CHAPTER EIGHT

RIGHT TO EQUALITY AND SECULARISM

The Secular character of the Indian Constitution can be traced in the Constitutional provisions relating to the Right to Equality. Articles 14 to 18 of the Indian Constitution deal with the Right to Equality. These articles are intended to ensure the establishment of Secular State in India. Similarly, Equality in the Political, Social and Economic field of life constitutes one of the basic aspects of Indian Secularism.

**Equality Before Law:**

Right to Equality before Law is guaranteed in the Article 14 of the Indian Constitution. Article 14 says "The State shall not deny to any person equality before the law or the equal protection of the law within the territory of India".

The two expressions - 'Equality before the Law' and 'equal protection of the Laws' are not identical. Infact, they mean different things. 'Equality before Law'
is a negative Concept. It implies that every one is equal before the law and absence of any special privileges in favour of any person, and equal subjection of all classes to the ordinary law of the Land. 'Equal Protection of Laws' is a positive Concept. It implies equal treatment in equal circumstances. In the words of Shukla 'The rule is that like should be treated alike and not unlike should be treated alike'.¹ The Supreme Court in the case of Chiranjitlal Chaudhary V. The Union of India² defined 'equal protection means equal protection under equal circumstances'.

The Article 14 has been invoked in a large number of cases before the High Courts and the Supreme Court of India. The Supreme Court in many cases³ has upheld

the view that Article 14 does not rule out classification for the purpose of Legislation. In Kedarnath Bajoria V. State of W.B. The Principle of 'equal protection of the Laws' was explained thus: "The equal protection of the laws guaranteed by the Article 14 of the Constitution does not mean that all the laws must be general in character and universal in application and that the State is no longer to have power of discriminating and classifying persons or things for the purpose of Legislation". However, the classification should not be arbitrary. It must be based upon just and proper difference.

The Right of Equality as guaranteed in the Article 14 is available to any person; citizen or foreigner. But it must be noticed that Article 14 prevents discriminatory action only by the State and not by the individuals, as it would be interference with the liberty of individuals. Similarly, it should be noted in this

context that the Indian Constitution does not confer absolute equality on the citizens. The Constitution recognises some exceptions, for example, the President or the Governor of a State shall not be answerable to any court while they are performing the powers and duties vested in their respective offices. No criminal proceeding shall be instituted or continued against the President or the Governor in any court during his term of office. These immunities however, are not applicable in the cases of impeachment.

Prohibition of Discrimination on various grounds: -

Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth is explained in the Article 15 of the Indian Constitution. This Article says "(1) The State shall not discriminate against any citizen on the 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 places 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 general public. (3) Nothing in this Article shall prevent the State from making special provisions 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 citizen or for the Scheduled castes and the Scheduled tribes.

From the wording of Article 15, it is clear that it is illustrative, and its scope is very wide. But, the rights under Article 15 are available only to the citizen of India. Clause (1) of the Article contains prohibitions against the State action and clause (2) explains the prohibition against the individual action. Clause (3) of the Article provides that the State can make special provisions in favour of women and children. Clause (4) of the Article empowers the State to make a special provision for the advancement of any specially and educationally backward class of citizens or for the
Scheduled Castes and the Scheduled Tribes. This clause (4) was added to the Article by the Constitution First Amendment Act, 1951. The amendment was necessitated by the decision of the Madras High Court declaring 'Communal Order' of Madras Government, reserving seats in certain educational institutions for the student of certain castes and communities as ultra-vires.

The word 'only' which is used in the Article 15 has been a matter of controversy and it has been discussed in many cases in the High Courts and the Supreme Court of India. Two cases namely Doraijan V. State of Madras (I.L.R.) 1951:Mad.149 and V. Venkataramana V. State of Madras (S.C.J.) 1951,318, can be mentioned.

In this context, it is explained that 'the Constitution does not forbid discrimination by the State on grounds of religion. The principle of religious non-discrimination embodied in Article 15 (1) is that the State

can not discriminate against any citizens on the sole basis of their religion. It can, however, discriminate on a religious grounds provided that, it is accompanied by another ground. Further, the State can make religion the sole basis of discrimination amongst its citizens when making special provision for the advancement of the Scheduled Castes and the Scheduled Tribes. About the clause 4 of the Article 15, it has been pointed out that 'a preferential treatment can validly be given because the socially and educationally backward classes need it, so that in the course of time, they stand in equal position with the more advanced section of the Society'.

However, it may be noted that the expression 'socially and educationally backward class of citizen' in the clause 4 of the Article 15, is very vague. There is no definite test to decide what is social backwardness, when it is, and when it ends. It is rather confused concept, and it has created confusion in the


formation and implementation of the policy.

The general guarantee contained in the clause (1) of Article 15 is illustrated in the various other provisions of the Constitution. For example (i) Equality of opportunity in matters of employment is provided in Article 16 (2). (ii) Article 325 provides that 'No person to be ineligible for inclusion in, or to claim to be included in a special electoral roll on grounds of religion, race, caste, or sex. It means that, there shall be one general electoral roll for every territorial constituency for election to either House of the Parliament or the House or either House of Legislature of a State. (iii) Universal adult suffrage is provided in Article 326. (iv) The Provision is made for maternity relief for women workers in Article 42. (v) Provision of free-education for children is made in Article 45. (vi) Measures for the prevention of exploitation of children are explained in Article 39 F.

Similarly, some special provisions relating to the certain classes have been made in Part XVI of the Constitution. Article 330 provides for the reservation of
seats for the Scheduled Caste and the Scheduled Tribes in the House of People.

Article 331 provides for the reservation of Anglo-Indian Community in the House of People by nomination.

Article 332 makes a provision for the reservation of seats for the Scheduled Castes and the Scheduled Tribes in the Legislative Assemblies of the State.

Article 333 provides for the representation of the Anglo-Indian Community in the Legislative Assemblies of the States. Article 334 makes provision for the termination of the reservation of the seats and special representation after certain period. But according to the 45th Constitutional Amendment Act, 1980, the reservations have been extended up-to 1990. This indicates that, there is tendency of continuing these privileges. But it may here, be pointed out that, such grant of special privileges to some backward communities for almost an indefinite period would create conflict with the other people who have no such privileges. And this would hamper integration of the different special classes and communities.
Thus, it is evident from the preceding discussion that, clause 4 of the Article 15, and the provisions contained in Articles 330 to 334 are inconsistent with the Concept of Secularism as explained in the clause I of Article 15 of the Indian Constitution.

**Equality of Opportunity :-**


1) There shall be equality of opportunity for all citizens in matters relating to the 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 or any of them be ineligible for any 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 any State or other local authority or Union Territory.
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.

5) Nothing in this Article shall affect the operation of any law which provides that, the incumbent of an office in connection with the affairs of any religious or denominational institution or any member of the Governing Body thereof shall be a person professing a particular religion or belonging to a particular denomination.

From the wording of the Article, it is clear that, in regard to the public employment, the guarantee is given both positively and negatively. Clause (1) of the Article 16 asserts it positively and clause (2) of the Article 16 asserts it negatively. Clause (3) of the Article contains an exception to the prohibition contained in clauses (1) and (2). According to this clause, the Parliament has the right to prescribe any residential qualifications in the case of appointment under
the State or Local Authority or Union Territory. Clause 4 also contains another exception, by which, the State has power to make provision for the reservation of appointments or post in favour of any backward class of citizen which in the opinion of the State is not adequately, represented in the services under the State.

The privileges given under the Article 16 (4) may be abused. Therefore, a safeguard against it is provided in the Article 365 which says 'that the claims of the Members of the Scheduled Castes and the Scheduled Tribes shall be taken into consideration consistently with the maintenance of efficiency of administration in the making appointments to the services and posts in the Union as well as States'.

Clause 5 of the Article 16 is another exception to the principle embodied in the clause (1) and clause (2). The clause (5) provides that offices connected with a religious or denominational institutions may be reserved for the persons professing the particular religion or belonging to the particular denomination to which the institution relates.
It is to be noted that the right guaranteed under Article 16 is available only to the citizens of India, and it ensures economic, equality by giving equality of opportunity in matters of public employment. But because of the provisions of reservation as it is made in clause 4 of the Article 16, the Principles of Equality of Opportunity has lost its significance. In this context, Smith D.E., has observed that 'when the scope for equality of opportunity is reduced to three posts out of ten, the modern Concept of the individual as the basic unit with the State is in grave peril. This kind of arrangement produces a State composed of castes and communities, not individuals. It may effect a static kind of justice but it does not lead to a dynamic society or a truly Secular State'.

The framers of the Constitution assumed that, these special provisions and reservations would be of a temporary nature. They expected that — after certain period (10 years), there would be more equality and

fewer special provisions for the citizens in the State. However, later on, we find that vested interests have been created in this system and there is tendency for its perpetuation. Therefore, the 'protective discrimination' which is provided in the Articles 15(4) and 16 (4) and special provisions in the Articles 330 to 334, though it has been upheld by the judiciary, should not be a permanent feature of the Constitution.

Abolition of Untouchability :-

Abolition of Untouchability is explained in the Article 17 of the Indian Constitution. This Article says "Untouchability is abolished and its practice in any form is forbidden. The enforcement of any disability arising out of untouchability shall be an offence punishable in accordance with the Law".

This Constitutional provision may be regarded as a revolution because, it abolished the age old institution of Indian Society. It also indicates the Secular character of our Constitution. Abolition of Untouchability is definitely important because with this provision
social equality will be promoted which is necessary for the creation of Secular Society. It must, however, be noted that the word 'Untouchability' is not defined either in the Constitution or in the Untouchability (Offence) Act, 1955, passed by the Parliament under the authority given in the Article 35 of the Constitution.

Although the Constitutional provision is made for the abolition of untouchability, it has not been enforced strictly. Therefore, it is not extinguished from the Society and occasionally, we find it is practiced.

In this context, it may be pointed out that, the evil of untouchability which had deep roots in the past and which had religious sanction can not be eradicated completely only by Constitutional provisions or by some Legislation. Untouchability is basically a social evil and its remedy lies in the change of attitude of the people themselves.

While considering the Constitutional provisions of 'Untouchability', Dr. Luthera posed a question as to whether a Secular State can ban untouchability from religious
places? Can it throw open the religious institutions including places of worship.--- To persons to whom these institutions are closed according to the tenants of their religion or to whose entry the constituted authorities of these institutions have serious objection? --- Luther has answered these questions. He said 'The performance of such functions by the State as far as the religious institutions are concerned, is not consistent with the Concept of the Secular State. The reason for this answer, is not far to seek. In a Secular State, the nature of relations between the Church and its believers is to be settled between themselves. The Church has a right to enforce its discipline among its members.--- But here, the State regulates the relations between the Church and its believers. It interferes with the internal affairs of the Hindu Religious Institutions, which is contrary to the very object of the Secularization of the State aims to secure' 9.

Abolition of Titles :-

In accordance with the Principle of Equality, the Constitutional provision is made for the Abolition of Titles. It is explained in the Article 18 of the Constitution which says "(1) No title, not being a military or academic distinction, shall be conferred by the State. (2) No citizen of India shall accept any title from any Foreign State. (3) No person who is not a citizen of India, shall while he holds any office of profit or trust under the State, accept without the consent of the President any title from any Foreign State. (4) No person holding any office of profit or trust under the State shall, without the consent of the President, accept any present emolument, or office of any kind from or under any foreign state".

Thus, for ensuring equality to all, the State is prohibited from conferring title on any person. However, the conferment of military and academic distinction is not debarred. The State is also allowed to confer any distinction or award for social services,'Bharat Ratna', 'Padma Vibhushan', 'Padma Bhushan', 'Padmashri' and other
State awards are not regarded as titles under the Article 18 of the Constitution. It may, here, be noted that, these awards were discontinued during the rule of Janata Party Government, but revived after 1980, when the Congress (I), Party came to power.

The foregoing analysis of the Right of Equality clearly shows that the Principles of Equality and non-discrimination by the State on the grounds of religion, race, caste, sex etc., is compromised in various fields in view of 'protective discrimination' in favour of the citizens of backward classes. It may be noted that, backwardness has been identified with caste and sub-castes. The result is that new vested interests have been created in the caste system. It has also strengthened the caste consciousness which certainly retards the growth of Secularism.

Similarly, the principle of equality before the Law becomes ineffective when different personal Laws are applied to the citizens belonging to a particular religion. Therefore, 'uniform civil code', as it is directed in Article 44 of the Constitution, is an urgent
necessity if the equality before the law is to be maintained. However, it may be noted here, that recently, Mr. Beg M.H., The Chairman of the Minorities Commission, in the report submitted by him to the Central Government, has opposed a change in the 'Muslim Personal Law'. This has again raised a controversy on the issues of 'Equality', 'Personal Laws', 'Uniform Civil Code'. Mr. Syed Bhai, the General Secretary of Muslim Satya Shodhak Samaj and many other reformers in the society have appealed the Central Government that the report of the Minorities Commission should not be accepted by the Government.