Part - B
Constitutional Provisions Relating to Social Justice
CHAPTER IV
EQUALITY AND SOCIAL JUSTICE

Men are all makers of one species of a simple class of objects i.e. human beings, having certain 'human worth' and are capable of being ends in themselves. Their inherent rationality and logicality are the basic attributes helping them in their struggle for existence in this biological world. Men desire not only to live, but to live well - physically, intellectually, ethically and aesthetically.

Justice has always evoked ideas of equality. Equity signifies equality. Rules and regulations, right and righteousness are concerned with equality in value. If all men are equal and all men of the same essence, the common essence, entitled them to the same fundamental rights and to equal liberty. In short, justice is simply another name for liberty, equality and fraternity. The doctrine of equality is the foundation of social justice. It refuses to accept a state in which some men are more equal than others. It recognises equality between men in the

society.\textsuperscript{4} Equality and social justice has to go side by side. Equality must become a living reality for the large masses of the people for the attainment of just and equal social order. The doctrines of equality and social justice are complementary to each other and their ultimate goal is to achieve an equal society. Laski has also said:

"Equality, involves up to the margin of sufficiency identity of response to primary needs. And that is what is meant by justice. We are rendering to each man his own by giving him what enables him to be a man. We are, of course, therein protecting the weak and limiting the power of the strong. We so act because the common welfare includes the welfare of the weak as well as of the strong...."\textsuperscript{5}

Social justice is a relative concept taking in its wings the time and circumstances, the people, their traditions and aspirations, their turmoil and torments, their backwardness, blood, sweat and tears.\textsuperscript{6} The virtue of social justice suffers from the vice of artificiality of social inequality, and social inequality as such assumes a particular responsibility to include within its fold and sweep a most comprehensive sense of economic justice.

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\item[5.] Harold J. Laski, \textit{Grammar of Politics} 160 (1948).
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and social justice. Thus the concept of social justice aims at removing all inequalities and affording equal opportunities to all citizens in social as well as economic activities.  

Social justice does not aim at providing justice to 'haves' but equally cares for the 'have-nots' viz., underdogs, disadvantaged, scorned and under privileged populace. Social justice, therefore, means "justice which is not confined to a fortunate few, but takes within its sweep large masses of disadvantaged and underprivileged segments of society; justice which not only penetrates and destroys the inequalities of race, sex, power, position or wealth but is also heavily weighed in favour of the weaker sections of humanity; justice which brings about equitable distribution of social, material and political resources of the community, justice which is the law must ensure the people that 'Rule of Law' becomes 'Rule of Life' and social justice a reality for them". 

Ideas of equality and inequality are in all societies built

into conceptions of justice, and no society exists without a conception of justice. The conception of justice rarely, if ever, rests solely on a simple arithmetical notion of equality in which all the constituent parts of a society, whether individuals or classes, are equally regarded in every respect. The more common of all is the attempt to establish equality by bringing about a just proportion between reward and merit. It is an old argument, and one probably acknowledged by every civilisation, ancient as well as modern, that the ends of justice are defeated when equals are treated unequally, but also when unequals are treated equally.\textsuperscript{10}

For justice requires that consideration be given to human beings as human beings, to what they have in common, and not merely to the myriad differences that no doubt exists among them. Therefore, the idea of human beings as equal claimants to justice in this broad sense can be a monopoly of any one society or culture to the exclusion of all others.\textsuperscript{11}

Therefore, a society, where the basic needs are satisfied, common decency and concern for other people's well being exists, with a feeling of community, the society can be said to be an ideal equal society based upon social justice.

\textsuperscript{10} Andre Beteille, \textit{The Idea of Natural Inequality and Other Essays} 36 (1983).
\textsuperscript{11} Ibid.
MEANING AND CONCEPT OF EQUALITY:

The word 'equality' is incapable of single definition as in its ambit, it is multi-dimensional. It is a comprehensive concept having many shades and connotations. It can only be realised and understood in contradiction with inequality. According to Oxford English Dictionary, the word equality means the condition of having equal dignity, rank or privileges with others; the fact of being on an equal footing; the condition of being equal in power, ability, achievement or excellence and in person: fairness, impartiality, equity.

There is a variety of ways to express the idea of equality. Different forms of equality depending upon its operation and application have been emphasised by different writers from time to time:

Social Equality

Social equality implies equality of status. It requires that no discrimination should be practised against any person on the

13. Vcl. III, p.253 (1969). Also see, Webster's Third New International Dictionary, vol. 1, p.767 (1976) [Equality was defined as the quality or state of being equal, as a sameness of equivalence in number, quantity or measure, likeness or sameness in quality, power, status and degree].
ground of race, religion, caste, sex or place of birth. Grouping of people on any other than the basis of fellow feeling or community would be against the basic principle of equality, as social equality requires the development of a society in which everyone has an equal social status, respect or treatment.

Political Equality

Political equality requires widest diffusion of political power. It is the extension of participation in a government, industry, education, social services, family life etc., which promotes real freedom from arbitrary power and oppression. Dictatorship in any form is clearly antithetical to political equality. Parliamentary democracy seeks to achieve political equality by the grant of adult suffrage.

Economic Equality

Economic equality means reducing disparities of income and wealth and a practical recognition of the equal rights of all persons to live and develop. Traditionally, two requirements have been understood to be implicit in the demand for economic equality. The first requirement is represented by the slogan,

14. Supra note 2 at 32.
16. Ibid., p.5.
17. Supra note 2 at 32.
'equality of opportunity'. It means that every one, irrespective of his class or family connections should have an equal start in life and an equal opportunity of gainful occupation or employment. The second requirement is that of 'fair shares', which implies that although the persons engaged in the economic process cannot have equal incomes, extravagant disparities of income ought to be avoided. Egalitarians believe that it is completely indefensible for some to live in luxury which others face utter deprivation. Beyond this, they look forward to a society in which everyone has not just a bearable, but a satisfying fulfilling life.

Cultural Equality

Cultural equality is the solvent of inequalities in all spheres, social, political and economic. Inequalities arising from religion, caste, community or sex add to systematic differences of wealth, power and status, but these can all be reduced to a material extent to the widest diffusion of knowledge and of a spirit of self-reliance and mutual co-operation among the people. Promoting education of the whole community in this sense is the surest means of establishing an order of human

18. Ibid., pp. 32-33.
equality. 20

Legal Equality

Legal equality implies the equal guarantee of the basic rights of life, liberty and prosperity along with many other important rights. With the growth of democratic institutions and the enactments of new Constitutions in the world, these basic rights have been provided adequate legal sanctions. Everyone is equal 'before' law and 'for' law i.e total and equal protection and recognition from law has been provided to all despite having inequality on any other plane viz. social, cultural, economic etc.

Equality as a value is specially favoured in modern times as a key to justice. As other conceptions of justice 'equality' principle meets the problem of variable interpretations of it. 21 Despite the refinement that distinguish the theories of various philosophers, most such theories represent variations on two basic notions of equality :

1. Jaffersonian concept of Equality or Formal Equality
2. Jacksonian concept of Equality or Proportional or Operational Equality.

1. Jaffersonian concept of Equality or Formal Equality :

In this sense it means nothing more than the uniform

20. Supra note 2 at 35. Also see, supra note 15 at 5.
enforcement of a rule without regard to the content of rule itself. No attempt is made to determine whether it applies to more or fewer groups than it should whether it has unjustly singled out a particular group for imposition of regular burdens. Each individual is to be protected in the exercise of his civil liberties so that each is afforded equal opportunity to fulfil his capabilities. This model of equality can also be termed as 'formal equality'. It should be accorded to all only if it can be shown that no relevant differences exist among them. This model of equality may not call for positive effort on the part of the state to level up the inequalities present in the society. This form of equality is achieved by treating all persons equally. This requires that there should be free and equal competition for acquiring advantages. Position or other goods are to be allotted only according to performance along some socially useful scale. In this sense equality is merely a common sense accompaniment of the free enterprising individualism.  

22. Ibid. [This means that they are not allotted according to race, sex, caste or social position or any other similar ground which is not considered to be relevant for different treatment. This form concedes that human beings are diverse and unequal in most respect, it nevertheless concludes that all such differences are irrelevant for purposes of distributing benefit and burdens among members of society. This model seeks to treat men identically in the public sector regardless of inequalities in private situation].
2. **Jacksonian concept of equality or Proportional or Operational Equality:**

According to Jacksonians, it is not sufficient that the law treats each person alike, but the law should afford to each individual all those opportunities of basic nature which are important liberties. In other words, people are equally entitled to all that facilitate their development as rational persons. This concept of equality ensures, for each individual existence of a broad class of external circumstances that facilitates full development and expression of the capacities involved in rational life and that afford unrestricted access to available goods. Richard calls this concept of equality as 'moral concept of equality' or 'proportional equality.' This concept has sufficient room to accommodate preferential relief to the deprived and depressed elements of the society. It is the equality of result for socially disadvantaged rather than equality in the formal sense.

25. The ideas of compensatory state action to make people who are really unequal in their wealth, education or social environment, equal in specified area was firstly applied judicially by the Supreme Court of the United States in *Griffin v. Illinois* 351 U.S. 12 (1955).
Proportional equality does take cognisance of differences among men and may require numerically different treatment because of these differing needs of its citizens, whenever those needs stand in the way of equal access to the basic resources of national life. Equality in proportional sense requires not only unequal treatment amongst unequals, but it also requires that unequals whose social and educational background is too deficient are to be made equal by allowing extra help. Forms of extra help depends upon available resources and the state will and effort in this direction. For example, education is one of the most significant instruments for the equalisation of opportunities for realising the potentialities of developed and for the removal of the social and economic disabilities of the Scheduled Castes and Scheduled Tribes. Thus promotion of education at all levels is the only way to enhance the competitive skills. 26

It is true that men have never been nor ever will be equal, but we have to ensure that differences between them are not due to such attributes as race, caste, health or nationality. Proportional equality, however, does not say that all men should

have the same rewards, but that they should have equal chances. Jacksonians did not proclaim a right to happiness but only to the pursuit of happiness - the opportunity to give it. To sum up, proportional equality means neither full uniformity or spacious talentism.27

Thus, the conflict is between equality and equalisation. This 'proportional or operational equality' is more socialistic and humanistic. This model emphasises equality that produces results and not mere illusory opportunities. Thus the notion of equality as an aspect of justice itself has two phases, namely equality as an end of justice and equality as a means of doing justice. The former requires treating all men equally and latter envisions taking all men equal. Formal Equality involves the principle of impartiality and proportional equality that of benevolence an element of affirmative duty to create such conditions in which equality as a principle of impartiality may not remain a mere illusion.28 Therefore, the basic concept of equality consist of some important elements, such as impartiality, equality of consideration and of opportunity, allotment of shares etc.

From eighteenth century onward in Constitutions, policies national and international charters, 'equality' as a vital principle was incorporated as a fundamental or basic right or claim of human beings.

INTERNATIONAL LEGISLATIVE PROVISIONS REGARDING 'EQUALITY':

The United Nations Charter, 1945\(^29\) reaffirms faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and is determined to promote social progress and better standards of life in larger freedom. \(^{30}\) Articles 1 (3) and 1 (4) promote and encourage respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion and harmonise the actions of nations in the attainment of these common ends.

Universal Declaration of Human Rights, 1948\(^{31}\) in its Preamble recognises the inherent dignity, equal and inalienable rights for all the members of human society as the foundation of

\(^{29}\) Signed at San Francisco on 26 June 1945.

\(^{30}\) See Preamble of the U.N. Charter.

\(^{31}\) Adopted and Proclaimed by General Assembly Resolution 217A (III) on 10 Dec. 1948.
freedom, justice and peace in the world.\textsuperscript{32}

International Covenant on Civil and Political Rights, 1966\textsuperscript{33} provides that all persons are equal before the law and are entitled without any discrimination the equal protection of the law. The law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status \textsuperscript{34}

Equal rights of men and women to the enjoyment of all civil and political rights,\textsuperscript{35} equal opportunity to take part in conduct.

\textsuperscript{32} Universal Declaration of Human Rights, Art. 1: All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood. (This Article of the Declaration combines equality with fraternity or brotherhood) Art. 2 connects equality and non-discrimination. Arts. 6 and 7 clearly explain the concept of equality. Equality as a legal and remedial right has also been recognised in the declaration under Arts. 8 and 10. Right to equal access to public service, universal and equal suffrage, equal access to higher education alongwith free elementary education for the full development of the human personality are the other facets of right to equality recognised in the Declaration. See, Arts. 21 (2) (3) ; 26 (1) (2).


\textsuperscript{34} International Covenant on Civil and Political Right, 1966, Art. 26.

\textsuperscript{35} Ibid., Art. 3
of public affairs and to have access to public service, universal and adult suffrage\textsuperscript{36} are the different equality rights specifically mentioned under the International Covenant on Civil and Political Rights, 1966.

International Covenant on Economic, Social and Cultural Rights, 1966\textsuperscript{37} undertakes to ensure the equal rights of men and women to the enjoyment of all economic, social and cultural rights set forth in detail in the present Covenant.\textsuperscript{38} Equal remuneration for work of equal value without distinction of any kind i.e. equal pay for equal work\textsuperscript{39}, equal opportunity for everyone to be promoted\textsuperscript{40}, right of everyone to have education\textsuperscript{41} and to social security\textsuperscript{42} etc. are the postulates of rights to equality given under the Covenant.

Similarly, European Convention on Human Rights, 1950 equality regarding the enjoyment of rights and freedoms set forth in the convention which would be secured without

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\item\textsuperscript{36} \textit{ibid.}, Art. 25 (a) (b) (c).
\item\textsuperscript{37} Adopted and opened for signature and ratification by General Assembly Resolution 2200 A (XXI) of 16 Dec. 1966. Entry into force: 3 Jan. 1976.
\item\textsuperscript{38} The International Covenant on Economic, Social and Cultural Rights, 1966 Art. 3.
\item\textsuperscript{39} \textit{ibid.}, Art. 7 (a) (i).
\item\textsuperscript{40} \textit{ibid.}, Art. 7 (c)
\item\textsuperscript{41} \textit{ibid.}, Arts. 13, 14.
\item\textsuperscript{42} \textit{ibid.}, Art. 9
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discrimination on any ground such as sex, race, colour, language, religion, political or any other opinion, national or social origin, association with a national minority, property, birth or other status.43

American Convention on Human Rights was signed on 22 Nov. 1969 and African Charter on Human and People's Rights adopted by Kenya in June 1981 was also on the similar lines reaffirming, the right to equality and equal protection of the law without any discrimination.44

Charter of the Organisation of American State, 1948 signed and ratified by many American states in its Preamble resolved to pursue democratic institution having system of individual liberty and social justice based on respect for the essential rights of man. Article 43, of the Charter dealing with social standards, provides that "all human beings, without distinction as to race, sex, nationality, creed or social condition have a right to material well-being and to their spiritual development, under circumstances of liberty, dignity, equality of opportunity and economic security."

In International Convention on Elimination of All Forms of Racial Discrimination 1965, the member states pledged themselves to take action for the promotion and observance of human rights and fundamental freedoms for all, without distinction as to race, sex, language or religion.

FOREIGN CONSTITUTIONS:

In 1776, American Declaration of Independence declared that "all men are created equal." Under Amendment XIV of USA Constitution, equal protection of the laws to each and every person has been envisaged. Section 1 says that State shall not deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.


According to Art. 1 of this declaration, "men are born and remain free and equal in rights. Social distinctions can be based only upon public utility". Law is the expression of the general will. 46

Similarly provisions relating to 'equality' are found in the fundamental rights of the Constitution of Ireland, 47 in the Constitution of Italy, in the Fundamental Statute of 1848 under the chapter regarding the rights and duties of citizens, 48 in Constitution of Swiss Federation (Switzerland), 1874 as modified upto 1931 49 and under Provisional Constitution of China adopted at the Fourth General Session of the National People's Convention, 1931. 50 The Japanese Constitution, 1946 also combines the two concepts of legal equality (equality before law) and non-discrimination. 51

As England does not have a written Constitution, individual rights in England have to be deduced from common law. Dicey asserted equality before law as a corollary from 'rule of law.' Rule of law means predominance or supremacy.

46. Declaration of Rights of Man and Citizen, France 1789, Art. 6
47. Constitution of Ireland, Article 40(1)
of law, which is the basic characteristic of English Constitution. It is contrasted with every system of Government based on exercise by persons in authority of wide, arbitrary or discretionary powers of constraint. Every man, whatever be his rank condition or position is subject to ordinary law of the realm and amenable to the jurisdiction of the ordinary tribunals, and no man is above law. According to Wade, law should be even-handed between government and the citizens. Government should be conducted within a framework of recognised rules and principles which restrict discretionary power. Everything must be done according to law. Coke spoke in picturesque language 'the golden and straight metwand' of law, as opposed to the 'uncertain and crooked cord of discretion'. Government should not enjoy unnecessary privileges or exemptions from ordinary law. In a system based on rule of

53. Ibid., p.193.
54. H.W.R. Wade, Administrative Law 24 (1985). [It was a lacuna in the rule of law until 1947 that the crown was in law exempt from the ordinary law of employer's liability for the wrong done by its employees, since there was no necessity for this immunity and in practice crown did not claim it. In principle, all public authorities should be subject to all normal legal duties and liabilities which are not inconsistent with their governmental functions].
55. Ibid., p. 22.
56. Ibid., p. 24.
law, unfettered governmental discretion is a contradiction in terms. The common theme is that the notion of absolute or unfettered discretion is rejected. Whenever there is arbitrariness or unreasonableness, there is denial of rule of law. Rule of law is the most common trait of every civilised and orderly state. This means that no man is punishable, nor can be made to suffer in body or goods, except for a distinct breach of law and nothing else. Every man is individually responsible for his own acts and no man is above the law. It is absolutely impartial. All persons are not only subject to the jurisdiction of the ordinary tribunals but all have a right of equal access to such tribunals, which impartially administer the law without fear.

Therefore, the rule of law implies existence of public order. It is synonym for law and order and is a universally recognised principle. Since fundamentally, it requires a limitation of powers, most legal states (states regulated by law) have sought to attain it by a written Constitution, for such a Constitution is fundamental law which limits by express rules

58. Supra note 54 at 355.
60. Ivor Jennings, *Law of the Constitution* 43 (5th ed.).
61. Ibid., p. 45.
the powers of the various governing bodies and thus substitutes Constitutional government (in large part a synonym for the rule of law) for absolutism. Rule of law contains notion of equality, a notion whose scope, however, is as imprecise as the notion of the rule of law itself. 

In India also charter of equality is found incorporated in the Rigveda, the most ancient of the Vedas and also in Atharvaveda. Rigveda proclaims that no one is superior or inferior. All are brothers. All should strive for the interests of all and should progress collectively and let there be oneness in your resolutions, hearts and minds. Let the strength to live with mutual co-operation be firm, are you all.

Atharvaveda also proclaims that all have equal rights in articles of food and water. The yoke of the chariot of life is placed equally on the shoulders of all. All should live together with harmony supporting one another like the spokes of a wheel of a chariot connecting its rim and the hub.

All these Vedic provisions forcefully declare equality.

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62. Ibid., p. 49.
64. Rigveda-Mandala 5, Sukta 60, Mantra 5.
fraternity and dignity among human beings. This was the concept of total equality among human beings at the earliest period of civilisation of India. The society came to be divided sometime later, on functional basis, into four varnas, or chaturvarnas. But the superiority or inferiority of an individual by birth in any of these classes appears to have not been in existence. At a still later point of time, in the long meandering course of our history, the society got divided into innumerable castes and sub-castes. The evil of discrimination as high and low among men, on basis of birth, hereditary avocations and other considerations, raised its head and pernicious practice of untouchability with all its degrading implications came into existence.

67. Four varnas or chaturvarnas namely - 1. Brahmanas, the class of persons taking to teaching and other learned professions; 2. Kshatriyas, warriors or the ruling class; 3. Vaishyas, the class of persons undertaking trade, commerce and agriculture; and 4. Sudras, the class of persons rendering all other essential services to the society.

68. Supra note 63 at 582-584; Also see, K.C. Yadav, *India's Unequal Citizen: A Study of Other Backward Classes* 41 (1994). [The Caste is derived from a Latin word 'Castus,' meaning 'pure' or unmixed .... The caste or such like things are found in some form or the other in almost every society the world over. Those who say or believe that only the Indian society - is compartmentalised are wrong] For an interesting discussion, see, Gerald Berreman, *Caste and Other Inequalities: Essays on Inequality* (1979).
The idea of economic self-sufficiency, the passion for simple living and high thinking based on dharma, reflected in Post Vedic period also. During the Muslim and British invasions, there was no deficiency of social cohesion in the community life, but castes, \(^{69}\) were prevalent in the Indian society. Nevertheless, there was no charter of any kind of civil rights dealing with equality or justice in pre-independent India.

**CONSTITUTIONAL PROVISIONS REGARDING EQUALITY**

Equality is the faith and creed of our Constitution. \(^{70}\) In the Preamble, it is resolved unequivocally that "equality of status and of opportunity" has to be secured to all the Indian citizens. Under Part III which deals with Fundamental Rights, 'Right to Equality' has been given from Articles 14 to 18. Under these Articles simple, formal, proportional or operational equality by resorting to protective discrimination, but excluding discrimination of any kind based on religion,

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\(^{69}\) Caste system can be defined as an all-encompassing organisation of hierarchically ranked, closed corporate groups, each set apart from all others in the system on the basis of techno-economic, social, political and ideological criteria. See, Peter B. Hammond, *An Introduction to Cultural and Social Anthropology* 204 (1971).

\(^{70}\) *Indira Gandhi v. Raj Narain*, AIR 1973 SC 2299 at 2468-2469, per Chandrachud J
race, sex, caste or place or birth, non-arbitrariness and equality of consideration and treatment has been incorporated Article 14 deals with equality, in general, whereas Article 15 prohibits discrimination against citizens on the grounds of religion, race, caste, sex or place of birth or any of them Article 16 deals with equality of opportunity in public employment, thereby providing social as well as economic equality. Abolition of untouchability and abolition of titles promote social equality under Articles 14, 19 and 21. Every form of arbitrariness or irrationality is considered as anathema in our Constitutional scheme. Therefore, these Articles jointly protect against arbitrary and unreasonable actions of the executive as well as of the judiciary and require observance of rule of law. Exaction of labour and services against wishes or even by payment of less than minimum wages amounting to 'forced labour' is also prohibited under Art. 23

71. Arts. 14, 15 and 16 embody facets of the many-sided grandeur of equality, which is one of the magnificent cornerstones of Indian democracy. See, Indra Sawhney v. U.O.I., AIR 1993 SC 477.
72. Art. 17
73. Art. 18
74. Arts. 32, 226
of the Constitution along with specific mention regarding the prohibition on trafficking in human beings. Article 24 prohibits employment of children below the age of 14 years in any factory, mine or in any other hazardous employment.  

Various kinds of rights providing for equal entitlement regarding religious affairs i.e. to profess, propagate, practice, manage and promote any religion, are provided in the Constitution to ensure a balanced social order based on equality and justice. To properly enforce and implement all these Fundamental Rights, appropriate proceedings in the form of different kinds of writs have also been contemplated under the Constitution.

Under Part IV of Directive Principles of State Policy, State is to secure a social order for the promotion of welfare of the people by minimising inequalities in income and by eliminating inequalities in status, facilities and opportunities amongst people. To achieve these basic objectives of a

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77. This provision read with Articles 39 (e) & (f) of Directive Principles of State Policy provides for the protection of the health and strength of the children below the age of 14 years.
79. Arts. 32 & 226.
80. Art. 38 (1) (2).
welfare state, the state would follow certain principles of the policy towards securing adequate means of livelihood, equal pay for equal work, \(^8\) living wage and decent standard of life for workers \(^8\) and would also take steps to ensure their participation in management of industries. \(^8\) The State would also provide for equal justice and free legal aid, \(^8\) just and human conditions of work and maternity relief, \(^8\) better standards of living for all and improvement in public health environment. \(^8\) To protect weaker sections of society from social injustice and exploitation, Article 46 of Part IV provides for promotion of their educational and economic interests by the State.

Therefore, it can be seen that our Constitution provides for a synthesis between Part III (Fundamental Rights) and Part IV (Directive Principles) of the Constitution, jointly striving for the attainment of a just and equal social order.

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81. Art. 39 (a) & (d)
82. Art. 43
83. Art. 43A. [Inserted by the Constitution (Forty-second Amendment) Act, 1976].
84. Art. 39A [Inserted by ibid.]
85. Art. 42 [Inserted by ibid.]
86 Arts. 47, 48-A [Inserted by ibid.]
Article 14: Concept of Equality under Constitution of India

Right to equality under Article 14 of the Indian Constitution has been provided as the sweeping provision to deal with this significant concept in the following words:

"The state shall not deny to any person before the law or the equal protection of the laws within the territory of India."

The obligations imposed on the state by Article 14 is for the benefit of all persons within the territory of India. Every person whether natural or artificial, whether he is citizen or an alien, Government servant, prisoner in jail is entitled to the protection of this Article.

87. The term 'State' in Article 14 means as defined by Article 12 under Part III of the Constitution. All the rights covered under Part III of the Constitution of India dealing with Fundamental Rights are available only against 'state' as envisaged under the same Part of the Constitution, as they are limitations upon all the powers of the government, legislative as well as executive. It is against the might of the state that an individual needs Constitutional protection. Private action is sufficiently guarded against under the ordinary law of land.


91. Chiranjit Lal Chaudhary v. U.O.I., AIR 1951 SC 41 at 44-45, paras 8-9 per Fazal Ali J.: In all the cases, the principle is the same, viz. that there should be no discrimination between one person and another if as regards the subject-matter of the legislation, their position is the same.
In *Moti Ram v. State of M.P.*, 92 Krishna Iyer J. said:

“Art 14 protects all Indians qua Indians within the territory of India.....Equality before the law implies that even a vakalat or affirmation made in any State language according to the law in that State must be accepted everywhere in the territory of India save where a valid legislation to the contrary exists. Otherwise, an adivasi will be unfree in free India, and likewise many other minorities. This divagation has become necessary to still the judicial beginnings, and to inhibit the process of making Indians aliens in their own homeland Swaraj is made of united stuff.”

In Article 14, 'equality before the law' and the equal protection of laws' means more or less the same thing. The dominant idea common to both these expressions is that of 'equal justice'. 94 'Equality before the law' is somewhat a negative concept implying the absence of any special privilege in favour of an individual and the equal subjection of all classes to the

92. AIR 1978 SC 1594.
ordinary law, while on the other hand 'equal protection of the laws' is a more positive concept implying equality of treatment in equal circumstances. Equality before the law means that among equals, the law should be equal and should be equally administered, that like should be treated

95. For details see, Supra note 52 at 188. [Dicey asserted 'equality before the law' as a corollary from his famous doctrine of rule of law. This means that no man is punishable, or can be lawfully made to suffer in body or goods, except for a distinct breach of law established in the ordinary legal manner before the ordinary courts of the land. In this sense, rule of law is contrasted with every system of government based on the exercise by persons in authority of wide, arbitrary or discretionary powers of constraint. Therefore, 'equality before the law' is an expression of English common law. The universal rule in England is that any wrongful act by public officers should be subject to control by the courts in the same way as any wrongful act committed by a private citizen. Dicey also explained: (pp. 202-203)

".... the rule of law, in this sense excludes idea of any exemption of officials or from the duty of obedience to the law governs other citizens or from the jurisdiction of the ordinary tribunals."

Any exclusion of public officials from this rule would have created a 'privileged class' of officials which, according to Dicey, is negatived by the doctrine of 'equality before law'. Therefore, equality before law postulates that every individual from the beggar to highest dignitary in the state shall be subject to the ordinary law of the land and though some exceptions are acknowledged to this principle, even in England on the ground of comity of Nations (Foreign sovereigns, Ambassadors, alien, enemies.) and public interest etc. (Heads of states in their official capacity, judges, members of legislatures, trade union, military personnel).
Equality before law is a dynamic concept having many facets. One facet - the most commonly acknowledged - is that there shall be no privileged person or class and that none shall be above law. It is the obligation upon the state to bring about, through the machinery of law, a more equal society envisaged by the Preamble and Part IV of our Constitution. For equality before law can be predicated meaningfully only in an equal society.\textsuperscript{97} Among others, the concept equality before the law contemplates minimising the inequalities in income and eliminating the inequalities in status, facilities and opportunities not only amongst individuals but also amongst groups of people, securing adequate means of livelihood to its citizens and to promote with special care the educational and economic interests of the weaker sections of the people, including in particular the Scheduled Castes and Scheduled Tribes and to protect them from social injustice and all forms

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\textsuperscript{96} Supra note 60 at 50. Also see, \textit{Lachhman Das v. State of Punjab}, AIR 1963 SC 222 at 239, para 22 per majority Aiyar J.; \textit{State of U.P. v. Deoman}, AIR 1960 SC 1125 at 1131-1132, paras 14-16 per J.C. Shah J.
\textsuperscript{97} \textit{Sri Srinivasa Theatre v. Govt. of T.N.}, AIR 1992 SC 999 at 1004, para 10 per B.P. Jeevan Reddy J.
\end{flushright}
of exploitation. The second expression 'equal protection of the laws' has been held to be the corollary of the finest expression 'equality before the law'. It would be a contradiction to say that any violation of equal protection of the laws would not result in violation of equality before the law. It was held that both these expressions mean one and the same thing, i.e. equality of status, and of opportunity. It is a pledge of the protection of equal laws. It is associated with non-discrimination. Equal protection means the right to equal treatment in similar circumstances, both in privileges conferred and in the liabilities imposed. Since the guarantee of 'equal protection' embraces the entire realm of 'state action', it would extend not only when an individual is discriminated against in the matter of exercise of his rights or in the matter of imposing liabilities upon him, but also in matter of granting privileges e.g. granting licences for entering into any business.

98. *Indra Sawhney v. U.O.I.*, AIR 1993 SC 477 at 502, para 5 per B.P. Jeevan Reddy J. [The content of the expression 'equality before the law' is illustrated not only by Arts. 15 to 18 but also by the several Articles in Part IV, in particular, Arts. 38, 39, 39A, 41 and 46].
inviting tenders for entering into a contract relating to Government business, or issuing quotas, giving jobs.  

But recently, in *Sri Srinivasa Theatre v. Govt. of T.N.*, the Supreme Court said that both the expressions did not mean the same thing, even though there was much in common between them. The court explained that the term 'law' in the former expression was used in a generic sense, a philosophical sense, whereas in the latter expression (equal protection of the laws) the word 'laws' denoted specific laws in force. The court laid down that these expressions had to be read and interpreted with regard to the context and scheme of the Constitution and not in the light of interpretations placed on them in the countries of their origin, though their relevance was undoubtedly great.  

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103. AIR 1992 SC 999 at 1004, para 9 per B.P. Jeevan Reddy J.

104. The 'equality before law' is an English expression, whereas the phrase 'equal protection of the laws' is based on Art. 1 of the fourteenth amendment of the Constitution of U.S.A. 'Equality before law' is a concept covering the whole humanity visualising it as one unit. This general provision regarding 'equality' can be found in almost all the Constitution of the world. 'Equal protection of law' elaborates this general concept and protects some specific laws so that practical proportional equality can be attained in consonance with the spirit of Art. 14 and the ideal let out in Preamble by Constitution makers.
Equality Permits Reasonable Classification

Art. 14 does not require absolute equality. It does not mean that all laws must be universal in application or general in character.\(^{105}\) It does not mean that the same laws should apply to all persons. From the very nature of the society, there should be different laws applying differently in different circumstances. As different persons should be treated differently, a theory of classification, has been evolved, for it is the classification which determines the range of persons affected by a special burden or benefit of a law which does not apply to all persons. Applications of the same laws uniformly to all under different circumstances may result in violation of the principle of equality,\(^{106}\) whereas, treating unequals differently do not violate Art. 14.\(^{107}\)

The theory of classification otherwise is easy to state but its application is beset by many difficulties. The true meaning and scope of Art. 14 was explained in several Supreme

\(^{105}\) Kedar Nath Bajoria v. State of W.B., AIR 1953 SC 404 at 406, para 6 per Patanjali Sastri J.


\(^{108}\) Classification is merely a systematic arrangement of things into groups or classes, usually in accordance with some definite scheme. See, State of W.B. v. Anwar Ali Sarkar, AIR 1952 SC 75.
Court decisions they were referred to and their effect was summarised by Das C.J in Dalmia’s case. The important principles laid down in Dalmia’s case include: there is the requirement to fulfill two conditions for a reasonable and permissible classification, namely (i) it must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group; (ii) the differentia must have a rational relation to the object sought to be achieved by the statute in question. Art 14 condemns discrimination not only by substantive law, but by a procedural law also. It forbids class legislation, but does not forbid classification. The classification must rest upon reasonable grounds of distinction. It must not be ‘arbitrary, artificial or evasive.’ It must be a reasonable classification. In permissible classification, mathematical nicety and perfect


equality are not required. Similarly, identity of treatment is also not enough. Moreover, if a law deals equally with members of a well-defined class, it is not open to the charge of denial of equal protection on the ground that the law has no application to other persons. Even a single individual may be a class by himself on account of some special circumstances or reasons applicable to him and not applicable to others, a law may be Constitutional even though it relates to a single individual who is a class by himself.

Therefore, a reasonable classification is one which includes all persons who are similarly situated with respect to the purpose of the law. The purpose of the law may be either the elimination of public mischief or the achievement of some positive public good. Every classification is in some degree likely to produce some inequality, and mere production of inequality is not enough. Mere differentiation or inequality

of treatment does not 'per se' constitute violation of Article 14. It denies equal protection only when there is no reasonable basis for the differentiation.\textsuperscript{117} The court also must find the purpose of the particular classification. To this end, the court may properly consider not only the language of the statute, but also the general public knowledge about the evil sought to be remedied, the prior law, the accompanying legislation enacted, statement of purposes, formal public announcements and the legislative history. Reasonableness of the classification has to be decided with reference to the realities of life and not in the abstract. It is the substance of classification and not form alone which must be seen.\textsuperscript{118} The real distinction between the true object of an enactment and the effect thereof, even thought appearing to be blurred at times, has to be borne in mind.\textsuperscript{119} Therefore, Art. 14 prohibits hostile legislation directed against individuals or group of individuals, but it does

\textsuperscript{117} Ameerunnissa Begum v. Mehboob, AIR 1953 SC 91 at 94, para 11 per B.K. Mukherjea J.; Babulal v. Collector of Customs, AIR 1957 SC 877 at 881, para 16 per Menon J.; Gopi Chand v. Delhi Adm., AIR 1959 SC 609 at 614, para 10 per Gajendragadkar J.

\textsuperscript{118} Kerala Hotel and Restaurant Assn. v. State of Kerala, AIR 1990 SC 913.

not forbid reasonable classification. There can be a valid classification based on geographical differentia, but even then that differentia must be pertinent to the object of the legislation.  

Presumption of Constitutionality of the statute, good faith, knowledge of existing conditions on the part of the legislature is always there, unless rebutted and court can take into consideration matters of common knowledge, matters of common report, the history of times and may presume that every state of facts which can be conceived existing at the time of legislation. Therefore, where all persons similarly situated circumstanced are treated alike both in privileges conferred and liabilities imposed, it is a reasonable classification. Therefore, segregating appropriate class having systematic relation found in common properties and characteristics and having sufficient relation to the object of the law is in conformity with the basic principle of Art. 14. Classification may be also either under-inclusive or over-inclusive.  

A classification is said to be under-inclusive, when all who are

120. *Jia Lal v. Delhi Admn.*, AIR 1962 SC 1781 at 1784, para 7 per Aiyar J.

included in the class are tainted with the mischief, but there are others also tainted whom the classification does not include. As the classification does not include all who are similarly situated with respect to the purpose of the law, there is a violation of the equality clause. An over-inclusive classification includes not only those who are similarly situated with respect to the purpose but others who are not so similarly situated. When the state action is burden on some, over-inclusiveness would seem to be less tolerable than under-inclusion, for, while the latter fails to impose the burden on some who would logically bear it, the former actually does impose burden on some who do not belong to that class. 122

It has been held that Article 14 requires not only reasonable classification but also that the classification must be fair, just and reasonable. Widening the concept of fairness inherent in the guarantee of equality under Article 14, the Supreme Court has come to hold that the court would not only strike down a law on the ground of absence of reasonableness of the classification made by it, but would conversely, uphold a law which makes a protective

122. Supra note 115 at 27-29.
In *Pradeep Jain v. U.O.I.*, the Supreme Court held that the wholesale reservation of seats in the MBBS and BDS courses on the basis of domicile or 'residence' within the state was unconstitutional and void as being in violation of Art. 14. The court observed that the object of any scheme of admission should be to select the best and most meritorious students by providing equal opportunities to all citizens in the country. Any departure from this rule must be justified on the touchstone of Art. 14. Therefore, special preferential treatment by reserving the seats for admission in favour of sons and wards of the employees of the university or institution is violative of Article 14 as there is no rational for the reservation nor any such reservation had any reasonable nexus with the object which is sought to be achieved.

123. *Pradeep Jain v. U.O.I.*, AIR 1984 SC 1420. [It means that Art.14 enjoins the state to take into account defacto inequalities which exist in the society and to "take affirmative action by way of giving preference to disadvantaged persons or inflicting handicaps on those more advantageously placed, in order to bring about real equality].

124. AIR 1984 SC 1420.

Similarly in Deepak Sibal v Punjab University, the Supreme Court struck down the classification between the employees of Government/semi Government institutions and those of private sector undertaking for the purpose of admission to L.L.B course as unreasonable and unjust and therefore, discriminatory and violative of Art. 14. But in V. Srinivasa Reddy v. Government of A.P., the court held that direct recruits and temporary appointees formed two distinct classes and thus the question of arbitrariness or unfairness or invalid discrimination violating Article 14 did not arise.

In D.S. Nakara v. U.O.I., the Supreme Court while upholding its earlier decisions observed that pension is not a bounty payable on the sweet will and pleasure of the government. Right to pension is a valuable right vesting in government servants, and classification to provide for revised pension based upon a specified date is valid. Similarly, the avowed purpose of the pension Rules is to provide sustenance.

126. AIR 1989 SC 903.
128. AIR 1983 SC 130 at 136-138, paras 20-30 per D.A. Desai J.
in the old age and, therefore, distinction between marriage during service and marriage after retirement appeared to be indeed arbitrary. Pension is not only compensation for loyal service rendered in the past, but it also have a broader significance, in that it is a measure of socio-economic justice. The social security purpose for which family pension was provided, would be frustrated if children born after retirement were excluded from the benefit of the family pension. Therefore, court said that there was no justification to keep post retirement marriage out of the purview of the definition of the term 'family'.

 Illegal or unwanted order by an authority did not entitle a High Court to compel the authority to repeat that illegality over again and again. The Supreme Court in Gursharan Singh v. New Delhi Municipal Committee ruled that the guarantee of equality before law was positive concept and that it could not be enforced by a citizen in court in a negative

130. Our Constitution shows that provident fund and gratuity are retirement benefits just as pension. (Similar to as defined under Government of India Act, 1935.)


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manner. Thus, if an illegality or irregularity had been committed in favour of any individual, the others could not invoke the jurisdiction of the court that the same irregularity or illegality be committed by the state so far such petitioners were concerned on the reasoning that they had been devoid the benefits which had been extended to others although in an irregular or illegal manner.

The Supreme Court has also cautioned that the doctrine of classification is only a subsidiary rule evolved by the courts to give practical content to the doctrine of equality, over-emphasis on the doctrine of classification or anxious or sustained attempt to discover some basis for classification may gradually and imperceptibly erode the profound potency of the glorious content of equality enshrined in Article 14 of the Constitution. The over-emphasis on classification would inevitably result in substitution of the doctrine of classification to the doctrine of equality and the Preamble of the Constitution which is an integral part and scheme of the Constitution.\textsuperscript{133}

**Equality and Non-Arbitrariness**

Unfortunately in the early stages of the evolution of our Constitutional law, Art.14 came to be identified with right against

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discrimination subject to the doctrine of classification. It was for
the first time in E.P. Royappa v. State of T.N., the Supreme
Cour: laid a new dimension of Art. 14 and pointed out that the
Article has highly activist magnitude and it embodies a
guarantee against arbitrariness. P.N. Bhagwati J. in the
majority judgment 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 the positive 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... Art. 14 strikes at
arbitrariness in state action and ensures fairness and
equality of treatment."

The principle of reasonableness which legally well as
philosophically, is an essential element of equality or non-

134. AIR 1974 SC 555 at 583, para 83
135. In a concurring judgment, Bhagwati J. for himself,
Chandrabhag and Krishna lyer JJ made the claim to have
laid down a new dimension of Art. 14. That claim was
repeated in Maneka Gandhi's case, AIR 1978 SC 597; in
the Air Port Case, AIR 1979 SC 1628 and in Ajay Hasia's
case, AIR 1981 SC 487.
arbitrariness, pervades Article 14 like a brooding omnipresence.\textsuperscript{136}

It must therefore now be taken to be well settled that what Art. 14 strikes at is arbitrariness, because an action that is arbitrary, must necessarily involve negation of equality. The new doctrine has both a positive and negative aspect. Positively, it asserts that Art. 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 Art. 14 embodied a guarantee against arbitrariness.\textsuperscript{137}

Therefore, Art. 14 has acquired a new and dynamic meaning. Once the court evolves the dynamic interpretation that the concept of equality in Art. 14 condemns arbitrariness of any kind, it stretches it to the logical extreme that the 'principles of natural justice' are an integral part of

\textsuperscript{136} R.D. Shetty v. Airport Authority, AIR 1979 SC 1628 at 1642, para 21 per P.N. Bhagwati J.
\textsuperscript{137} H.M. Seervai, \textit{Constitutional Law of India} 437 (1991). [Author is not convinced with the new doctrine and claims it wrong and untenable for various reasons viz., it is propounded without any reference to the terms, in which the guaranteed right to 'the equal protection of laws' is conferred; failure to distinguish between the violation of equality by law or by executive action and not proper comparison and analysis. For details see, \textit{ibid.}, pp. 436-442].
guarantee of equality assured by Art. 14.  

In *D.T.C. v. D.T.C. Mazdoor Congress*, the Supreme Court held that Regulation 9(b) of the Delhi Board Transport Authority (Condition of Appointment and Service Regulation, 1952), which conferred power on the authority to terminate the services of a permanent employee by issuing a notice without assigning any reason and without giving him any opportunity of hearing, was wholly arbitrary, uncanalised and unrestricted violating principles of natural justice as well as Article 14.

It is one of the fundamental rules of our Constitutional set-up that every citizen is protected against exercise of arbitrary authority by the state or its officers. If there is power to decide and determine to the prejudice of a person, duty to act judicially is implicit in the exercise of such power and the rule of natural justice operates in areas not covered by any law validly made. What particular rule of natural justice should apply to a given

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case must depend to an extent of the facts and circumstances of that case, the framework of the law under which the enquiry is held and the body of persons appointed for that purpose. It is only where there is nothing in the statute to actually prohibit the giving of an opportunity to be heard, but on the other hand, the nature of the statutory duty imposed itself necessarily implied an obligation to hear before deciding, that the 'audi alteram partem' rule could be imported. 140

Therefore, it has been reiterated in recent judgment in Basudeo Tiwary v. Sido Kanhu University, 141 that non-arbitrariness is an essential facet of Art. 14, pervading the entire realm of state action governed by Art. 14. Natural justice in turn is an antithesis of arbitrariness. It therefore follows that 'audi alteram partem,' which is facet of natural justice is a requirement of Art. 14. In the sphere of public employment, it is well settled that any action taken by the employer against an employee must be fair, just and reasonable, which are the components of fair treatment. The conferment of absolute power to terminate the services of an employee is an antithesis of fair,

140 Ibid.
141 AIR 1998 SC 3261.
just and reasonable treatment. In order to impose procedural safeguards, requirement of natural justice has been read into many situations, when the statute is silent on this point. Omission to impose the hearing requirement in the statute under which the impugned action is being taken does not exclude hearing - it may be implied from the nature of the power - particularly when right of a party is affected adversely. 142

It is now too well settled that every state action, in order to survive, must not be susceptible to the vice of arbitrariness which is the crux of Art. 14 of the Constitution and basic to the rule of law, the system which governs us. Arbitrariness is the very negation of the rule of law. Satisfaction of this basic test in every state action in *sine qua non* to its validity and in this respect, the state cannot claim comparison with a private individual even in the field of contract. 143 Rule of law contemplates governance by laws and not by humour, whims or caprices. Absence of arbitrary power is the first essential of the rule of law upon which our whole Constitutional system is

In Food Corporation of India v. M/s Kamdhenu Cattle Feed Industries, the Supreme Court included a new relevant factor as legitimate expectation of a citizen for the analysis of the principle of arbitrariness in a decision making process and gave a right of fair hearing and of judicial review in consonance with the Constitutional conscience and with that of rule of law.

**Article 14 and Discretionary Power**

With the change in socio-economic outlook, the public servants are being entrusted with more and more discretionary powers even in the filed of distribution of Government wealth in

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144. *Ibid.*, p. 554, paras 36-37. [in a system governed by rule of law, discretion when conferred upon executive authorities, must be confined within clearly defined limits. The rule of law from this point of view means that decisions should be made by the application of known principles and rules and in general, such decisions should be predictable and the citizen should know where he is, if a decision is taken without any principle or without any rule it is unpredictable, such a decision is the antithesis of a decision taken in accordance with rule of law]. Also see, *supra* note 52, Introduction.


146 In U.O.I. v. Hindustan Development Corp., AIR 1994 SC 988 at 1015-1021, paras 27,28,33-36. [The Court explained in detail the doctrine of 'legitimate expectation, giving the applicant sufficient *locus standi* for judicial review and for fair hearing, but it does not grant any absolute right for fulfillment of the expectation]
various forms. In a recent case, it was held that if a public servant abuses his office either by an act of omission or commission, and the consequence of that is injury to an individual or loss of public property, an action may be maintained against such public servant. The Supreme Court said that public servants should be held personally responsible for their malafide acts in discharge of their function as public servant. They may be liable in damages for malicious deliberate or injurious wrong-doing i.e. for 'misfeasance in public office'.

Each wide power, the exercise of which has far-reaching repercussion, has inherent limitation on it. It should be exercised to effectuate the purpose of the Act. In legislations enacted for general benefit and common good the responsibility is far graver. It demands purposeful approach. The exercise of discretion should be objective. Test of reasonableness is more strict. The public functionaries should be duty conscious.

147. Common Cause v. U.O.I. AIR 1996 SC 3538 at 3551, para 25 per Kuldip Singh J. [In the present case, Capt. Satish Sharma, Minister for Petroleum and Natural Gas was issued a show-cause notice by the court for criminal breach of trust and made him liable to pay damages for his malafide in allotting petrol pumps to 15 persons. A cost of Rs. 50,000/- was also asked to be paid personally by Capt. Satish Sharma as to costs of the case].

rather than power charged. Its actions and decisions which touch the common man have to be tested on the touchstone of fairness and justice. That which is not fair and just is unreasonable. And what in unreasonable is arbitrary. An arbitrary action is ultra vires. It does not become bonafide and in good faith merely because no personal gain or benefit to the person exercising discretion should be established. An action is malafide if it is contrary to the purpose for which it was authorised to be exercised. Dishonesty in discharge of duty vitiates the action without anything more. An action is bad even without proof of motive of dishonesty, if the authority is found to have acted contrary to reason. ¹⁴⁹

To ascertain unreasonableness and arbitrariness in the context of Art. 14 of the Constitution, it is not necessary to enter upon any exercise for finding out the wisdom in the policy decision of the state government. It is immaterial if it can be demonstrated that the policy decision demonstrably capricious or arbitrary and not informed by any reason what so ever or it suffers from the vice of discrimination or infringes any statute. ²⁵¹

or provision of the Constitution, the policy decision cannot be struck down. It should be borne in mind that except for the limited purpose of testing a public policy in the context of illegality and unconstitutionality, courts should avoid “embarking on uncharted ocean of public policy”.

Now a days, the Government in a welfare state exercises Wide Power in regulating and dispensing of special services like leases, licences and contracts etc. The magnitude and range of such government function is great. The Government while entering into contracts or issuing quotes is expected not to act like a private individual, but should act in conformity with certain healthy standards and norms. Such actions should not be arbitrary, irrational or irrelevant. The avowed policy of the Government particularly from the point of view of public interest is to prohibit concentration of economic power and to control monopolies so that the ownership and control of the material resources of the community are so distributed as best to subserve the common good and to ensure that while promoting industrial growth there is reduction in concentration of wealth.

and that the economic power is brought about to secure social and
economic justice.  

In Wade's Administrative Law, it has been succinctly stated:

"... The whole conception of unfettered
discretion is inappropriate to a public authority,
which possesses powers solely in order that it
may use them for the public good".  

In Sagir Ahmad v. State of U.P., the Constitution
Bench at the earliest buried fathom deep that the state is 'free to
carry on trade or business in the same position as a private
trade. But, the Constitutional power conferred on the government
cannot be exercised by it arbitrarily or capriciously or in an
unprincipled manner; it has to be exercised for the public
good. Every activity of the Government has a public element in
it and it must therefore, be informed with reason and guided by
public interest. Every action taken by the Government must be
reasonable in public interest and for public good, if it does not,
it would be liable to be invalidated. If the Government awards a
contract or leases out or otherwise deals with its property or
grants any other largess it would be liable to be tested for its

152. Ibid., p. 1005, para 11.
153. Supra note 54 at 356.
154. AIR 1954 SC 728.
validity on the touch-stone of reasonableness and public interest and if it fails to satisfy either test, it would be unconstitutional and invalid."  

In *M/s Erusian Equipment and Chemicals Ltd. v. State of West Bengal*, the Supreme Court observed:

"This privilege arises because it is the Government is trading with the public, the democratic form of Government demands equality and absence of arbitrariness and discrimination in such transactions.... The activities of the Government have a public element and, therefore, there should be fairness and equality. The state need not enter into any contract with anyone, but if it does so, it must do so fairly without discrimination and without unfair procedure."  

Discretion under Article 14, when affecting public interest, should be exercised objectively, rationally, intelligibly, fairly and non-arbitrarily - It should not be taken in undue haste disregarding the procedure, nor should it be ultra

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156. AIR 1975 SC 266.

vires the powers conferred by the statute. 158

In Ramana Dayaram Shetty v. International Airport Authority of India, 159 P.N. Bhagwati J. has explained this concept at length and has said:

"Today with tremendous expansion of welfare and social service functions, increasing control of material and economic resources and large scale assumption of industrial and commercial activities by the state, the part of the executive Government to affect the lives of the people is steadily growing. The attainment of socio-economic justice being a conscious end of State Policy, there is vast and notable increase of frequency with which ordinary citizens come into relationship of direct encounter with the state power-holders. The Government in a welfare state is the regulator and dispenser of special services and provider of large number of benefits including jobs contracts, quotas and license etc." 160

On the question of the power of the Government in granting largess, it was also observed further that, "the Government is not and should not be free like an ordinary individual in selecting the

159. AIR 1979 SC 1628.
160. Ibid., p. 1636, paras 10-11 per Bhagwati J.
recipients for its largess. Whatever its activity, the Government is still the Government and will be subject to restraints, inherent in its position in a democratic government, cannot lay down arbitrary and capricious standards for the choice of persons with whom alone it will deal. 161 Therefore, it cannot choose to deal with any person it pleases in its absolute and unfettered discretion. Every activity of public authority must be informed by reason, guided by the public interest and should be free from arbitrariness. All exercises of discretion or power of public authority must be judged with these standards. 162 It was also reiterated that the concept of public interest must as far as possible receive its orientation from the Directive Principles. What according to the founding fathers constitutes the plainest requirement of public interest is set out in the Directive Principles and they embody par excellence the Constitutional concept of public interest. If, therefore, any governmental


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action is calculated to implement or give effect to a Directive Principle, it would ordinarily, subject to any other overriding considerations he informed with public interest. Where any Governmental action fails to satisfy the test of reasonableness and public interest discussed above and is found to be wanting in the quality of reasonableness or lacking in the element of public interest, it would be liable to be struck down as invalid. It must follow as a necessary corollary from this proposition that the Government cannot act in a manner which would benefit a private party at the cost of the state; such an action would be both unreasonable and contrary to public interest.\textsuperscript{163}

In \textit{Associated Provincial Picture Houses Ltd. v. Wednesbury Corpn.},\textsuperscript{164} Lord Green M.R. has also held that a decision of a public authority will be liable to be quashed or otherwise dealt with by an appropriate order in judicial review proceedings where the court concludes that the decision is such that no authority properly directing itself on the relevant law and acting reasonably could have reached.\textsuperscript{165}

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  \item \textsuperscript{163} \textit{U.O.I. v. Hindustan Development Corpn.}, AIR 1994 SC 988 at 999-1000, para 9 per K.J. Reddy J.
  \item \textsuperscript{164} (1948) 1 KB 223, quoted in \textit{New Horizons Ltd. v. U.O.I.}, (1995) 1 SCC 478.
  \item \textsuperscript{165} See, \textit{Tata Cellular v. U.O.I.}, (1994) 6 SCC 651.
\end{itemize}

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Doctrine of Public Trust

The new doctrine of 'public trust' was introduced by the Supreme Court in Common Cause v. U.O.I. 166 According to this doctrine, every holder of a public office is a trustee whose highest duty is to the people of the country and, therefore, every act of the holder of a public office, irrespective of the label classifying that act, is in discharge of public duty meant ultimately for public good. With the diversification of state activity in a welfare state requiring the state to discharge its wide-ranging functions even through its several instrumentalities, all the state actions required to be non-arbitrary and justified on the touchstone of Article 14.

Subsequently in 1999 review petition filed in case of Common Cause v. U.O.I., 167 the Supreme Court refused to apply the doctrines of public trust, and 'misfeasance' (applied by the court in its decision of 1996) in the present case of allotment of petrol outlets by Minister of State in Union Cabinet. The court said that the person does not on becoming

166. AIR 1996 SC 3538 at 3550-51, paras 21, 25. In Kumari Srilekha Vidyarathi v. State of U.P., AIR 1991 SC 537 at 551, para 27, the Supreme Court has opined that every holder of a public office by virtue of which he acts on behalf of state or public body is ultimately accountable to the people in whom the sovereignty vests.

167. AIR 1999 SC 2979.
the Minister of State for Petroleum and Natural gas assume the role of 'trustee' in real sense nor does 'trust' came into existence in respect of government properties. As there is no specific identifiable plaintiff, the essential elements for the tort of 'misfeasance' are also not there. Therefore, awarding the amount of Rs. 50,000 as permissive damages is not appropriate. 168

Taxation Laws, Equality and Social Justice

In the matter of taxation laws, the court permits a great latitude to the discretion of the legislature. State is allowed to pick and choose districts, objects, persons, methods and even rates of taxation, if it does so reasonably. Courts view the laws relating to economic activities with greater latitude than other matters. 169

The instrument of taxation is not merely a means to raise revenue in India; it is, and ought to be, a means to reduce inequalities. It is for this reason that while applying the doctrine of classification - developed mainly with reference to and under the concept of 'equal protection of laws' - Parliament is allowed more freedom of choice in the matter of taxation vis-a-vis other laws. If this be the situation in the case of

168. Ibid.

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direct taxes, since in the case of such taxes the real incidence is upon some other than upon the person who actually makes it over to the state though, it is true, he cannot avoid the liability on the ground that he was not passed it on. In the matter of taxation it is, thus, not a question of power but one of constraints of policy - the interests of economy, of trade, profession and industry, the justness of the burden, its 'acceptability' and other similar considerations. Thus, however, does not mean that taxation laws are immune from attack based upon Art. 14. It is only that Parliament and legislatures are accorded a greater freedom and latitude in choosing the persons upon whom and the situations and stages at which it can levy tax. There is an added obligation upon the state to employ the power of taxation - nay, all its powers - to achieve the goal adumbrated in Art. 38. 170

Therefore, in tax legislation, legislature must be provided a greater latitude and a greater play in the joints. The mere fact that some crudities and inequalities result as a result of complicated experimental economic legislation, the legislation cannot be struck down on that ground alone. The courts cannot be

converted into tribunals for relief from such crudities and inequities. The court must adjudge the Constitutionality of a legislation by the generality of its provisions and not by its crudities and inequities. 171

The latitude of classification in a taxing statute is much greater and in order to tax something it is not necessary to tax everything. These basic postulates have to be borne in mind while determining the Constitutional validity of a taxing provision challenged on the ground of discrimination. Court must look beyond the ostensible classification and to the purpose of the law and apply the test of 'palpable arbitrariness' in the context of the felt needs of the times and societal exigencies informed by experience to determine reasonableness of the classification. 172

The Directive Principles of State Policy also enjoin the state to temper the legislation towards securing a social order conducive to the promotion of social and economic quality, eliminating as far as may be the existing inequalities between different strata in the society. This too is a pointer in the same direction. If the classification is made with the object of

taxing only the economically stronger while leaving out the economically weaker sections of society, that would be a good reason to uphold the classification if it does not otherwise offend any of the accepted norms of valid classification under the equality clause.

The scope for classification permitted in taxation is greater and unless the classification made can be termed to be palpably arbitrary, it must be left to the legislative wisdom to choose the yardstick for classification, in the background of the fiscal policy of the state to promote economic equality as well.\textsuperscript{173}

\textbf{Articles 15 \& 16 : Equality of Treatment and Opportunity, Reservation and Protective Discrimination}

General right to 'equality' has been guaranteed to each and every person within the territory of India by Art. 14 of Part III of the Indian Constitution. The positive amplification of this general principle with particular reference to the citizens of India in some special circumstances has been provided under Articles 15 and 16 of the same part of the Constitution, which reads as under:

Art. 15 : Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth:

(1) The State shall not discriminate against any citizen on

grounds only of religion, race, caste, sex, place of birth or any of them.

(2) No citizen shall, on grounds only of religion, race, caste, sex, place of birth or any of them, be subject to any disability, liability, restriction or condition with regard to-

(a) access to shops, public restaurants, hotels and place of public entertainment; or

(b) the use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of State funds or dedicated to the use of the general public.

(3) Nothing in this article shall prevent the State from making any special provision for women and children.

(4) Nothing in this article or in clause (2) of article 29 shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes.

Art. 16: Equality of opportunity in matters of public employment:

(1) There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State.

(2) No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect of any employment or office under the State.

(3) Nothing in this article shall prevent Parliament from making any law prescribing, in regard to a class or
classes of employment or appointment to an office under the Government of, or any local or other authority within, a State or Union territory, any requirement as to residence within that State or Union territory prior to such employment or appointment.

(4) Nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts in favour of any backward class of citizens which, in the opinion of the State, is not adequately represented in the services under the State.

(4-A) Nothing in this article shall prevent the State from making any provision for reservation in matters of promotion to any class or classes of posts in the services under the State in favour of the Scheduled Castes and the Scheduled Tribes which, in the opinion of the State, are not adequately represented in the services under the State.

(4-B) Nothing in this Article shall prevent the State from considering any unfilled vacancies of a year which are reserved for being filled up in that year in accordance with any provision for reservation made under clause (4) or clause (4A) as a separate class of vacancies to be filled up in any succeeding year or years such class of vacancies shall to be considered together with the vacancies of the year in which they are being filled up for determining the ceiling of fifty percent reservation on total number of vacancies of that year.

Art. 15 deals with 'equality of treatment' and non-discrimination on specified grounds, where as Art. 16 provides
for 'equality of opportunity' in matters relating to
appointment or employment to any office under the State and
prohibits discrimination on the above mentioned grounds under
Art. 16 (2).

Art. 15 (1) forbids discrimination against citizens in all
matters on the specified grounds. Art. 15 (2) deals only with
cases of discrimination as regards to use or access to public
places mentioned therein, thus envisaging true 'equality of
treatment' and 'equality of rights or liberties' provided to the
citizens. In this sense, Art. 15 (2) is more general in nature.
Moreover the prohibition under Art. 15 (1) is against State only
whereas Art. 15 (2) prohibits not only the State, but also
private individuals from violating the directions contained
therein. Art. 16 (1) guarantees 'equality of opportunity' to
all citizens in the matter of appointment to any office or of any

174. The object behind Art. 15 (2) was to guard against the
menace of discrimination which could possibly be
practised, in a relentless manner. The purpose was to
eradicate the evil of the Hindu caste system under which a
section of Hindus, the depressed classes were considered
untouchables and were prohibited entry to public places.
Therefore, it can be seen that elaborate provisions were
incorporated in Indian Constitution so as to build a social
order based upon justice and equality. For details see, B.
Shiva Rao, The Framing of India's Constitution: A study,
183 (1968).
employment under the State. Hence, if an employee's case has been properly 'considered' but rejected, he cannot complain that the person who has been promoted is junior or inferior in merit to him. This right includes the right to make an application for any post under the Government and further guarantees a right to be considered on the merits for the post for which an application has been made. The State can lay down qualification for appointment to post or to employment under the State, which must be applicable to all the citizens and must have a reasonable relation to the suitability for the post or in the

176. General Manager v. Rangachari, AIR 1962 SC 36; Shivcharan v. State of Mysore, AIR 1965 SC 280; U.O.I. v. Kashikar, AIR 1986 SC 431; B Prabhakar Rao v. State of A.P., AIR 1986 SC 210. [Normally, appointment denotes a single act, while employment denotes a continuous state of affairs. Therefore, the words 'matters relating to employment or appointment' have been held to be wide enough to include all matters in relation to employment, both prior and subsequent, such as the initial appointment; conditions of service pertaining to the office to which the appointment is made, e.g. salary, periodical increments, revision of pay, promotion, terms of leave, gratuity, pension, age of superannuation].


interests of discipline. Advertisement of posts and condition of service is done in order to provide opportunity to every one eligible for the post. It also enables the selection committee to have a larger field to choose from.

The protection of Art. 16 (1) extends also to matter of fixation of seniority for purposes of promotion etc. of employees within the same cadre. But where recruitment to cadre is from two sources, namely direct recruits and promotees 50% of each, seniority is fixed in accordance with rotational system in seniority i.e. by alternately fixing promotees and direct recruits.

In such a case, the introduction of 'carry-forward' rule by which a certain quota is fixed annually for a certain class of persons and it is carried forward from year to year, would offend against Article 16 (1). In short, all persons selected on the same footing shall be treated equally. But where the cadre consists of both 'permanent' and 'temporary' employees, the incident of confirmation cannot be an intelligible criterion for determining seniority as between direct recruits and promotees.

All other factors being equal, continuous officiation in a non-fortui-ous vacancy sought to receive the due recognition in determining rules of seniority as between persons recruited from different sources, so long as they belong to the same cadre, discharge similar functions and bear similar responsibilities.\(^{183}\)

Moreover, no discrimination is permissible after recruits from different sources have been integrated into one grade or service.\(^{184}\) But even after integration, a classification may be made for the purposes of promotion if the criterion for differentiation is conducive to administrative efficiency, in the service concerned. But, whether the classification is reasonable or not will depend upon the circumstances of each case, existing at the time of recruitment.\(^{185}\)

Art. 16 (2) emphatically brings out in a negative form what is guaranteed affirmatively by Art. 16 (1). It prohibits discrimination on certain grounds and thus assures effective


\(^{185}\) Govind v. Chief Controller, AIR 1967 SC 839.
enforcement of the right to equality of opportunity guaranteed by Art. 16 (1). The scope of Art. 16(2) is thus co-extensive with that of Art. 16 (1). 186 Where discrimination is based on grounds other than those mentioned in Art. 16 (2) it would not attract this clause, but the case will have to be weighed and judged in the light of general principle laid down in clause (1) of Article 16. 187 For example, if discrimination is made on the ground of backwardness, Art. 16 (2) will not be attracted. 188 There would be no violation of Article 16 (2) where the rules place an embargo on the recruitment of males in a predominate female institution, as it amounts to discrimination based on sex. 189 However, a convention of preferring women to men as lecturers in Government women's college has been held to be reasonable and not discriminatory. 190

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186. The emphasis in Art. 16 (2) is on the word 'only' and where there is discrimination only on any of the grounds mentioned therein, this clause will come into play. But where discrimination is based partly on ground contained in Article 16 (2) and partly on some other consideration, there will be no contravention of Art. 16 (2). See, Gandhi Bariha v. State of Orissa, AIR 1959 Orissa 166.
While Art. 15 (1) would prevent a State from making any discriminatory law *inter alia* on the ground of sex alone, the State, by virtue of Art. 15 (3) is permitted, despite Art. 15 (3) in relation to women is a recognition of the fact that for centuries, women of this country have been socially and economically handicapped. It is in order to eliminate this socio-economic backwardness of women and to empower them in a manner that would bring about effective equality between men and women, Art. 15 (3) is placed in Art. 15. Its object is to strengthen and improve the status of women. An important limb of this concept of gender equality is creating job opportunities for women. Similarly Art 15 (4) was added by the Constitution (First Amendment) Act, 1951\(^1\) to enable the State for making special provision for the advancement of any socially and educationally backward classes of citizens or for the

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1. The object of this amendment was to bring Art. 15 and 29 in line with Art. 16 (4). It may be recalled that in the case of *State of Madras v. Champakam Dorairajan*, AIR 1951 SC 226, the Supreme Court (upholding the decision of Madras H.C.) struck down the Government Order fixing the admissions on communal basis. The court held that Fundamental Rights guaranteed by Arts. 15(1) and 29 (2) were not controlled by any exception, and since there was no provision under Art. 15 corresponding to Art. 16 (4), Art. 15 was amended and Art. 15 (4) was added. Thus, there is no doubt that Art. 15 (4) has to be read as a proviso or an exception to Arts. 15 (1) and 29 (2).
Scheduled Castes and the Scheduled Tribes. Therefore, the way was cleared for reservation of posts for any group judged to be socially and educationally backward.

Art. 15 (4) comprises two ideas - one of classifying citizens as socially and educationally backward and the other making a special provision for their advancement. The former has relevance to the ideas of equality and non-discrimination and the latter to the ambit of the restraint which could lawfully be placed upon the fundamental right. 192

Similarly, Arts. 16 (3), 16 (4) and 16 (5) also prescribe reasonable restraint on the general right to equality in favour of some deserving categories of society mentioned therein. Chinnappa Reddy J. in A.B.S.K. Sangh (Rly.) v. U.O.I. 193 has also said:

"Art 16 (4) is a facet of Art 16 (1) which fosters and furthers the idea of equality of opportunity with special reference to an underprivileged and deprived class of citizens to when egalite de droit (formal or legal equality) is not egalite de fait (practical or formal equality). It is illustrative of what the state must do to wipe out the distinction between egalite de

Arts. 16 (4) and (4A) read with Directive Principles, protective discrimination has poured forth practical content, softened the rigour of legal equality and given practical content of equality in 'opportunity' in favour of unequals to hold office or post under the State in democratic governance. Similarly, Arts. 15 (3) and (4) also provides for equality of treatment with the help of protective discrimination in favour of women, backward classes and for Scheduled Castes and Scheduled Tribes. Protective discrimination connotes mitigation of absolute equality in order to achieve 'equality in results' in favour of the disadvantaged sections of society. Appointment to an office or post gives an opportunity to have equality of status and dignity of person. The object, thereby, is to provide economic equality. Social equality gets realised through facilities and opportunities given to the dalits and tribes to live with dignity and with equal status in the society. Economic equality also gives socio-economic empowerment, a measure to improve

194. ibid., p. 336, para 126.
195. Arts. 46,42.
excellence in every walk of life. Equal opportunity of appointment to a post of office is available to all citizens legitimately and Constitutionally entitles them to consider their claims for employment/appointment to an office or post in accordance with rules.  

Therefore, the protective discrimination is a contour to bring about equality in results for women, children, backward classes, Scheduled Castes or Scheduled Tribes. It is a facet of equality under Arts. 14, 15 and 16 of the Constitution. When therefore competing rights between general and reserved candidates require adjudication and adjustment with the right of general candidates, the doctrine of violation of Art. 14 has no role to play, since protective discrimination itself is a facet of Art. 14 and it does not again deny equality to the reserved candidates. As a result of the combined operation of all these Articles, [Arts. 15 (3), 4 ; 16 (3) (4) (5), (4A) 198 (4B) 199], an array of programmes, of compensatory or protective discrimination have been pursued by various states and the Union.
Government. Marc Galanter, in his book, Competing Equalities has described the Constitutional scheme of compensatory discrimination thus:

"These compensatory discrimination policies entail systematic norms of equality (such as merit, even-handedness, and indifferences of ascriptive characteristics). These departures are justified in several ways first, preferential treatment may be viewed as needed assurance of personal fairness, a guarantee against the persistence of discrimination in subtle and indirect forms. Second, such policies are justified in terms of beneficial results that they will presumably promote: integration, use of neglected talent, more equitable distribution, etc. With these two—the anti-discrimination theme and the general welfare theme—is entwined a notion of historical restitution or reparation to offset the systematic and cumulative deprivations suffered by lower castes in the past." 200

The Supreme Court further held that since every such policy makes a departure from the equality norm, though in a permissible manner, for the benefit of the backward, it has to be designed and worked in a manner conducive to the ultimate building up of an egalitarian non-discriminating society. That

is its final Constitutional justification. Therefore, programmes and policies of compensatory discrimination under Article 15 (4) have to be designed and pursued to achieve this ultimate national interest. At the same time, the programmes and policies cannot be unreasonable or arbitrary, nor can they be executed in a manner which undermines other vital public interests or the general good of all. All public policies, therefore, in this area have to be tested on the anvil of reasonableness and ultimate public good. In case of Article 16 (4) the Constitution makers explicitly spelt out in Article 335 one such public good which cannot be sacrificed, namely, the necessity of maintaining efficiency in administration. Article 15 (4) also must be used, and policies under it framed, in a reasonable manner consistently with the ultimate public interest.

201. Recently, vide Constitution (Eighty-second) Amendment Act, 2000 added a proviso to this Act: “Provided that nothing in this Article shall prevent in making of any provision in favour of the members of the Scheduled Castes and the Scheduled Tribes for relaxation in qualifying marks in any examination or lowering the standards of evolution, for reservation in matters of promotion to any class or classes of services or posts in connection with the affairs of the Union or of a State.”

The reservation\textsuperscript{203} in appointment, employment or promotion in favour of dalits and tribes is a Constitutional right under Art. 16 (1) and 16 (4A) read with Art. 46.\textsuperscript{204} Art. 15 (4) enables the State to make special provision for socially and educationally backward classes and for Scheduled Castes and Scheduled Tribes. 'Special provisions' include power of making reservations.\textsuperscript{205}

Under Art. 15 (4) and 16 (4) there is no uniform or prescribed method of providing reservation. The extent and nature of reservation is a matter for the state to decide having regard to the facts and requirements of each case. The provisions of

\textsuperscript{203} The term 'reservation' in Art. 16 (4) implies a separate quote which is reserved for a special category of persons. The very purpose of reservation, is to protect the weaker category against competition from the open category candidates. Reservation, therefore, is one of the Constitutionally recognised methods of overcoming backwardness. See, \textit{Govt. of A.P. v. P.B. Vijay Kumar}, AIR 1995 SC 1648 at 1652, para 9 per Mrs. Sujata v. Manohar J.

\textsuperscript{204} Art. 46: Promotion of educational and economic interests of Scheduled Castes, Scheduled Tribes and other weaker sections - The state shall promote with special care the educational and economic interests of the weaker sections of the people, and, in particular, of the Scheduled Castes and the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation.

\textsuperscript{205} Significantly, Art. 15 (4) does not specially speak of reservation, but it has been generally understood to include that power.
Arts. 16 (1), 16 (4) and 335 of the Constitution of India imply that process should be adopted while making appointments through direct recruitment or promotion in which the merit is not ignored. For attracting meritorious and talented persons to the public services, a balance has to be struck, while making provisions for reservation in respect of a section of the society.

In a recent judgment, the Supreme Court has also said that:

"The protective discrimination in the shape of job reservations under Article 16 (4) has to be programmed in such a manner that the most deserving section of the backward class is benefited... It is, therefore, necessary that the benefit of the reservation must reach the poorer and the weakest section of the backward class. Economic ceiling to cut off the backward class for the purpose of job reservations is necessary to benefit the needy sections of the class. The means test is, therefore,

206. The larger concept of reservations takes within its sweep all supplemental and ancillary provisions as also lesser types of special provisions as also lesser types of special provisions like exemptions, concessions and relaxations, consistent no doubt with the requirement of maintenance of efficiency of administration under Art. 335. It has further been recognized that reservation implied selection of less meritorious persons. This much cost has to be paid, if the constitutional promise of social justice is to be redeemed. See, Indra Sawhney v. U.O.I., AIR 1993 SC 477.
imperative to skim off the affluent section of the backward class." 207

To identify and ascertain the criterion of backwardness, so as to make reasonable and appreciate classification for positive discrimination, the President appointed a Backward Classes Commission for the first time on Jan. 29, 1953 under the chairmanship of Kaka Kalekar. 208 This Commission was to inquest into condition of backward groups of people not covered by the term Scheduled Caste and to lay down criteria for determining the socially and educationally backward classes.

The Commission realized that the Indian society was not based essentially on economic structure but on the medieval

208. Art. 338 [Substituted by the Constitution (Sixty-fifth Amendment) Act, 1990]. provides for appointment by the President of a National Commission for the Scheduled Castes and the Scheduled Tribes to investigate all matters relating to the safeguards provided for them under the Constitution. Art. 340 envisages the appointment of a Commission by the President to investigate the conditions of backward classes. Art. 341 enables the president by public notification to specify castes, races or tribes which shall be deemed to be Scheduled Castes in the State or the Union Territories. Art. 342 contains similar provisions for similar notification in respect of the Scheduled Tribes.
concepts of varna (caste) and social hierarchy. The Commission prepared a list of 2399 caste-groups which were treated "socially and educationally backward." Due to contradictions between the recommendations of the Chairman and the Report, Govt. of India could not issue any list of backward classes. It was also considered that caste should not be the basis for identification of backward classes and is repugnant to India's avowed policy of casteless and classless society, and as inimical to democracy. Therefore, the Govt. of India requested the states to draw their own lists of backward classes by applying non-communal tests of income and occupation. In the light of this direction of the Central Govt., various states appointed their own Commissions and Committees to investigate the conditions of the backward classes and to evolve some criteria to identify "the socially and educationally backward" classes in the states. But by and large all the concerned states kept caste as a dominating factor for identify the "backward classes."  

The Supreme Court then in *M.R. Balaji v. State of Mysore*\(^{212}\) also recommended that backward classes should not be equated with backward castes. Caste standing could be used in conjunction with other indices of the backwardness such as poverty, occupation, place of residence.\(^{213}\) Realising that the aim of compensatory justice to eliminate the inherited inequalities, the court emphasized that backward classes should be both socially and educationally backward, that too is comparable to that of Scheduled Castes and Scheduled Tribes.\(^{214}\) The aim of the compensatory discrimination was to help those whose backwardness was associated with discriminatory social structure and not to “give weightage to progressive sections of our society under the false colour of the caste to

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\(^{213}\) AIR 1963 SC 649 at 658-660, paras 22-25.

\(^{214}\) Ibid. Also see, *State of A.P. v. U.S.V. Balaram*, AIR 1972 SC 1375 at 1394-95, para 80 per Vaidiyalingam J.
which they happen to belong." Caste is taken only as one of the considerations to ascertain whether a person belongs to a backward class and could be included in the Scheduled Caste following the appropriate procedure. This interpretation of the court helped the really backward class to the exclusion of the advanced sections among the backward classes. State is entitled to do everything for the upliftment of members of these castes and tribes, to make reservations for their admission.

215. Chitralekha v. State of Mysore, AIR 1964 SC 1823 at 1833, para 19 per Subba Rao J. At 1832, para 14, the court further said: "The group of citizens to whom Art. 15(4) applies are described as 'classes of citizens,' not as 'castes of citizens.'" A class according to dictionary meaning, shows division of society according to status, rank or caste. Therefore, though the caste of the group of the citizens may be relevant, its importance should not be exaggerated. Also see, P. Rajendran v. State of Madras, AIR 1968 SC 1012 at 1014-15, para 7 per K.N. Wanchoo J., the Supreme Court held that class is an open category, whereas caste is closed category. One remains throughout life in the caste into which one is born, whereas one may change one's class in one's life time. In State of U.P. v. Pradip Tandon, AIR 1975 SC 563 at 567, para 17 per A.N. Ray C.J., the court held that the expression "classes of citizens" indicates a homogeneous section of people who are grouped together because of certain likeliness and common traits and who are identifiable by some common attributes. The homogeneity of the class of citizens is social and educational backwardness. Neither caste nor religion nor place of birth will be uniform element of common attributes to make them a class of citizens.

216. State of A.P. v. U.S.V. Balaram, AIR 1972 SC 1375 at 1395-99, paras 82,82,95 per Vaidyalingam J.
to educational institutions, may relax rules for selection to Government employment\textsuperscript{217} or by offering them avenues for promotions or reservations of selection posts for them.\textsuperscript{218} In State of U.P. v. Pradip Tandon,\textsuperscript{219} the people of hill - areas were held to be the socially and educationally backward classes unlike people from rural areas. They were considered to be backward on socially, economic as well as educational basis due to poor living standards, inefficient use of resources and inaccessible educational facilities etc.\textsuperscript{220} Similarly, in Devadasan v. U.O.I.,\textsuperscript{221} Mudholkar J. struck down the provision adopting of 'carry forward' rule permitting perpetual reservation for 2-3 years more than 50% vacancies in third year.\textsuperscript{222} The court

\textsuperscript{219.} AIR 1975 SC 563.
\textsuperscript{220.} Ibid. pp. 567-568, para 18-21 per A.N. Ray CJ.
\textsuperscript{221.} AIR 1964 SC 179.
\textsuperscript{222.} Ibid. pp. 187-189, paras 14, 21. The court said, "... any method can be evolved by the Government, it must strike, 'a reasonable balance between the claims of the backward class and claims of other employees.'" Also see, AIR 1963 SC 649, where the court struck off 68% reservation as inconsistent and fraud on the Constitutional power conferred on the State by Arts. 15(4) & 16(4). But in Indra Sawhney v. U.O.I. AIR 1993 SC 477 provided for carry-forward scheme, but not beyond 50%. Now 'carry forward rule' upto the maximum limit of 50% has also been added as a new provision i.e. Art. 16(4 B) in the Constitution, vide Constitution (Eighty - first Amendment) Act. 2000.
clarified further that reservation of seats should not be allowed to become a vested interest. The Government should always keep under review the question of reservation of seats and only the classes which are really socially and educationally backward should be allowed to have benefit of reservation. 223 A special provision contemplated by Art. 15(4), like reservation of posts and appointments contemplated by Art. 16 (4) must be within reasonable limits. The interests of weaker sections of society which are a first charge on the states and the Center have to be adjusted with the interests of the community as a whole. 224

When in 1977, due to the change in the Govt. at the Centre, some states like U.P. and Bihar extended reservation to certain backward communities, there was widespread protest over the measures. 225 Following these developments, in 1978, the Central Government appointed another Commission under the Chairmanship of B.P. Mandal, again determine the criteria for identifying "backward classes." Mandal Commission also proceeded on the definite premise that in traditional Indian

223. A. Periakaruppan v. State of T.N., AIR 1971 SC 2303 at 2311, para 31 per Hegde J.
society, social backwardness was a direct consequence of caste status and that various other types of backwardness flowed directly from this crippling handicap. On the basis of its socio-educational survey conducted in 405 districts all over India, a set of eleven indicators was generated divided into three groups-social; educational and economic. 226

Taking caste as the main criteria of backwardness, assigning different weightage to social, educational and economic backwardness holding 75% of Indian population as backward and eligible beneficiaries of compensatory discrimination, which is totally inconsistent with legal doctrine, no uniformly applicable criteria for identification of 'other backward classes' could be laid down by the Commission. 227


K.C. Vasantha Kumar v. State of Karnataka. a five judges bench of Supreme Court again considered the question of relevant criteria for identification of backwardness. The five judges expressed five separate opinions on the vexed question. The conclusion which may be drawn from these would be that, both caste and poverty, would be relevant factors in determining the backwardness of citizens. Occupation and places of habitation may also be compared in making the determination of backwardness. The policy of preferential treatment should be reviewed after every five year and there should be a permanent National Backward Commission to review the condition of backward classes. It is also suggested that caste criteria should no longer be followed to identify the backward classes. There is definitely a shift from caste to economic criteria as the basis of the identification of other backward classes.

In Indra Sawhney v U.O.I., the majority held that caste could be an important or even sole factor in determining the social backwardness and that poverty alone could not be such a criterion. The Govt. of India was directed to specify the basis of

228. AIR 1985 SC 1495.
229. Ibid.
230. AIR 1993 SC 477
exclusion, whether on the basis of income, extent of holding or otherwise of 'creamy layer'. In the case of \textit{Dr. Jagdish Saran v. U.O.I.}, while striking down the reservation of 70\% of seats for local candidates in admission to the post graduate medical courses by Delhi University, Krishna Iyer J. said,

"But it must be remembered that exceptions cannot overrule the rule itself by running riot or by making reservations as a matter of course in every university and every course.... the first caution is that reservation must be kept in check by the demands of competence. You cannot extend the shelter of reservation, where minimum qualifications are absent. Similarly, all the best talent cannot be completely excluded by wholesale reservation.........A fair preference, a reasonable reservation, a just adjustment of the prior needs and real potentials of the weak with the partial recognition of the presence of competitive merit such is the dynamic of social justice which animates the three egalitarian articles of the Constitution."

231. \textit{Ibid.} [In accordance with this direction, the Govt. of India appointed an expert committee known as the 'Justice Ramnandan Committee' to identify the creamy layer among the socially and educationally backward classes].
232. AIR 1980 SC 820
Thus, the court emphasised the need for quality excellence which according to them should not be compromised because that would be detrimental to the interest of the nation. To devalue merit at the summit would be to temporise with the country's development in the vital areas of professional expertise.234 In 1993, a bench of nine judges of Supreme Court considered the nature, amplitude and scope of Constitutional provisions relating to reservations in the famous Mandal Commission case and accepted that the very idea of reservation implies selection of less meritorious persons. At the same time, they recognised that this much cost has to be paid if the Constitutional promise of social justice is to be redeemed.235 But the court also added that it may not be advisable to provide for reservation in specialties and super-specialties, in medicine, engineering and other such courses in physical sciences, mathematics, in defence services, etc.,236 otherwise it would be dangerous to depreciate merit and excellence. The higher you go in the ladder of education, the lesser should be the

234. Ibid. Also see, Pradeep Jain v. U.O.I., AIR 1984 SC 1420 at 1441.
236. Ibid., para 838.
reservation. Similarly, there would be no reservation in single cadre post. Art. 16(4A) relates to reservation in promotional post, whereas adequate representation consistent with the efficiency in administration has not been provided, but this Article also does not deal with the question of reservation in a single cadre post.

Therefore, Arts. 14, 15 and 16 including Arts. 16(4A) and 16(4B) must be applied in such a manner so that a balance is struck in the matter of admission or appointments by creating opportunities for the reserved classes and also for the other members of the community who do not belong to the reserved class. Therefore, keeping in mind several relevant and objective considerations, Art. 16(4) contemplate not merely


quantitative, but also qualitative support of backward class of citizens. 239

Therefore, it can be seen that there had been judicial vacillation from case to case. The court stressed mainly on caste or poverty as the basis for identification of the individuals as backward classes. It is submitted that due to the failure of the various executive and judicial agencies for laying down the specific criteria to identify the other backward classes, the real needy persons have been deprived of the benefit of these Constitutional provisions.

Article 17: Abolition of Untouchability

'Untouchability' refers to the social disabilities historically imposed on certain classes of people by reason of their birth in certain castes and would not include an instigation of social boycott by reason of the conduct of certain persons. The word 'Harijan' prima facie refers to an untouchable. 240

Mahatma Gandhiji has stated that it is a phenomenon peculiar to Hinduism and has got no warrant in reasons or Shastras. 241 Swami Vivekanand had stated that "we refuse

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entirely to not identify ourselves with this phenomenon of untouchability. That is not Hinduism. It is in none of our books. It is an orthodox superstition which has interfered with national life all along the line." 242 According to Dr. Ambedkar, "the untouchability is the notion of defilement, pollution, contamination and the ways and means of getting rid of that defilement. It is a permanent hereditary stain which nothing can cleanse." It is not only a system of unmitigated economic exploitation. It was a diabolical contrivance to suppress and enslave humanity. Its proper name would be 'infamy'. 243 In State of Karnataka v. Appa Balu Ingale, the court opined that untouchability is not a separate institution by itself, it is a corollary of the institution of the caste system of Hindu society. It connotes the acts, action or practice on non-touching of the members of the lowest caste by the caste Hindus, which means separation, segregation and isolation of such persons from the higher caste Hindus. It means keeping the Harijan untouchables from outside the mission. 245 In Shastri

243. Quoted in supra note 3 at 230.
244. AIR 1993 SC 1126.
245. ibid., p. 1133, paras 18, 19 per K. Ramaswamy J.
Yagnapurushdasji v. Muldas Bhundardas Vaishya, the Supreme Court speaking through Gajendragadkar, C.J.I. also held that 'untouchability is founded by superstition, ignorance, complete misunderstanding of the true teachings of Hindu religion.'

Untouchability, therefore, is founded upon prejudicial hatred towards dalits as an independent institution. It is an attitude to regard dalits as pollutants, inferiors and outcastes.

The practice of untouchability is the root cause for social segregation, denial of opportunities for educational, economic and cultural pursuits. Dalits are subjected to severe discrimination, disabilities, liabilities, prohibitions, restrictions or conditions etc. The scheme in Part III, namely, Fundamental Rights is to remove disabilities to which the dalits are subject to and to provide positive right in their favour. The practice of untouchability in any form is a crime against the Constitution.

The abolition of untouchability is the arch of the Constitution to make meaningful and to integrate the dalits in the national mainstream. In other words Constitution charges the State to improve the quality of their life, social, economic and cultural pursuits as part of meaningful right to life guaranteed under Art. 21 of the Constitution. Directive Principles of State

246. AIR 1966 SC 1119.
Policy under Part IV fasten duties on the State to render socio-economic and political justice and to protect them from all forms of exploitation, injustice and by operation of Art. 38 and Art. 46 of the Constitution.

Sardar Vallabh Bhai Patel, during the course of the discussion on the floor of the Constituent Assembly stated that, removal of untouchability is the main idea. If abolition of untouchability is provided as a fundamental right, as an offence, necessary adjustment will be made in the law that can be passed by the legislature. Therefore, Art. 17 has been held to be a very significant provision from the very beginning from the days of enactment of our Constitution from the point of view of equality before the law. It guarantees social justice and dignity of man, the twin privileges which were denied to a vast section of the Indian society for the centuries together. Recently also the Supreme Court has held it is an extension of caste system and an indirect form of slavery.

Articles 17 abolished 'untouchability' and forbids its practice in any form. It further declares that the enforcement of

248. State of Karnataka v. Appa Balu Ingale, AIR 1993 SC 1126 at 1133, para 19 per K. Ramaswamy J.
any disability arising out of ‘untouchability’ shall be an offence punishable in accordance with law. Parliament has been empowered to make laws \textit{inter alia} prescribing punishment for those acts which are declared to be offences under Part III of the Constitution. \(^{249}\) In exercise of that power and to give effect to the mandate contained in Article 17, Parliament enacted the Untouchability (Offences) Act, 1955, which later on was amended and renamed as the Protection of Civil Rights Act, 1955. Whenever any Fundamental Right like Art. 17 is violated by a private individual, it is the Constitutional obligation of the State to take necessary steps to interdict such violation and ensure observance of the Fundamental Right by the private individual who is the victim of transgression. The State is under a Constitutional obligation to see that there is no violation of the Fundamental Rights.

When the mandate of Art. 17 is being breached with impunity, and commission of atrocities on dalits and tribes are unabated, to stamp out the evil, the Parliament stepped in and made Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 with stringent provisions to eradicate the offences committed against dalits by providing relief and

\(^{249}\) See, Article 35.
rehabilitation to the victims of such offences with the help of speedy trials. 250

The thrust of Art. 17 and the Act is to liberate the society from blind and ritualistic adherence and traditional beliefs which lost all legal or moral base. It seeks to establish new ideal for society - equality to the dalits, at par with general public, absence of disabilities, restrictions or prohibitions on ground of caste or religion, availability of opportunities and a sense of being a participant in the main stream of national life. 251

Article 18: Abolition of Titles

Article 18 deals with abolition of titles. It prohibits the State from conferring any type of title on any person whether a citizen or non-citizen. However, military and academic distinctions are exempted from this prohibition.

A citizen of India is prohibited from accepting any title

250. *R. Chandevarappa v. State of Karnataka*, (1995) 6 SCC 309; *State of Karnataka v. Appa Balu Ingale*, AIR 1993 SC 1126 at 1137, para 35: The Court held that in interpreting the Act, the judge should be cognizant to and always keep at the back of his/her mind the Constitutional goals and the purpose of the Act and interpret the provisions of the Act in the light thus shed to annihilate untouchability, to accord to the dalits and the Tribes right to equality, social integration a fruition and fraternity a reality.

from any foreign state. Moreover, a non-citizen who is holding any office of profit or trust under the State should remain loyal to the State and should not commit the breach of trust reposed in him. He is prohibited, without the consent of the President, from accepting any present or emolument or office of any kind from or under any foreign state.

But the Article does not prohibit the State from conferring military or academic distinctions on any person. The conferment of awards like "Bharat Ratna", "Padma Vibhushan", "Padma Shri" in recognition of good work done by citizens in various fields of activities are covered by this exception. National awards, therefore, do not amount to titles within the meaning of Article 18, but they should not be used as suffixes or prefixes. In Dr. Dasarathi v. State of A.P.,

252. Article 18 (3)
253. Article 18 (4)
254. Balaji Raghwan v. U.O.I., AIR 1996 SC 770 at 778, para 32 per Ahmadi C.J.I. : Such awards are in recognition of fundamental duty of citizens under Art.51-A(j) which exhorts every citizen “to strive towards excellence in all spheres of individual and collective activity, so that the nation constantly rises to higher levels of endeavour and achievement”. However, the system of granting such awards has been misused in the absence of proper guidelines and limitation in respect of number of awards to be granted in a year, therefore formation of National and State Committees were suggested in this case.
255. AIR 1985 SC 136.
the court abolished the post of 'Poet Laureateship' and held that conferment of this title is inconsistent with the Government’s Constitutional obligations mentioned under Arts. 14 to 18. Arts like poetry can flourish and prosper only in free market conditions of perfect freedom and truthfulness. The appointment of Poet Laureateship on fixed salary is based upon purchasing allegiance and is totally inconsistent with the nature of poetry or with the democratic polity. 256

Therefore, to maintain an appropriate equality in the Indian society, the conferment of titles giving any kind of unnecessary preference of one over the other thereby offending against the Fundamental Right of equality of all citizens was abolished, so as to create an egalitarian and democratic society.

Directive Principles of State Policy
Promoting Equality and Social Justice

The words 'justice' social, economic and political' are reproductions from the Preamble. Directive Principles under Arts. 36 to 51 are the directives to the State to give effect to the objectives expressed in the Preamble to the Constitution by securing a social order for the promotion of

256. Ibid., pp. 142-143, paras 12-15.
the welfare of the people. Art. 38 is the star by which we are expected to chalk our course. It is to achieve the goals echoed in Article 38 that Part IV contains various provisions.257

Under Article 38 the framers of our Constitution contemplated a 'welfare state', the function of which should be within the bounds of the Constitution and subject to the limitation, be commensurate with public welfare. The modern welfare state directly participates in general activities for the welfare of the public.258 Article 38 (2) was inserted by the Constitution (Forty-fourth Amendment) Act, 1978 which also emphasised the equality of status, facilities and opportunities in society and has made obligatory on the State to reduce economic inequalities also. Art. 39 chalks out the requisite parameters of State policy for attaining an equal social order as contemplated by Constitution makers under Art. 38. The State policy is not doctrinaire, but practical. It does not seek to abolish private property or industry altogether, at the same time, it acknowledges that both must yield to social control whenever the common

257. Lokanath Misra v. State of Orissa, AIR 1952 Orissa 42 at 47, para 12 per Narasimhan J.
Social good and justice must be the priority for State Policy rather than individual progress.

In continuation with the basic principle of equality, State policy should be directed towards equal renumeration irrespective of sex, as both men and women have right to adequate means of livelihood. Men and women doing the same work or work of similar nature should get equal pay. Art. 16 (1) read with Articles 14 and 39 (d), also guarantees 'equal pay for equal work', so that the court would strike down unequal scales of pay for identical work under the same employer, which is based upon no classification or irrational classification. The principle of 'equal pay for equal work' enunciated under Article 39 (d) of Part IV of the Constitution has also been interpreted...

260. Art. 39(a)
261. Art. 39(d)
262. Randhir Singh v. U.O.I., AIR 1982 SC 879; Ramchandra v. U.O.I., AIR 1984 SC 541; All India Stenographers v. U.O.I., (1988) 3 SCC 91. [There is no discrimination where though the function may be the same, the responsibilities or quality of work of two employees may be different. The problem of equal pay cannot be translated into a mathematical formula and a certain amount of value judgement must be left with the administrative authorities with which the court can interfere only if the differentiation is irrational, without any basis, or mala fide].

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to be the Constitutional goal of Article 16(1). 263

'Equal pay for equal work' and providing security for service by regularising casual employment within a reasonable period has been accepted by this court as a constitutional goal of our socialistic pattern. This court has zealously enforced the fundamental right of 'equal pay for equal work' in effectuating the constitutional goal of equality and social justice. 264

The social objective regarding ownership and control of the material resources and its equal distribution as best to observe the common good has been specifically mentioned under Article 39(b). 265 These resources can be vested in the state or in the hands of private persons. Their distribution can prevent concentration of wealth in a few hands and thus benefits

263. *Randhir Singh v. U.O.I.*, AIR 1982 SC 879. [Equal pay for equal work is not expressly declared by the Constitution as a Fundamental Right but in view of the Directive Principles of State Policy as contained in Art. 39(d) of the Constitution equal pay for equal work has assumed the status of Fundamental Right in service jurisprudence having regard to the Constitutional mandate of equality in Arts. 14 and 16 of the Constitution].


265. The expression 'material resources' means all things which are capable of producing wealth for the community, including natural or physical resources, movable or immovable property etc.
the society at large. A conformity with Preamble and may cut down individual liberty or a few, but it widens the horizon of many.

For implementing this directive, a large scale reform has been introduced both in agricultural and industrial fields, in pursuance of recommendations of the Planning Commission. The abolition of inter-mediaries (zamindaris, jagirdars, inamdars etc.) as recommended by the Planning Commission in the First Plan benefitted the main item of material resources i.e. agrarian or agricultural properties. By acquisition of zamindaris and the interests of intermediaries, the state has subserved the common good by bringing the land which feeds and sustains the community and also produces wealth by its forests, mineral and other resources, under its own control or State ownership. This State ownership or control over land is a necessary step towards the implementation of Directive Principles of State Policy and it cannot, but be a public purpose. 266 By protecting tenants at will and sub-tenants, 267 by fixing ceilings on land holdings to prevent concentration of land in the hands of a few and to fix

267. Tenants at will were those land tillers to whom ryots used to sublet parts of his holdings in the areas where zamindari system did not prevail.
maximum area which an individual may hold by various legislations were the few efforts made for the promotion of social justice. The nationalisation of trade and business by taking over the existing private concern and vesting of business and assets in statutory corporation owned or controlled by the State, e.g. life insurance, road transport, civil aviation was effected for the implementation of Article 39 (b). Art. 39 (b) and (c) together with other provisions of the Constitution, contain one main objective, namely the building of a welfare State and an egalitarian social order, to fix certain social and economic goals for immediate attainment by bringing about a non-violent social revolution. Through such a social revolution the Constitution seeks to fulfill the basic needs of the common man and to change the structure of the society without which political democracy has no meaning. It aims at making the Indian masses free in the positive sense. Art. 39 (e) and (f) requires

270. Air Corporation Act, 1953.
271. Kesavananda Bharati v. State of Kerala, AIR 1973 SC 1461 at 1606-1607, para 612 per Shelat & Grover JJ. : " ....The Constitution makers had, among others, one dominant objective in view that was to ameliorate and improve the lot of the common man and to bring about a socio-economic transformation based on principles of social justice." Also see, paras 728-730 per Hegde & Mukherjea JJ. paras 1312-1315, 1813-1815 per Palekar J.
the State to direct its policy towards securing that health and strength of the workers and that the tender age of children are not abused. Instead of forcing them towards unsuitable vocations, proper facilities and opportunities should be provided, so that protection from moral and material abandonment can be provided especially to children.

Article 39-A deals with 'equal justice and free legal aid'. It was added by Constitution (Forty-second Amendment) Act, 1976. This is to ensure equal justice which has been promised to all citizens, by the Preamble and to further the guarantee of equality before law, which was unmeaning to a poor man so long as he was unable to pay for his legal advisor. 272 It imposes an imperative duty upon the State to provide free legal aid to the poor. It is with a view to enable the poor litigant to have an easy access to a court of law to invoke legal right and to secure him equal protection of laws against his well-to-do opponent, that the scheme of affording legal aid and assistance to the poor has been conceived. 273 Legal Services Authorities Act, 1987 was enacted to implement the directives of Article 39-A and the


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court also suggested that the Government should set up a 'suitors fund' to meet the cost of defending a poor or indigent. It has also been suggested that the State must encourage and support the participation of voluntary organization and social action groups in operating the legal aid programme.\textsuperscript{274}

In order to cut across religion, caste and tribes and to build up a homogeneous nation, the State shall endeavour to scheme for the citizens a uniform civil code throughout the territory of India.\textsuperscript{275} The object of this Article is to introduce a uniform personal law for the purpose of national consolidation and to effect an integration of India by bringing all communities on the common platform on matters which are at present governed by diverse personal laws but which do not form the essence of any religion.\textsuperscript{276} This Article proceeds on the assumption that there is no necessary connection between religion and personal law in a civilized society. The object is not to encroach upon religious liberties, which Art 25(2)(a) already reserves with that of the State.

\textsuperscript{274} Centre for Legal Research v. State of Kerala, AIR 1986 SC 1322.
\textsuperscript{275} Art. 44.
\textsuperscript{276} Mohd. Ahmed Khan v. Shah Bano Begum, AIR 1985 SC 945 at 954-955, para 32 per Chandrachud C.J.I.
Art. 46 deals with protective discrimination for the furtherance of equality amongst weaker sections of society, in particular of the Scheduled Castes and Scheduled Tribes. This Article embodies the concept of 'distributive justice' which connotes, inter alia, the removal of economic inequalities and rectifying the injustice resulting from the dealings or transactions between unequals in society. This may be achieved by the State by lessening inequalities by differential taxation, giving debt relief, distribution of property owned by one to many who have done by imposing ceiling on holdings, or by direct regulation of contractual transactions by forbidding certain transactions. It also means that those who have been deprived of their properties by unconscionable bargaining should be restored to their property. Hence a law invalidating transferor would be an implementation of this Article and Constitutionally valid. 277

Thus, 'in the matter of employment', the Government of a Socialist State must protect the weaker sections. 278 It must be ensured that there is no exploitation of the poor or ignorant. Hence, even though they may have accepted the employment on

unequal treatment, the State must not deny their basic rights of equal treatment, equal pay and the like.  

Under Article 46, the State is at liberty to do anything to promote educational and economic interests of the weaker section of the people. Art. 46 charges the State with promoting special care the educational and economic interests of the weaker sections of the people, and in particular of the Scheduled Castes and the Scheduled Tribes and with protecting them from social injustice and all forms of exploitation. The State may make such provisions or reservations for the betterment and amelioration of the weaker and economically backward sections and to implement the Directive Principles contained in Art. 46. Therefore, the object of Art. 46 being to remove social and economic inequalities and social disabilities that cripple the weaker sections, so as to place them on a footing of equality with the rest of the nation and to improve the quality of their life, social, economic and cultural pursuits to render meaningful their rights to life also.

By removing various disparities and disabilities amongst weaker sections of society with the help of compensatory discrimination and distributive justice, bringing them at par with other sections of society, the need of equality and social justice can be fulfilled.

280. Art. 21.