equal subjection of all classes to the ordinary law of the land administered by the ordinary Law Courts.\(^5\) It means that no man is above the Law and that every person, whatever be his rank or conditions, is subject to the jurisdiction of ordinary Courts.

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1. provided that “All are equal before the law and are entitled with out any discrimination to equal protection of the Law”
2. provides that “All are equal before the law and shall be accorded equal protection of the law”.
3. Jennings; Law of the Constitution,\(^3\) Ed. p.49
Professor Dicey gave three meanings of the Rule of Law thus:

(1). 'Absence of Arbitrary power of supremacy of the Law. It means a man may be punished for a breach of Law, but he can be punished for nothing else.

(2). Equality before the law; It means subjection of all classes to the ordinary law of the land administered by ordinary law Courts.

(3). The Constitution is the result of the ordinary Law of the land. It means that the source of the right of individuals is not the written constitution but the rules as defined and enforced by the Courts'.

The first and the second aspects apply to Indian system but the third aspect of the Dicey's rule of Law does not apply to Indian system as the source of the rights of individuals is the constitution of India, where the constitution is the Supreme Law of the land and all Laws passed by the legislature must be consistent with the provisions of the Constitution.

It will be seen that the second aspect of rule of Law emphasizes, in sense, the subjection all alike, and particularly, the subjugation of all public officers to the jurisdiction of the ordinary courts of law and to the ordinary principles of Civil and Criminal liability. But the constitutional guarantee in India goes much farther than requiring that officials be subjected to Law: it requires, in addition, that the Law, which includes subordinate legislation also, should it self satisfy certain objective standards of equality and even-handed ness, not merely and so much

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between a State Official and private individual, but also between one private individual and another.¹

3.3.2. Equal Protection of the Laws

The guarantee of Equal Protection of Laws is similar to one embodied in the 14th Amendment to the American Constitution. The equal protection guarantee in the Constitution of India is more comprehensive in its coverage and more effective in operation than that in the United States of America, also. In first place the guarantee is stated by the US Constitution, to be available only against the States and not against the federal Government. It is only by judicial interpretation that the guarantee is incorporated in the Fifth Amendment as a part of the due process requirement provided there is against the Federal government. Then again in India the unique provision in Article 32 makes the enforcement of all fundamental rights, including the guarantee of equal protection, it self a secured fundamental right; and the matter involving denial of equal protection can be agitated directly before the Supreme Court.²

3.3.3. Exceptions to the Rule of Law & Test of Reasonable Classification

The above rule of Law is, however, not an absolute rule and there are number of exceptions to it. First 'Equality before the Law' does not mean the "Powers of the private citizens are the same as the powers of the Public Officials." But the Rule of Law does require that these powers should be clearly defined by Law and that abuse of authority by Public Officers must be punished by ordinary courts in the same manner as illegal acts committed by private persons. Secondly: The Rule of Law

¹ Tripathi, P.K. – Some Insights in to Fundamental Rights – Mahajan Memorial Lectures; University of Bombay; 1972,p.48.
² Ibid – p.50.
does not prevent certain classes of persons being subject to special rules, e.g. members of the armed forces are controlled by Military Laws\(^1\) and so on.

*Test of Reasonable Classification:* Article 14 forbids class legislation but it does not forbid reasonable classification of persons, objects and transactions by the legislature for the purpose of achieving specific ends. But classification must not be "arbitrary, artificial or evasive". It must always rest upon some real and substantial distinction bearing a just and reasonable relation to the object sought to be achieved by the legislature.

**3.3.4. Application of Article 14**

Article 14 can apply only when the discrimination results from laws emanating from one single source and not when law enacted by one legislature is different from a law enacted by another legislature. "Article 14 does not authorise the striking down of a Law of one state on the ground that in contrast with the Law of another State on the same subject its provisions are discriminatory. Nor does it contemplate a Law of the Centre or of the state dealing with similar subjects being held to be unconstitutional by a process of comparative study of the provisions of the two enactments. The sources of authority for the two statutes being different, Article 14 can have no application.\(^2\)

**3.3.5. Old Doctrine of Classification**

The guarantee of equal protection of laws only forbids the state from taking legislative or executive action which has certain obnoxious result, and so does any fundamental right, in essence. It is submitted that

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\(^{1}\) Pandey, J.N. – Constitutional Law of India, Central Law Agency; Allahabad, 42\(^{nd}\) Ed.2005, p.75

\(^{2}\) M.P. v. G.C., Mandawar, (1955) 1 SCR 599.
in India, the Union of India and the States are legal persons. Part III (Fundamental Rights) imposes several duties on the state, and provides for their enforcement by the Supreme Court and the High Courts: under Article 32 and Article 226.

The right which Article 14 confers by enacting a prohibition conferred on every person and not merely on citizens. It protects a person against a Law, but not against any agreement or contract\(^1\). And Law in article 14 is not confined to the Law enacted by a legislature, but includes any order or notification. Thus Article 14 protects a person not only against legislation but also against executive orders or notifications. It is not surprising, for the protection given by Article 14 would be worth little if a Law enacted by the legislature could not violate it but executive action could.

The real meaning and scope of Article 14 have been explained in a number of cases by the Supreme Court, they referred to, and their effect submersed by Das, C.J., in *Rama Krishna Dalmia V. Justice Tendolkar's case*\(^2\). Though the well settled rules of scope and meaning were not receded, in re, Special Courts Bill, 1978, case,\(^3\) as an advisory opinion under Article 143. Chandra Chud, C.J. reformulated new propositions to be followed regarding the applicability of Article 14 and *Justice Bhagwati* was one of the members in that seven member bench. *Chandra Chud C.J.*, gave leading judgment for himself and for *Justice Bhagwati*, and held that "under Article 246(2) the Parliament by Law is empowered to set up Special Courts and to provide special procedure for the trial of certain offences or classes of offences. Such law will not be violative of Art.14 if

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\(^1\) Shanta Bai V. Bombay, (1959) SCR, 265.
\(^2\) AIR 1958 SC 538
\(^3\) AIR 1979 SC 478
it lays down proper guide lines for classifying offences, class of offences or classes of offences or classes of cases to be tried by Special Court.¹

3.3.6. Justice Bhagwati’s Dynamic Concept of Equality

Justice Bhagwati aim at building up a new Jurisprudence in line with his main plank of social Justice for all, holding the Constitution Supreme and all the three important organs of the state as direct functionaries under it.

He says that- it is the constitution which alone can safeguard the citizen. But the Constitution by itself cannot do anything or achieve anything unless there is an independent strong judiciary which can interpret and enforce the constitutional rights of the citizen and the constitutional limitations on the executive and the legislature without fear or favour².

A number of judgments delivered after 1974 have claimed that the Supreme Court for the first time laid in E.P. Royappa’s case,³ a new dimension of Article 14. In this case His Lordship propounded a dynamic concept of equality, which had somehow escaped the sight of all the judges of an earlier day.

In this case, the petitioner is a member of the Indian Administrative Service in the cadre of the State of Tamil Nadu, by this writ petition under Article 32 of the Constitution asks for a mandamus or any other appropriate writ, direction or order directing the respondents to withdraw and cancel the order of transfer dated 27 June, 1972 and he challenged this on several grounds along with the violation of Articles 14 and 16. The

1 AIR 1979 SC 508, 510.
petitioner further asks for direction to re-post the petitioner to the post of Chief Secretary in the State of Tamil Nadu. The respondents are the State of Tamil Nadu and the Chief Minister of Tamil Nadu.

The Judgment of, A. N. Ray, C.J. and D. G. Palekar J. Was Delivered By Ray, C.J. dismissed the petition but did not dealt with Article 14 A separate opinion of Y. V. Chandrachud, P. N. Bhagwati And V. R. Krishna Iyer, JJ., was given By Justice Bhagwati, while delivering the concurring judgment dealt with the challenge under Article 14 and made the claim to have laid bare a new dimension of Article 14 and Justice said that we are in agreement with the final conclusion reached in the judgment delivered by the learned Chief Justice, but our approach and reasoning are a little different and we are, therefore, delivering separate judgment expressing our views on the various questions arising in the petition and observed that the concept of equality and variation between equality and arbitrariness that:

"Article 16 embodies the fundamental guarantee that Art. 14 as there shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State. Though enacted as a distinct and independent fundamental right because of its great importance as a principle ensuring equality of opportunity in public employment which is so vital to the building up of the new classless egalitarian society envisaged in the Constitution, Art. 16 is only an instance of the application of the concept of equality enshrined in Art. 14. In other words, Art. 14 is the genus while Art. 16 is a species, Art. 16 gives effect to the doctrine of equality in all matters relating to public employment...The basic principle which, therefore, informs both Articles 14 and 16 is equality and inhibition against discrimination. Now, what is the content and reach of this great equalising principle. It is a founding faith, and it must not be subjected to a narrow pedantic or lexicographic
approach. One cannot countenance any attempt to truncate its all embracing scope and meaning, for to do so would be to violate its activist magnitude”.

Further he held that, Equality is a 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 antithetic to arbitrariness. In fact equality and arbitrariness are sworn enemies; one belongs 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 Art. 14, and if it affects any matter relating to public employment, it is also violative of Art. 16.

Further on the dimension of Article 14 speaking through Justice Bhagwati the Supreme Court made the claim to have laid bare a new dimension of Article 14 that "article 14 and 16 strike at arbitrariness in state action and ensure fairness and equality of treatment. They require that state action must be based on valiant relevant principles applicable alike to all similarly situate and it must not be guided by any extraneous or irrelevant considerations because that would be denial of equality where the operative reason for state action, as distinguished from motive inducing from the antechamber of the mind, is not legitimate and relevant but is extraneous and outside the area of permissible considerations, it would amount to malafide exercise of power and that is hit by Articles 14 and 16. Malafide exercise of power and arbitrariness are different lethal radiations emanating from the same vice, in fact the later comprehends the former. Both are inhibited by Articles 14 and 16 “.
Again Justices Bhagwati pointed out the scope of ambit and reach of Articles 14 and 16 that: "the ambit and reach of Articles 14 and 16 are not limited to cases where the public servant affected has a right to a post. Even if a public servant is in an officiating position, he can complain of violation of Articles 14 and 16 if he has been arbitrarily or unfairly treated or subjected to malafide exercise of power by the state machine."

One other very important case decided by this eminent member of the Indian Judiciary which paved way to accrued enormous opportunities to read various human needs as fundamental rights embodied in the provisions of article 21 of the Constitution pertained to Maneka Gandhi v. Union of India’s case, which marked a water shed in the history of Constitutional Law of India.

Through this judgment the Supreme Court challenged the traditional concept of equality which was based on reasonable classification, and introduced new concept of equality.

The brief facts of the case are that the petitioner, Mrs. Maneka Gandhi’s Passport was impounded by the Government of India under section 10 (3) (c) of the Passport Act, 1967, by stating it was necessary in the interest of the general public’, but the Government declined to furnish the reasons for its decision. The petitioner challenged the validity of the said order on the following grounds. They are:

(1) Under section 10 (3) (C ) the powers of the Pass Port Authority to impound the Pass Port is violative of Article 14 since the condition denoted by the words ‘in the interest of the general public’ is limiting the exercise of the power is vague and undefined.

The Pass Port was impounded by the Government without affording an opportunity of hearing to the petitioner under section 10 (3) (C) would be infected with the vice of arbitrariness and it would be void as offending Article 14.

Section 10 (3) (C) is *ultravires* Article 21 since it provides for impounding of Pass Port without any procedure as required by that Article, or even if it provides some procedure prescribed under the Pass Ports Act 1967, it is wholly arbitrary and unreasonable.

Section 10 (3) (C) is violative of Articles 19 (1) (a) and 19 (1) (g) as much as it authorises imposition of restrictions on freedoms guaranteed under Article 19 (1) (a) and (g) and these restrictions are impermissible under Article 19 (2) and Article 19 (6).

The affidavit filed on behalf of the Government disclosed the reasons for which it was necessary in the interest of the general public to impound her Pass Port where that the petitioner’s presence was likely to be required in connection with the proceedings before the commission of enquiry.

As far as concerned to this affidavit the Supreme Court viewed that it could not be said that a good enough reason had been shown to exist for impounding the Pass Port of the petitioner. Then the immediate questions rose for consideration before the Apex Court are pertained to the requirement of Article 14, and content and reach of the great equalizing principle enunciated in this Article. Whether the procedure prescribed by the Pass Port Act for impounding a Pass Port meets the test of requirement is main consideration.

With regard to these issues Justice Bhagwati had observed in the following way:
“Equality is a dynamic concept with many aspects and dimensions and it cannot be imprisoned with in traditional and doctrinaire limits. 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.... Article 14 pervades like a brooding omnipresence and the procedure contemplated by Article 21 must answer the test of reasonableness in order to be in conformity with article 14. It must be right, just and fair and not arbitrary, fanciful or oppressive, otherwise, it would be no procedure at all and the requirement of Article 21 would not be satisfied.”

“To impound the Pass Port of a person is a serious matter, since it prevents him from exercising his constitutional right to go abroad and such a drastic consequence cannot in fairness be visited without observing the principle of *audi alteram partem*. Now it is true that there is no express provision in the Pass Port Act, 1967 which requires that the *audi alteram partem* rule should be followed before impounding a Pass port, but that is not conclusive of the question”. “In order to comply with the requirement of Article 21, the Parliament enacted the Pass Ports Act, 1967 for regulating the right to go abroad. The Pass Ports Act, lays down the circumstances under which a Pass Port may be issued or refused or cancelled or impounded and also prescribes a procedure for doing so, but the question is whether that is sufficient compliance with Article 21. Is the prescription of some sort of procedure enough or must the procedure comply with any particular requirements? Obviously, the procedure cannot be arbitrary, unfair or unreasonable.

The power conferred under section 10 (3) (C) of the Pass Port Authority to impound a pass port is a quasi-judicial power. The rules of natural justice would, there fore, be applicable in the exercise of this
power. Further, discussing the principle of natural justice, he observed that 'natural justice is a great humanising principle intended to invest law with fairness and to secure justice and over the years it has grown in to a widely pervasive rule affecting large areas of administrative action. Fairness in action therefore demands that an opportunity to be heard should be given to the person affected'.

Here in this case regarding the opportunity to be heard the Attorney General filed a statement on behalf of the Central Government that the petitioner could make a representation in respect of her passport and that the representation would be dealt with expeditiously and that even if the impounding of the passport was confirmed, it would not exceed a period of 6 months from the date of the decision that might be taken on the petitioner's representation. In view of the statement made by the Attorney General, it was held by the Supreme Court that it was not necessary to formally interfere with the impugned order.

As far as the ground denoted by the words in the interests of the general public concerned the Supreme Court observed that the power conferred on the Passport Authority to impound a Passport under section 10(3) (c) of the Passport Act 1967 cannot be regarded as discriminatory and it does not fall foul of article 14 and it could not contravene Article 19 (1) (a) or (g) or Article 21 of the constitution. The view of the S.C. was that the right to go abroad in the circumstances of this case was not a fundamental right though the right to travel was a part and parcel of personal liberty enshrined under Article 21.
The principle laid down in *Maneka Gandhi’s case* was reiterated by Justice Bhagwati in the case of *Raman Daya Ram Shetty V International Airport Authority* in the following words –

“It must ... therefore, now be taken to be well settled that what Article 14 strikes at is arbitrariness because an action that is arbitrary, must necessarily involve negation of equality. The doctrine of classification which is involved by the Court is not paraphrase of Article 14 nor is it the objective and end of that Article. It is in question is arbitrary and, therefore constituting denial of equality. If the classification is not reasonable and does not satisfy the two conditions referred to above, the impugned legislation or executive action would plainly be arbitrary and the guarantee of equality under Article 14 would be breached.”

Thus, according to this doctrine the content and reach of Article 14 can not be determined on the basis of the classification.

In *Ajay Hasia V. Khalid Mujib’s Case* Justice Bhagwati, again had an opportunity to explain the scope and ambit of article 14 that the society is an “Authority” and therefore “state” under Article 12, it must subject to the constitutional obligation under Article 14. The true scope and ambit of Article 14 has been the subject matter of numerous decisions and it is not necessary to make any detailed reference to them. It is sufficient to state that the content and reach of Article 14 must not be confused with the doctrine of classification.

Further, Justice Bhagwati view was that under the existing circumstances, allocation of more than 15 per cent of the total marks for

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2 Raman Daya Ram Shetty v. International Airport Authority; AIR 1979 SC 1628:: 1979 – SCC (3) 489.  
the oral interview would be arbitrary and unreasonable and would be liable to be struck down as constitutionally invalid.

One may point out that, if the marks allocated for the oral interview do not exceed 15 Per Cent of the total marks and the candidates are properly interviewed and relevant questions are asked with a view to assessing their suitability with reference to the factors required to be taken into consideration, the oral interview test would satisfy the criterion of reasonableness and non-arbitrariness. It would also be desirable that the interview of the candidates shall be tape-recorded and will be contemporaneous evidence to show, what were the questions asked to the candidates by the interviewing committee and, what were the answers given which will eliminate a lot of unnecessary controversy besides acting as a check on the possible arbitrariness of the interviewing committee.

The conclusion drawn from the above passages is that classification "is merely a judicial formula for determining whether the legislative or the executive action is arbitrary and therefore constitutes a denial of equality". The new doctrine has both a positive and a negative aspect. Positively, it asserts that Article 14 embodies a guarantee against arbitrariness; and, negatively, that the traditional and doctrinaire theory of classification" was not correct, for it failed to recognize that Article 14 embodies a guarantee against arbitrariness. ¹

Again in, Kasturi Lal Lakshmi Reddy, Represented by Its Partner Shri Kasturi Lal v. State Of Jammu And Kashmir², the writ petitions filed

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under Article 32 rose questions of some importance in the field of constitutional law.

The dispute in this Writ Petition relates to the validity of an Order passed by the Government of Jammu and Kashmir, allotting to the 2nd respondents 10 to 12 lacs blazes annually for extraction of resin (the process is called as "tapping"), from the inaccessible Chir forests in Poonch, Reasi and Ramban Divisions of the State on account of their distance from the roads and so were some forests in the Poonch Division near the line of actual control which were difficult of access.

The main three grounds on which the validity of the order was assailed on behalf of the petitioners were as follows:

(A) That the order is arbitrary, *mala fide* and not in public interest, inasmuch as a huge benefit has been conferred on the 2nd respondents at the cost of the State.

(B) The order creates monopoly in favour of the 2nd respondents who are a private party and constitutes unreasonable restriction on the right of the petitioners to carry on tapping contract business under Article 19 (1) (g) of the Constitution.

(C) The State has acted arbitrarily in selecting the 2nd respondents for awarding tapping contract, without affording any opportunity to others to compete for obtaining such contract and this action of the State is not based on any rational or relevant principle and is, therefore, violative of Article 14 of the Constitution as also of the rule of administrative law which inhibits arbitrary action by the State.

Justice examined these grounds in preface by making a few preliminary observations in regard to the law on the subject with previous cases in the following way:
“Where the government is dealing with the public whether by way of giving jobs or entering into contracts or granting other forms of largess, the government cannot act arbitrarily at its sweet will, but its action must be in conformity with some standard or norm which is not arbitrary, irrational or irrelevant. The governmental action must not be arbitrary or capricious, but must be based on some principle which meets the test of reason and relevance. This rule was enunciated by the court as a rule of administrative law and it was also validated by the court as an emanation flowing directly from the doctrine of equality embodied in Article 14”.

In the instant case, the State has, as a matter of policy, stopped selling resin to outsiders and decided to allot it only to industries set up within the State for the purpose of encouraging industrialisation. In the above context Justice Bhagwati viewed that, ‘if the State were simply selling resin, the State must endeavour to obtain the highest price subject, to any other overriding considerations of public interest and in that event, its action in giving resin to a private individual at a lesser price would be arbitrary and contrary to public interest. The yardstick of price in the open market would be wholly inept, because in view of the State policy, there would be no question of any resin being sold in the open market. The object of the State in such a case is not to earn revenue from sale of resin, but to promote the setting up of industries within the State’.

Hence, there can be no scope for complaint that the State is giving resin at a lesser price than that which could be obtained in the open market.

Further the most important case in the aspect of national importance and also where Justice Bhagwati had followed the old doctrine of equality in view of the case which involves national importance is the case of R.K.
Garg v. Union of India¹. The Supreme Court in Bearer Bonds case, speaking through Justice Bhagwati for the majority, further elaborated the boundaries of the Fundamental Right to equality guaranteed by Article 14 and who spoke of the guarantee of equality in Article 14 as a dynamic concept which is having an activist magnitude. This Writ Petition raised a common question of law relating to the constitutional validity of the Special Bearer Bonds (Immunities and Exemptions) Ordinance, 1981 and the Special Bearer Bonds (Immunities and Exemptions) Act, 1981. The principal ground on which the constitutional validity of the Ordinance and the Act is challenged is that they are violative of the equality clause contained in Article 14 of the Constitution. There is also one other ground on which the Ordinance is assailed as constitutionally invalid and it is that the President had no power under Article 123 of the Constitution to issue the Ordinance and the Ordinance is therefore ultra virus and void.

The principal question for consideration is that whether the provisions of the Act are violative of Article 14 of the Constitution. The true scope and ambit of Article 14 has been subject-matter of discussion in numerous decisions of this court and the propositions applicable to cases arising under that Article have been repeated many times during the last thirty years that they now sound platitudinous.

While dealing with this case Justice observed that “the latest and most complete exposition of the propositions relating to the applicability of Article 14, found in the judgment( Justice Bhagwati was also one of the of that bench), in re the Special Courts Bill, 1978. It not only contains a lucid statement of the propositions arising under Article 14. That decision lets out several propositions delineating the true scope and ambit of Article 14.....

¹. AIR 1981 SC 2138. (also known as Bearer Bonds case)
They clearly recognize that classification can be made for the purpose of legislation but lay down that:

(1) 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, (1) that the classification must be founded on an intelligible differential which distinguishes those that are grouped together from others and (2) that differentia must have a rational relation to the object sought to be achieved by the Act.

(2) 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.

This means Art. 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. It is clear that Article 14 does not forbid reasonable classification of persons, objects and transactions by the legislature for the purpose of attaining specific ends. What is necessary in order to pass the test of permissible classification under Article 14 is that the classification must not be "arbitrary, artificial or evasive" but must be based on the some real and substantial distinction bearing a just and reasonable relation to the object sought to be achieved by the legislature".

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Speaking on the contention of the petitioner he expressed that “while considering the constitutional validity of a statute said to be violative of Article 14, it is necessary to bear in mind certain well established principles which have been evolved by the courts as rules of guidance in discharge of its constitutional function of judicial review. The first rule is that there is always a presumption in favour of the constitutionality of a statute and the burden is upon him who attacks it to show that there has been a clear transgression of the constitutional principles”.

Further he stated that, this rule is based on the assumption, judicially recognized and accepted, that the legislature understands and correctly appreciates the needs of its own people, its laws are directed to problems made manifest by experience and its discrimination are based on adequate grounds. Another rule of equal importance is that laws relating to economic activities should be viewed with greater latitude than laws touching civil rights such as freedom of speech; religion etc., legislature can always step in and enact suitable amendatory legislation. That is the essence of pragmatic approach which must guide and inspire the legislature in dealing with complex economic issues.

With these prefatory observations, Justice proceeded to examine the constitutional validity of the Act, and observed that ‘the preamble of the Act which affords a clue to the scope of the statute’ makes it clear that the Act is intended to canalize for productive purposes of black money which has becomes a serious threat to the national economy.

“The abundance of black money has in fact given rise to a parallel economy operating simultaneously and competing with the official economy. This parallel economy has over the years grown in size and dimension and even on a conservative estimate, the amount of black
money in circulation runs into some thousand crores. The menace of black money has now reached such staggering proportions that it is causing havoc to the economy of the country and poses a serious challenge to the fulfilment of our objectives of distributive justice and setting up of an egalitarian society. There are several causes responsible for the generation of black money and they have been analysed in the Report of the Wanchoo Committee....Today there is considerable amount of black money, unaccounted and concealed, in the hands of a few persons and it is causing incalculable damage to the economy of the country. It is therefore no exaggeration to say that black money is a cancerous growth in the country’s economy which if not checked out in time is certain to lead to chaos and ruination”.

His view was that the government has adopted various measures in the past with a view to curbing the generation of black money and bringing it out in the open so that it may become available for strengthening the economy. The object of the enactment of the Act was observed by Justice Bhagwati in the following way – ‘it was to combat this menacing problem of black money and to unearth money buying secreted and outside the ordinary trade channels that the act was enacted by parliament. It was realized that all efforts to detect black money and to uncover it had failed and the problem of black money was an obstinate economic issue which was defying solution and the impugned legislation proving for issue of Special Bearer Bonds was therefore enacted with a view to mopping up black money and bringing it out in the open, and being utilised to promote’.

So this was the object for which the Act was enacted in the view of Justice Bhagwati hence, with reference to this object he held that ‘none of the provisions of the Act violative of Article 14 and its constitutional validity must be upheld’.
In Pradeep Jain V Union of India, the judgment of far reaching importance, the Supreme court through Justice Bhagwati held that the whole sale reservation of seats in the MBBS and BDS courses made by State Government of Karnataka, Uttar Pradesh and Union Territory of Delhi on the basis of 'domicile' or residence within the state or on the basis of institutional preference for students who have passed the qualifying examination excluding all students not satisfying the residence requirement, regardless of merit, was unconstitutional and as being violative of Art.14 of the Constitution.

Delivering the majority judgement Justice Bhagwati, held that admission in these courses, such as MBBS, MS, M.D. etc. should be made primarily on the basis of merit and not on the basis of residential requirement or institutional preference.²

Further he explained the position i.e. demand and availability of seats thus: ‘there is considerable paucity of seats in Medical college to satisfy the increasing demand of students for admission and some principle has therefore, to be evolved for making selection of students for admission to the Medical college and such principle has to be in conformity with the requirement of Art.14. Now the primary imperative of Article 14 is equal opportunity for all across the nation for education and advancement’.

Following on the lines of which Justice Bhagwati has decided the cases on the basis of reasonable classification, in 1993, in the case of Y. Srinivasa Rao vs. J. Veeraiah³ the appointment of a dealer of a fair price

1. 1984 SCC (3) 654.
3. AIR 1993 SC 929
shop in Andhra Pradesh was challenged. A brief facts relating to the case are An Advertisement was issued on 16.4.1990 inviting applications from the eligible candidates subject to, *inter alia*, following conditions:

(a) Preference will be given to unemployed educated persons, ladies and handicapped persons in case of equal qualifications among the candidates.

(b) Preference will be given to the candidates who are experienced in the business.

In this case, the appellant and the respondent besides other applicants applied for the fair price shop dealership and the respondent was selected after a brief interview. The collector allowed the petitioner's claim which was over-ruled by the High Court hence this case came before the Supreme Court in Special leave petition. The Apex Court has been held that government's policy to give preference to less educational persons over more educated persons in granting licence for running fair price shop was arbitrary and liable to be set aside. The appellant who was an unemployed graduate with experience of the running fair price shop was not appointed as fair shop dealer when as a matriculate persons was given dealership in view of the government policy of giving preference to less educated persons. This amounts to allowing premium on ignorance, in competent and consequently in efficiency, and therefore unconstitutional is the view of Apex Court.

*In State of Maharashtra V. Manubhai Pragji Vashi*, the Supreme Court has held that denial of grants-in-aid to recognized private law colleges while extending such benefits to other faculties, viz., Arts, Science, Commerce, Engineering, Medicine etc. by the state of

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1. 1995- (5) SCC 730.
Maharashtra is discriminatory and violation of Art.14 of the constitution. The court therefore, directed the state of Maharashtra to give the grants-in-aid to recognize private colleges on the same criteria as such grants are given to other faculties. Paucity of funds cannot be the ground for such hostile discrimination as it has no relation with the object sought to be achieved.

In State of M.P. and v. Nandlal Jaiswal's case\(^1\) Justice Bhagwati, CJII, had an occasion to deal with manufacture, export, import and sale of intoxicants and, he expressed in the following way – 'There is no fundamental right in a citizen to carry on trade or business in liquor. The state under its regulatory power has the power to prohibit absolutely every form of activity in relation to intoxicants – its manufacture, storage, export, import, sale and possession. No one can claim as against the state the right to carry on trade or business in liquor and the state cannot be compelled to part with its exclusive right or privilege of manufacturing and selling liquor. But when the state decides to grant such right or privilege to others the state cannot escape the rigour of Art.14. It cannot act arbitrarily or at its sweet will. It must comply with the equality clause while granting the exclusive right or privilege of manufacturing or selling liquor. It is, therefore, not possible to uphold the contention that Art. 14 can have no application in a case where the licence to manufacture or sell liquor is being granted by the State Government. The state cannot ride roughshod over the requirement of that Article. But, while considering the applicability of Art. 14 in such a case, the court must bear in mind that, having regard to the nature of the trade or business, the court would be slow to interfere with the policy laid down by the state government for grant of licences for manufacture and sale of liquor.

\(^1\) AIR 1986 SC 251
Further, Justice Bhagwati pointed out regarding the entitlement of the government that 'when the state government is granting licence for putting up a new industry, it is not at all necessary that it should advertise and invite offers for putting up such industry. The State Government is entitled to negotiate with those who have come up with an offer to set up such industry. In view of the inherently pernicious nature of the commodity allows a large measure of latitude to the state government in determining its policy of regulating, manufacture and trade in liquor. Moreover, the grant of licences for manufacture and sale of liquor would essentially be a matter of economic policy where the court would hesitate to intervene and strike down what the state government had done, unless it appears to be plainly arbitrary, irrational or malafide.

Hence, it is clear that, so long as the state action is bonafide and reasonable, the court will not interfere merely on the ground that no advertisement was given or publicity made or tenders invited.'

Reserve Bank of India V. N.C. Paliwal's, case is related to the integration of non-clerical cadre with the clerical services. The first question arises for consideration is whether the Reserve Bank has violated the constitutional principle of equality in bringing about integration of non-clerical with clerical services. In the instant case Justice Bhagwati held that "Article 16 and a fortiori also, Article 14 do not forbid the creation of the different cadres for government service and if that be so, equally these two articles cannot stand in the way of the state integrated different cadres into one cadre. It is entirely a matter for the State to decide whether to have several different cadres or one integrated cadre in its services that is a matter of policy which does not attract the applicability of the equality clause. The integration of non-clerical with

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1. AIR 1976, SC 2345
clerical services sought to be effectuated by the Combined Seniority Scheme cannot in the circumstances be assailed as violative of the constitutional principal of equality”. Thus Justice did not interfered with the matters of executive function as the constitution has entrusted the powers to the three main and vital organs of it to perform in their own spheres.

Again in the case of Reita Nirankari v. Union of India¹, which is also regarding to the reservations and Justice had applied his decision in the case of Pradeep Jain V. Union of India.

Further, in Tulsipur Sugar Co. Ltd. v. Secretary to the Govt. of U.P. and others². Justice held that “The Sugar factories which purchase sugarcane yielding low recovery are distinguishable as a class separately from those which do not fall in it and there is a reasonable basis to classify those left out of that group. Therefore, notifications issued by the State Govt. granting remission only to such factories purchasing sugarcane yielding low recovery are valid and not discriminatory under Art.14 of the Constitution of India.

3.3.7. Article 14 and the Rule of Law

By applying the rule of law principle, Justice Bhagwati, further widened the scope of Art.14. This was occurred in Bachan Singh v. State of Punjab.³ In this case, Justice in dissenting ,expressed his opinion that “It is now settled law as a result of the decision of this court in Maneka Gandhi v Union of India’s⁴ case that, Article 14 enacts primarily a guarantee against arbitrariness and inhibits State action, whether

¹. AIR 1984 SC 1569  
². AIR 1987 SC 443  
⁴. AIR 1978 SC 597
legislative or executive, which suffers from the vice of arbitrariness. This interpretation placed on Article 14 by the Court in Maneka Gandhi’s case has opened up a new dimension of that Article which transcends the classificatory principle. For a long time in the evolution of the constitutional law of our country, the courts had construed Article 14 to mean only this, namely, that you can classify persons and things for the application of a law but such classification must be based on intelligible differentia having rational relationship to the object sought to be achieved by the law. But the court pointed out in Maneka Gandhi’s case (supra), that Article 14 was not to be equated but after the Maneka Gandhi’s case and R.D. Shetty’s case, the court held that in regard to government largesse, the discretion of the government is not unlimited in that the government cannot give or withhold largesse in its arbitrary discretion or at its sweet will. The government action must be based on standards that are not arbitrary or irrational. This requirement was spelt out from the application of Article 14 as a constitutional requirement and it was held that having regard to the constitutional mandate of Art. 14, the Airport Authority was not entitled to act arbitrarily in accepting the tender but was bound to conform to the standards or norms laid down by it”.

Justice Bhagwati thus reiterated and reaffirmed his commitment to protect individuals against arbitrariness in the State action. It can therefore now be taken to be well-settled that if a law is arbitrary or irrational, it would fall foul of Article 14 and would be liable to be struck down as invalid. Now a law may contravene Article 14 because it enacts provisions which are arbitrary, as for example they make discriminatory classification which is not founded on intelligible differential having rational relation to the object sought to be achieved by the law or they arbitrarily select persons or things for discriminatory treatment. But there

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R.D. Shetty v International Airport Authority, AIR 1979 SC 1628

79
is also another category of cases where without enactment of specific provisions which are arbitrary a law may still offend Article 14 because it confers discretion on an authority to select persons or things for application of the law without laying down any policy or principle to guide the exercise of such discretion. Where such unguided and unstructured discretion is conferred on an authority, the law would be violative of Article 14 because it would enable the authority to exercise such discretion arbitrarily and thus discrimination without reason.

In the above discussed cases it is clear that, Justice Bhagwati propounded new doctrine in the E.P. Royappu’s case which was reiterated in Maneka Gandhi, R.D. Shetty and Ajay Hasia cases respectively. But in the case of R.K. Garg V. Union of India he followed the doctrine of classification. So at this stage he obliterated the concept of new doctrine of classification, which was developed after him and followed the path of the old doctrine of reasonable classification and gave a new light to the doctrine of equality.

3.4. Justice Bhagwati’s Judgments in the area of Reservations

It is when the discrimination is leased upon one of the grounds mentioned in Article 15, the reasonableness of the classification will be tested under Article 14, the guarantee, however, under Article 15 is available to citizens only and not to every person whether citizen or non-citizen as under Art.141.

Justice Bhagwati had an occasion to deal with cases relating to reservations of seats to the admission of students in professional colleges like Medical and Engineering. While dealing with these matters of reservations he emphasized that “It is true that Article 14 does not forbid

on the basis of the nexus between the classification and the object to be achieved even assuming that territorial classification may be a reasonable classification. The fact however that the classification by itself is reasonable is not enough to support it unless there is nexus between the classification and the object to be achieved. Therefore, as the object to be achieved in a case of the kind with which we are concerned is to get the best talent for admission to professional colleges.” In Ajay Hasia’s case he observed that whether an act is arbitrary and if it affects any matter relating to public employment, it is also violative of Art.16. Art 14 & 16 strike at arbitrariness in state action and ensure fairness and equality of treatment1.

There may be so many questions regarding the reservations in admissions to professional colleges, like, whether residential requirement or institutional preferences in admissions to technical and medical colleges can be regarded as constitutional permissible. Can it stand the test or Article 14 does it fall foul of it. With regard to the admissions to MDS course in Karnataka are concerned, the candidate should have studied for at least 5 years in an educational institution in the state of Karnataka prior to his joining BDS course. The position in the Union Territory of Delhi is little different. The question is whether such reservations or preferences are constitutionally valid when tested on the touch stone of Art.14, whether the admission to a Medical College or any other institutions of learning situate in a state can be confined to those who are residents in that state, i.e., the requirement of domicile, whether the region-wise reservations in admissions to Medical College is valid.

These questions came before the Supreme Court for consideration in *Pradeep Jain v Union of India* ¹ through group of writ petition. This case implied a great national importance affecting admissions to medical colleges, both at the undergraduate and at the postgraduate levels.

Delivering judgment, Justice Bhagwati as far as concerned to the selection of students for admission in to the medical colleges observed thus: "there is considerable paucity of seats in medical colleges to satisfy the increasing demand of students for admission and some principle has, therefore, to be evolved for making selection of students for admission to the medical colleges and such principal has to be inconformity with the requirement of Art.14. The primary imperative of Art.14 is equal opportunity for all across the nation for education and advancement."²

Further, he held that "the primary consideration in selection of candidates for admission to the medical colleges must, therefore, be merit. The object of any rules which may be made for regulating admissions to the medical colleges must be to secure the best and most meritorious students. Otherwise the very best be rejected from the admission and that will be a national loss and the interests of no region can be higher than those of the nation."

Again with regard to the reservation criteria of the institution his view was that, the fundamental is an enduring value of Indian polity and it is a guarantee to each of equal opportunity to unfold the full potential of his personality. Anyone anywhere, humble or high, agrestic or urban, man or woman, whatever be his language or religion, place of birth or residence, is entitled to be afforded equal chance for admission to any

¹. AIR 1984 SC 1420.

². *Pradeep Jain v Union of India*; AIR 1984 SC 1420.
secular educational course for cultural growth, training facility, speciality or employment...The philosophy and pragmatism of universal excellence through equality of opportunity for education and advancement across the nation is part of our founding faith and constitutional creed. The effort must, therefore, always be to select the best and most meritorious students for admission to technical institutions and medical colleges by providing equal opportunity to all citizens in the country and no citizen can legitimately, without serious detriment to the unity and integrity of the nation, be regarded as an outsider in our constitutional set-up. Moreover, it would be against national interest to admit in medical colleges or other institutions giving instruction in specialties, less meritorious students are available, simply because the former are permanent residents or residents for a certain number of years in the State while the latter are not, though both categories are citizens of India.

As far as concerned to the circumstances in which departure may justifiably be made from the principle of selection based on merit, he observed that:

"The departure can be justified only on equality oriented grounds the principle of selection followed for making admissions to medical colleges must satisfy the test of equality. The concept of Equality under the constitution is a dynamic concept. It takes within its sweep every process of equalization and protective discrimination. Equality must not remain mere idle incantation but it must become a living reality for the large masses of people. Equality of opportunity is not simply a matter of legal equality. Its existence depends not merely on the absence of disabilities but on the presence of abilities. When there is equality, legal equality always tends to accentuate it. Those who are unequal cannot be treated by identical standards; that may be equality in law but it would certainly not be real quality. It is therefore, necessary to take into account
in to *defacto* inequalities which exist in the society and take affirmative action by way of giving preference to the socially and economically and physically disadvantaged persons in order to bring about real equality”.

Further the Supreme Court speaking through Justice Bhagwati on government’s entitlement to lay down criteria and valid classification for admissions in to the courses held that¹: “the government which bears the financial burden of running the government colleges is entitled to lay down criteria for admission in its own colleges and to decide the sources from which admission would be made, such classification is not arbitrary and has a rational basis and a reasonable connection with the object of the rules. So long as there is no discrimination within each of such sources, the validity of the rules laying down such sources cannot be successfully challenged the rules lay down a valid classification. Candidates passing through the qualifying examination held by a university form a class by themselves as distinguished from those passing through such examination from the other two universities. Such a classification has a reasonable nexus with the object of the rules, namely, to cater to the needs of candidates who would naturally look to their own university to advance their training in technical studies, such as medical studies. In our opinion, the rules cannot justify be attacked on the ground of hostile discrimination or as being otherwise in breach of Article 14”.

As far as concerned to the question of region-wise reservations due to backward are of particular region, validity in admissions to medical colleges concerned Justice Bhagwati held that if creatively and imaginatively applied, preferential treatment based on residence in a backward region can play a significant role in reducing uneven levels of development and such preferential treatment would presumably satisfy the

¹. *Pradeep Jain v Union of India; AIR 1984 SC 1420*
test of Article 14, because it would be calculated to redress the existing imbalance between backward or woefully deficient in medical services and in such a case there would be serious educational and health service disparity for that backward region which must be redressed by an equality and service minded welfare state. The purpose of such a policy would be to remove the existing inequality and regional imbalance and to promote welfare based equality for the residents in the backward region.

For the question as to what should be the extent of such reservation based on residential requirement and institutional preference, Justice Bhagwati held that, reservation based on residential requirement or institutional preference should not exceed the outer limit of 70 per cent of the total number of open seats after taking into account other kinds of reservations validly made, and that the remaining 30 per cent of the open seats at the least should be made available for admission to students on All-India basis irrespective of the state or the university from which they come. We would adopt the same principle in case of region wise reservation or preference and hold that not more than 70 per cent of the total number of open seats in the medical college or colleges situated within the area of jurisdiction of a particular university, after taking into account other kinds of reservations validly made, shall be reserved for students who have studied in schools or colleges situated within that region and at least 30 per cent of the open seats shall be available for admission to students who have studied in schools or colleges in other regions within the state.

University-wise distribution of seats was thus upheld by the court as constitutionally valid even though it was not in conformity with the principle of selection based on merit and marked a departure from it. The view taken by the court was that university-wise distribution of seats was not discriminatory because it was based on a rational principle. There was
nothing unreasonable in providing that in granting admissions to medical colleges affiliated to a university, reservation shall be made in favour of candidates who have passed PUC examination of that university, firstly, because it would be quite legitimate for students who are attached to a university to entertain a desire to "have training in specialised subjects, like medicine, satisfied through colleges affiliated to their own" university, since that would promote institutional continuity which has its own value and secondly, because any student from any part of the country could pass the qualifying examination of that university, irrespective of the place of his birth or residence.

In conclusion his observations are that 'such wholesale reservation is to be unconstitutional and void as being in violation of Article 14 of the Constitution". And a fair preference, a reasonable reservation, a just adjustment of the prior needs and real potential of the weak with the partial recognition of the presence of competitive merit – such is the dynamics of social justice which animates the three egalitarian articles of the constitution'.

Again in 1986, Justice P.N. Bhagwati, Chief Justice of India, delivered judgment on the same lines of questions raised in Pradeep Jain's case is *Nidamarti Mahesh Kumar V. State of Maharashtra*¹.

This case is an appeal by special leave arises from a writ petition filed by the appellant in the High Court of Bombay challenging the validity of Rule B(2) of the Rules framed by the State Government on 21st December 1984 for Admission to the MBBS course. The validity of this rule has been assailed on the ground that it offends Article 14 of the Constitution. The challenge has been negativied by the High Court but the

¹ *Nidamarti Mahesh Kumar V. State of Maharashtra; AIR 1986 SC 1362*
appeal contends in this appeal that the decision of the High Court is erroneous and Rule B (2) must be struck down as unconstitutional and void.

The facts of the case are such the qualification required for admission to the MBBS course in the state of Maharashtra is the passing of 12th standard examination held by the Maharashtra State Board of Secondary and Higher Secondary Education, Maharashtra State Board of Secondary and Higher Secondary Education is the only Board for the whole of Maharashtra and it comprises of three divisional boards. One for Vidharba, another for Maharashtra region and the third one is for the rest of the Maharashtra state. These Boards are for the purpose of convinced to conduct the XII standard examination for area within its Jurisdiction. Through the Boards are separate, the examination which is held in one and the same and the syllabus is same with the same set of questions and same through out the state, but the standard of evaluation result is published division wise.

The admissions to the Medical colleges with in the state of Maharashtra would, therefore, agreeably be determined on the basis of merit. But for the academic year 1985 the state government departed from this principle of selection based on merit across the board and made region wise classification for admission to the MBBS course on December 21, 1984, Rule B(2) of these rules provided inter alia as under.

“Students who have passed H.S.C. (10+2) 12th standard examination of the Maharashtra State Board of Secondary and Higher Secondary Education from Schools / Colleges situated within the jurisdiction of one university are not eligible for admission to medical college or colleges situated in the jurisdiction of another university. The seats at the Government Medical Colleges in Maharashtra state except
those earmarked for nominees of the Government of India and nominees of Miraj Medical Centre and those mentioned in Rule D(4) are reserved for the students of the respective university area."

The admissions to medical colleges were thus made subject to region-wise classification in as much as a student from a school or college situated within the jurisdiction of a particular university could seek admission only in the medical college or colleges situated within the jurisdiction of that University and he could not be eligible for admission to medical college or colleges situated in the jurisdiction of another university. This region wise classification made by the State Government for the purpose of admissions to medical colleges was assailed by the appellant by filing a writ petition in the High Court of Bombay on the ground that it was violative of Article 14 of the constitution. The writ petition was heard by a Division Bench of the High Court and by a judgment dated 1st August, 1985 the High Court dismissed the writ petition.

When this appeal filed before the Supreme Court, Justice Bhagwati allowed and observed thus, as a result of the region wise classification, a student from one region would have no opportunity for securing admission in the medical college or colleges in another region, though he may have done much better than the student in that other region. The region wise scheme adopted by the State Government in Rule B (2) clearly results in denial of equal opportunity violative of Article 14 of the Constitution.

While distinguishing the Rule B (2) which dealt with the region-wise classification from the classification based on the backwardness, Justice Bhagwati observed that where the region from which the students of a university are largely drawn is backward either from the point of view
of opportunity for medical education, or availability of competent and adequate medical services, it would be constitutionally permissible, without violating the mandate of the equality clause, to provide a high percentage of reservation or preference for students coming from that region.

But it is not possible to accept the view that the provision in Rule B (2) that a student from a school or college situated within the jurisdiction of a particular university would not be eligible for admission to medical college or colleges situated in the jurisdiction of another university would be confined only within the jurisdiction of the same university.

Further, in support of the reservation of few seats for students made by the state government, he had given reasons that: "it would not be unconstitutional for the state government to provide for reservation or preference in respect of a certain percentage of seats in the medical college or colleges in each region in favour of those who have studied in schools or colleges within that region and even if the percentage stipulated by the State Government is on the higher side, it would not fall foul of the constitutional mandate of equality....In the first place it would cause a considerable amount of hardship and inconvenience if students residing in the region of a particular university are compelled to move to the region of another university for medical education which they might have to do if selection for admission to the medical colleges in the entire state were to be based on merit without any reservation or preference region wise. It must be remembered that there would be a large number of students who, if they do not get admission in the medical college near their residence and are assigned admission in a college in another region on the basis of relative merit, may not be able to go to such other medical college on account of lack of resources and facilities and in the result they would be effectively deprived of a real opportunity for pursuing the medical course.

89
even though on paper they would have got admission in the medical college."

Further, he emphasized the need for reservation of few seats open for all India basis and in case of region wise reservation or preference it was held that not more than 70 per cent of the total number of open seats in the medical college or colleges situate within the area of jurisdiction of a particular university, after taking into account other kinds of reservations validly made, shall be reserved for students who have studied in schools or colleges situate within that region and at least 30 per cent of the open seats shall be available for admission to students who have studied in schools or colleges in other regions within the state. The percentage of 70 and 30 in case of region wise reservation are to be applied after deducting such number of open seats as are required to be made available for admission of students on All India basis in accordance with the principles laid down in the decision in Dr. Pradeep Jain’s case as modified from time to time by various subsequent judgments delivered by the Supreme Court.

Justice Bhagwati had one more occasion to deal with the arbitrary and discriminatory action taken by the State in *Amarjit Singh Ahluwalia v Union of India* case. In this case, the question which arose consequent on the integration of Class I of Public Health Service with Provincial Civil Medical Service, Class I was as to how the inter se seniority of the officers coming form the two services should be determined in the integrated service after its reorganisation on 15.7.1964.

In the above context Justice Bhagwati’s consideration was that, the true scope and ambit of the principle of seniority laid down in clause (2) (ii) of the memorandum dated 25.10.1965 and it applied in relation to

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1. 1975-AIR (SC) 984 :: 1975-SCC -3-503
officers coming from both services for the purpose of determining seniority and held that, clause (2) (ii) of the memorandum dated 25th October, 1965 was in the nature of administrative instruction, not having the force of law, but the State Government could not at its own sweet will depart from it without rational justification and fix an artificial date for commencing the length of continuous service in the case of some individual officers only for the purpose of giving them seniority in contravention of that clause. That would be clearly violative of Articles 14 and 16 are wide and pervasive.

Delivering the judgment based on the principle that arbitrariness should be eliminated in state action Justice Bhagwati held that: “we find that the order dated 4/12/1967 gave an artificial date from which the continuous service of respondents Nos.3 to 19 shall be deemed to have commenced, though in fact and in truth their continuous service commenced from different dates and it was thus in contravention of the principle of seniority laid down in clause (2) (ii) of the memorandum dated 25.10.1965, it would have to be held to be void as being violative of Articles 14 and 16.

Therefore, Justice Bhagwati reiterated that “these two articles embody the principle of rationality and they are intended to strike against arbitrary and discriminatory action taken by the ‘state’. Where the state government departs from a principle of seniority laid down by it, albeit by administrative instructions, and the departure without reason and arbitrary, it would directly infringe the guarantee of equality under Articles 14 and 16.”

3.5. Justice Bhagwati’s concern for Educational rights

Education is a basic need of man along with food, cloth and shelter. Education is the source of development of a man and it is the source of...
many rights without which many other objectives can not be achieved and for the success of democratic system of government, education is one of the essential element.

An educated citizen has to choose the representatives who form the government. Education gives a person human dignity who develops himself as well as contributes to the development of his country. Moreover education is a basic human right.

The framers of the constitution perhaps were of the view that in view of the financial condition of a new state it was not feasible to make it a fundamental right under Part III of the constitution, but included it is Part IV as one of the directive principles of state policy. In the meantime, the supreme court in *Unni Krishnan v State of A.P.* declared that the right to education for the children of the age of 6 to 14 years is a fundamental right, even after this there was no improvement and finally the Government of India enacted constitution (86th amendment) Act, 2002.

Now right to Education is a fundamental right under Article 21A which provides that "the state shall provide free and compulsory education to all children of the age of 6 to 14 years in such manner as the state may, by law determine." But prior to the above mentioned case there are some

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1. The framers of the Indian Constitution were well aware of this basic need and therefore they incorporated two provisions under the Directive Principles in Articles 41 and 45. Art. 41 directs the state shall ensure the people with in the limit of its economic capacity and development of education and Art 45 required the state to make provision within ten years for free and compulsory education for all children until they complete the age of 14 years, with an object to abolish the illiteracy.


other cases of which Justice Bhagwati identified, expressed and emphasized concern for the educational rights.

In *Francis Coralie v Administrator, Union Territory of Delhi*¹ Justice ruled that the right to live with human dignity also includes facilities for reading and writing. While dealing with *Bandhua Mukti Morcha v Union of India*² – *Justice* considered about the education of workers’ children.

In dealing with *Salal Hydro Electric Project v state of Jammu & Kashmir’s case*³, Justice Bhagwati made few observations with regard to the education of the children of labourers engaged in the project work that the possibility of augmenting their meagre earnings through employment of children is very often the reason why parents do not send their children to schools and there are large drop-outs from the schools. This is an economic problem and it cannot be solved merely by legislation…we would suggest that whenever the central government undertakes a construction project which is likely to last for some time, the central government should provide that children of construction workers who are living at or near the project site should be given facilities for schooling and this may be done either by the central government itself or if the central government entrusts the project work or any part thereof to a contractor, necessary provision to this effect may be made in the contract with the contractor”.

While Justice Bhagwati performing as Chief Justice of India, had again an occasion to deal with the issue relating to education in the case of

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¹ AIR 1981 SC 746  
² AIR 1984 SC 802  
³ Labourers Working on Salal HydroElectric Project V. Jammu & Kashmir: AIR 1984 SC 177
Rajendra Prasad Mathur v. Karnataka University and another\(^1\). In this case a group of appeals by special leave have been filed by the students challenging the cancellation of their admissions by the Karnataka University. The facts giving rise to these appeals are few and may be briefly stated as follows: R. P. Mathur, passed Higher Secondary Examination conducted by the Board of Secondary Education, Rajasthan and applied for admission to the first year of the Engineering Degree Course in Shri Dharmasthala Manjunatheshwara College of Engineering and Technology for the academic year 1981-82 subsequently he joined in the same college which is a private Engineering College affiliated to the Karnataka University and admission to the first year of the Engineering Degree course in this College was, therefore, governed by the Rules for admission made by the Karnataka University.

On the basis of an order made by the Vice-Chancellor on 11\(^{th}\) August, 1980, in exercise of the emergency powers conferred upon him by S. 12(5) of the Karnataka Universities Act, he issued an Order prescribing, *inter alia*, condition of eligibility for admission to the first year of the Engineering Degree Course. This Order made by the Vice-Chancellor was approved by the Academic Council and the Syndicate and it governed admissions to be made to the first year of the Engineering Degree Course in the academic year 1981-82 and subsequent years. The condition of eligibility provided by this Order was as follows:

"Candidates shall have passed the two-year pre-university examination of the pre-university education board, Bangalore or an examination held by any other Board or University recognised as equivalent to it with English as one of the languages and Physics, Chemistry and Mathematics as optional subjects with the necessary

\(^1\) AIR 1986 SC 1450

94
percentage of marks laid down by the University at the time of admission. A student who has passed B. Sc. Examination with Physics, Chemistry and Mathematics and secured not less than 50% of the aggregate of Physics, Chemistry and Mathematics, is also eligible for admission. However, he cannot claim exemption of any sort."

As a result of the above order, whilst the appellant was studying for the second year, his admission (and five others) was disapproved by the Karnataka University in a letter dated 7th April 1983 addressed by the Registrar to the Principal of the Dharmasthala Manjunatheswara College of Engineering and Technology in the following terms: "the H.S.C. Examination of the H.E.F. Board and H.S.M. Board, Rajasthan which is equivalent to 11 years schooling. As per our eligibility requirements, a candidate must have passed two year Pre-University examination of the pre-University Examination Board, Bangalore or an examination held by any other Board or university recognised as equivalent to it. As per our eligibility requirement, H.S.C. examination of 11 years duration is not considered as equivalent to our two year Pre-University examination as the pattern of education in our State is 10 years plus two years while it is 11 years schooling in Rajasthan State. Therefore, the two candidates (1) Shri R. P. Mathur and (2) Sri Abhay Kumar Jain are not eligible for admission to the first year P.E. Course during the year 1981-82 as per our eligibility rules. Candidates may be informed accordingly."

In the above state of affairs the matter under Article 136 of the constitution came before the Bench comprising Justice P.N. Bhagwati, speaking through him the court opined that: "in the first place it may be noted that what the condition of eligibility laid down by the Karnataka University requires is that the students seeking admission should have passed the two year Pre-University Examination of the Pre-University Education Board, Bangalore or an examination held by any other Board or
University recognised as equivalent to it. The examination held by any other Board or University which has been passed by the candidate must be recognised by the Karnataka University as equivalent to the two year Pre-University Examination of the Pre-University Education Board, Bangalore. The equivalence has to be decided by the Karnataka University and it is not a matter of objective assessment or evaluation by the Court. It is for each University to decide the question of equivalence of an examination held by other Board or University with the examination which primarily constitutes the basis of eligibility.

It is for each University to decide the question of equivalence and it would not be right for the Court to sit in judgment over the decision of the University because it is not a matter on which the Court possesses any expertise. The University is best fitted to decide whether any examination held by a University outside the State is equivalent to an examination held within the State having regard to the courses, the syllabus, the quality of teaching or instruction and the standard of examination. It is an academic question in which the Court should not disturb the decision taken by the University.

Further the Court held that 1 "it is quite possible that the appellants did not know that neither the Higher Secondary Examination of the Secondary Education Board, Rajasthan nor the first year B.Sc. examination of the Rajasthan and Udaipur Universities were recognised as equivalent to the Pre-University Examination of the Pre-University Education Board, Bangalore. The appellants being young students from Rajasthan might have presumed that since they had passed the first year B.Sc. examination of the Rajasthan or Udaipur University or in any event the Higher Secondary Examination of the Secondary Education Board,

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1. Rajendra Prasad Mathur v. Karnataka University and another AIR 1986 SC 1450
Rajasthan they were eligible for admission. The fault lies with the Engineering Colleges which admitted the appellants because the Principals of these Engineering Colleges must have known that the appellants were not eligible for admission and yet for the sake of capitation fee in some of the cases they granted admission to the appellants. We do not see why the appellants should suffer for the sins of the managements of these Engineering Colleges. We would therefore, notwithstanding the view taken by us in this judgment allow the appellants to continue their studies in the respective Engineering Colleges in which they were granted admission. But we do feel that against the erring Engineering Colleges the Karnataka University should take appropriate action because the managements of these Engineering Colleges have not only admitted students ineligible for admission but thereby deprived an equal number of eligible students from getting admission to the Engineering Degree Course”.

_Narendra Bahadur Singh and others, v. Gorakhpur University and another_,’s case, judgment by an order Justice P.N. Bhagwati, C.J.I., directed the Gorakhpur University to take care not only by itself but to ensure that no College affiliated to it shall give admissions to the Students more than the prescribed number, because the students who are admitted in excess of the prescribed number suffer in the process and it is the duty of the University to take care to, see that the students are not duped by the Colleges.

The above cases reveal Justice Bhagwati’s concern to extend the arm of judiciary to protect the students academically from the faults of administration as well as his recognition for the privileges vested with the autonomous bodies like Universities.

1. _AIR 1987 SC1154_