Chapter II

EQUALITY AND ITS OBJECTIVES IN CONSTITUTIONAL PERSPECTIVE
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Equality means in one sense that adequate opportunities are laid open to all. By adequate opportunities we can not imply equal opportunities in a sense that implies identity of original chance. Equality is not an imperative to treat in identical ways for men who are unequal in their physical or intellectual attainments. It is a policy of equality of concern or consideration for men whose different needs may require different treatment. It is not a mechanical policy of equal opportunity for everyone at any time and in all respect. It is equality of opportunity for all individuals to develop whatever personal and socially desirable talents they possess and to make whatever unique contributions which their capacities permit. It is not a demand for absolute uniformity of living conditions or even for arithmetically equal compensation for socially useful work. It is not a policy of restricting the freedom of being different or becoming different. It is policy of encouraging the freedom to be different or becoming the different. It is a policy of encouraging the freedom to be different, restricting only that exercise of freedom which coverts talents or possession into a monopoly that frustrates the emergence of other free personalities. Equality in the dynamic sense means reduction of the harshest forms of inequality. Article 14 of the Constitution provides that the state shall not deny to any person equality before the law or equal protection of the laws within the territory of India. It uses two expressions: i) 'equality before law' and ii, 'equal protection of laws'. The phrase 'equality before law' is to be found in almost all those written Constitutions which guarantee fundamental
rights. Article 7 of the declaration of Human Rights provides that all are equal before the law and are entitled without any discrimination to equal protection of the law. The expression equal protection of the law occurs in the American Constitution which provides that ‘no state shall deny to any person with its jurisdiction the equal protection of the laws’. Both the expressions aim at establishing equality of status. The expression ‘equality before the law’ is a negative concept employing the absence of any special privilege in favour of individuals and the equal subjection of all classes to the ordinary law. The expression ‘equal protection of the law’ is a positive concept and implies the equality of treatment in equal circumstances. In the words of Dr. Jennings: ‘Equality before law means that among equals the law should be equal and should be equally administered, that like should be treated alike. The right to sue and be sued, to prosecute and be prosecuted for the same king of action should be same for all citizens of full age and understanding without distinction of race, religion, wealth social status or political influence.\(^3\)

The concept of ‘equality before law’ does not mean absolute equality among human beings which is physically not possible. This very concept implies the absence of any special privilege by reason of birth, creed, or the like in favour of any individual and also the equal subjection of all individual and classes to the ordinary law of the land. The guarantee of equality before law is an aspect of what Prof. Dicey calls the rule of law in England. This means that no man is above the law and every person, whatever his rank or condition, is subject to the jurisdiction of ordinary courts. The rule of law requires that no person shall be subjected to harsh. The object is to secure the paramount exigencies of law and order.\(^4\) the guarantee of ‘equal protection of laws’
is similar to one embodied in the 14\textsuperscript{th} Amendment of the American Constitution. This has been integrated to mean subjection to equal law, applying to all in the same circumstances. All persons similarly circumstanced shall be treated alike both in the matter of privileges conferred and the liability imposed by the laws. Equal law should be applied to all in the same situation without discrimination. The like should be treated alike. It is the duty of the state to take special measure to prevent and punish brutality by police methodology. The rule of law embodied in Article 14 is a basic feature of the Indian Constitution which can not be destroyed even by an amendment of the Constitution under Article 368 of the Constitution. The guarantee of equal protection of laws is available to any person who includes any company or association or body of individuals. The protection of Article 14 extends both to citizens and non-citizens and the natural as well as legal persons. Equality before law is guaranteed to all without regard to race, color or nationality. Even corporations which are juristic persons are also benefited by Article 14. There are few exceptions to this rule. Foreign diplomats are immune from the jurisdiction of courts. Article 361 affords and immunity to the President of India and the Governors of the states. No criminal proceedings can be instituted against them during their term of office. No process for their arrest can be issued from any court against them. Persons may be classified into groups and such groups may be for such difference or distinction or differentiation which rests upon reasonable grounds of distinction. A valid classification may be made on geographical or territorial basis, historical considerations, nature of the person concerned, and basis of the nature of business. Beside this a classification which treats the state differently from private
citizens is not hit by Article 14. There can be valid classification with
reference to time and finally object of law is also a basis of
classification. Laws are violation of Article 14 on the ground that there
is a classification without a difference or the basis of classification is
irrelevant to the purpose of the Act. A classification based on language,
religion, race, sex or place of birth is not permissible. Article 14 of the
Constitution says that the state shall not deny to any person equality
before the law or the equal protection of the law which within the
territory of India. The first expression ‘equality before the law’ is taken
from the English common law which is a declaration of equality of all
persons within the territory of India, implying thereby the absence of
any special privilege in favour of any individual. No man is above the
law. Every person whatever by his rank or condition, is subjected to
the jurisdiction of ordinary Courts. The expression ‘the equal protection
of the laws’ which is rather a corollary of the first expression is based on
the last clause of the first section of the 14th Amendment to the
American Constitution, which directs that equal protection shall be
secured to all persons within the territorial jurisdiction of the union in
the enjoyment of their rights and privileges without favoritism or
discrimination. Thus Article 14 uses two expressions to make the
concept of equal treatment a binding principle of state. It will be
difficult to imagine any violation of the expression, “the equal
protection of the laws”, which would also be a violation of the
expression, ‘equality before the law” Equality before the law is a
negative concept which equal protection of law is a positive one. The
former declares that every one is equal before law, that on one can claim
special privileges and that all classes are equally subjected to the law of
the land and the latter postulates equal protection of all like in the same situation and under like circumstances. No discrimination can be made either in the privileges conferred or in the liabilities imposed. The guiding principle of the Article is that all persons and things circumstanced shall be treated alike both in privileges conferred and liabilities imposed. ‘Equality before the law’ means that amongst equals the law should be equal and should be equally administered and that like should be treated alike. Hence, what it forbids is discrimination between persons who are substantially in similar circumstances or conditions. Unequal treatment does not arise between persons governed by different conditions and different set of circumstances. The rule is that like should be treated alike and not that unlike should be treated alike. This Article applies to any person and is not limited to citizens alone. A corporation, which is a juristic person, will also be entitled to the benefit of this Article. It is accepted that persons may be classified into groups and such groups may be differently be treated if there is a reasonable basis for such difference or distinction. Article 14 forbids class legislation, but does not forbid classification or differentiation which rests upon reasonable grounds of distinction. It does not prohibit legislation which is limited either in objects to which it is directed or by the territory within which it is to operate the rule of differentiation is that in enacting laws differentiating between different persons or things in different circumstances which govern one set of persons or objects so that the question of unequal treatment does not really arise between persons governed by different conditions and different set of circumstances. The principle of equality does not mean that every law must have universal application for all
persons who are not by nature, attainment or circumstances in the same position and the varying needs of different classes of persons require different treatment. The rule of classification is not a logical and natural corollary of the rule of equality, but the rule of differentiation is inherent in the concept of equality.\textsuperscript{10} The equal protection of the laws guaranteed by Article 14 does not mean that all the laws must be generated in character and universal in application and that the state is no longer to have the power of distinguishing and classifying persons or things for the purpose of legislation.\textsuperscript{11} A classification to be valid must not be arbitrary. It should always rest upon some real and substantial distinction bearing reasonable and just relation to the needs in respect of which the classification is made. In order to pass the test of permissible classification, two conditions must be fulfilled. (1) The classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group, and (2) The differentia must have a rational relation to the object sought to be achieved by the statute in question, the object of classification must be made in the utmost good faith. Classifications that are scientific and rational, that will have direct and scientific and rational, that will have direct and reasonable relation sought to be achieved yet can be bad because be allowed on the ground that it offends the letter and spirit of Article 14. In such a case, the object itself must be struck down and not the mere classification which, after all, is only means of attaining the desired end.\textsuperscript{12} The provision of Article 14 has came up for discussion before the Supreme Court in a number of cases. The decision have established certain important principles which further elucidate the scope of permissible classification. These may be
stated as: ¹³ (a) A law may be constitutional even though it relates to a single individual if, on account of some special circumstances, or reasons applicable to him and not applicable to others, that single individual may be treated as a class by himself, (b) There is always a presumption in favour of the constitutionality of an enactment and the burden is upon him who attacks it to show that there has been a clear transgression of the Constitutional principles. The person, therefore, who pleads that Article 14 has been violated, must not only have been so treated differently from others but he has been so treated from persons similarly circumstanced without any reasonable basis and such differential treatment has been unjustifiably made¹⁴, (c) It must be presumed that the legislature understands and correctly appreciates the need of its own people, that its laws are directed to problems made manifest by experience and that its discriminations are based on adequate grounds, (d) In order to sustain the presumption of Constitutionality, the court may take into consideration matters of common knowledge, matters of report, the history of times and way assume every state of facts which can be conceived existing at the time of the legislation, (e) The legislature is free to recognize degree of harm and confine its restriction to those cases where the need is deemed to be the clearest, (f) While in good faith and knowledge of the existing conditions on the part of legislature are to be presumed, if there is nothing on the face of the law or the surrounding circumstances brought to the notice of the court on which the classification may reasonably be regarded as based, the presumption of constitutionality can not be carried to the extent of always holding that there must be some undisclosed and unknown reasons for subjecting certain individuals or
corporations to be hostile or discriminating legislation, (g) The classification may be made on different basis, e.g. geographical or according to objects or occupations or the like, and (h) The classification made by a legislature need not be scientifically perfect or logically complete.\textsuperscript{15} Equality before the law does not require mathematical equality of all persons in all circumstances. Equal treatment does not mean identical treatment. Similarly, not identity of treatment is enough.\textsuperscript{16} There can be discrimination both in procedural and substantive law as well Article 14 applies to both.\textsuperscript{17} The above principles of Article 14 which embodies the equal protection clause of the Constitution has been invoked in a large number of cases before the Supreme Court. If the classification satisfies the test laid down in the above proposition, the law will be declared Constitutional. We further proceed to the new concept of equality. In \textit{E.P Royappa v. State of Tamil Nadu}\textsuperscript{18}, the Supreme Court challenged the traditional concept of equality which was based on reasonable classification and has laid down the new concept. Bhagwati J. delivering the judgment on behalf of himself, Chandrachud and Krishna Iyer J.J pronounced the new concept of equality: "Equality is a dynamic concept with many aspects and dimensions and it can not be cribbed, cabined and confined with in traditional doctrinaire limits". In \textit{Menaka Gandhi vs. Union of India}\textsuperscript{19}, Bhagwati J. again quoted with approval the new concept of equality propounded by him in \textit{E.P Royappa case}. He said: "equality is a dynamic concept with many aspects and dimensions and it can not be imprisoned within traditional and doctrinaire limits. Article 14 strikes at arbitrariness in state action and ensures fairness and equality of treatment". In \textit{International Airport Authority case}. Bhagwati J.
reiterated the same principle in the following words: “It must be therefore now being taken to be well established that Article 14 strikes at is arbitrariness because an action that it arbitrary, must necessarily involve negation of equality. The doctrine of classification which is involved by the court is not paraphrase of Article 14 nor is it the objective and end of that Article. It is legislative or executive action in question which is arbitrary and therefore constituting denial of equality”. Thus according to this very doctrine if the action of the state is arbitrary it can not be justified even on the basis of doctrine of classification. Where an act is arbitrary, it is implicit in it that it is unequal and therefore violation of Article 14. Article 14 strikes at arbitrariness in state action and ensures fairness and equality of treatment. It is attracted where equals are treated differently without any reasonable basis. In K.A. Abbas vs. Union of India, the validity of cinematographic Act, 1952 was challenged on the ground that it makes unreasonable classification. It was argued that motion picture is a form of expression and therefore entitled to equal treatment with other forms of expression. The court held that the treatment of motion of picture must be different from that of other forms of art an expression therefore the classification of films into two categories (U films and A films) is a reasonable classification and due to this reason the motion of picture must be regarded differently other forms of speech and expression. In Nishi Manghu vs. State of J & K, the Court held that the classification based on regional imbalance was vague in absence of identification of areas suffering from such imbalance and accordingly selection of candidates for admission to MBBS course from this category was arbitrary and violation of Article 14 of the and Constitution hence invalid .But as
regards selection of candidate on the basis of other considerations, the Court held that the classification was valid as it was based on nature and occupation and not on the basis of caste and does not offered Article 14 or Article 15. In *Ajay Hasia vs. Khalid Mujib*\(^2\), the Court held that the allocation of one third of total marks for the oral interview was plainly arbitrary and unreasonable and thus violation of Article 14 of the Constitution. In *Air India vs. Nargesh Meerza*\(^3\), the Supreme Court struck down the Air India and Airlines Regulations on the retirement and pregnancy bar on the services of air hostesses as unconstitutional on the ground that the conditions laid down therein were entirely unreasonable and arbitrary. The court held that the termination of service on pregnancy was manifestly unreasonable and arbitrary and violation of Article 14 of the Constitution. In *R.K Garge vs. Union of India*\(^4\), popularly known as the Bearer Bond’s case, the Constitutional validity of the special Bearer Bonds Immunities and Exemptions Ordinance 1981 and the Act, which replaced it was challenged on the ground that the classification made by them was arbitrary and without rational basis and was violation of Article 14 of the Constitution. The Court by 4-1 majority upheld the validity of the classification made by the Act between persons having black money and persons not having black money was based on intelligible differentia having rational relation with the object of the Act. The majority also, rejected the contention that in judging the validity of classification under Article 14 the consideration of morality and others should play an important role, Gupta J. however, dissented from the majority and held that the classification between two classes- tax evaders and honest tax payers- had no rational relation to the object of the Act, and therefore the Act
and the ordinance violates Article 14. He held that in judging the reasonableness of law under Article 14 mortality and ethics have an important bearing. In A V Nachane vs. Union of India, known as L.I.C. Bonus case, the Supreme Court upheld the validity of L.I.C. Amendment Act, 1981. The Act and the rules were challenged that they were violation of Article 14 of the Constitution as they suffered from excessive delegation of legislature functions. The court held that the 1974 settlement on bonus could only be superseded by a fresh settlement, an industrial award or relevant legislation. But any such suppression could only have future effect and not retrospective effect. In D.S. Nakara vs. Union of India the Supreme Court struck down the rule 34 of the central services (Pension) Rule, 1972 as unconstitutional on the ground that the classification made by it between pensions retiring before a particular date and retiring after that date as not based on any rational principle and was arbitrary and violation of Article 14 of the Constitution. In Mithu vs. State of Panjab the Court struck down section 303 of IPC as unconstitutional on the ground that the classification between persons who commit murder whilst under the sentence of the imprisonment and those who commit murder whilst they were not under the sentence of the life imprisonment for the purpose of making the sentence of death mandatory in the case of former class and optional in the later class was not based on rational principle. In Suman Gupta vs. State of J & K, the Supreme Court held that the nomination of candidates of states for admission to the reserved can not be left to the absolute discretion and uncontrolled choice of the state governments. Article 14 is violated by the powers and procedures which results in unfairness and arbitrariness. In Suneel Jatley vs. State of Haryana, the
reservation of 25 seats for admission to MBBS and BDS course for students who were educated from class I to VIII in common rural Schools was held to be violation of Article 14 and invalid because the classification was arbitrary and irrational. In Pradeep Jain vs. Union of India, the Supreme Court held that wholesale reservation of all seats in the MBBS and BDS courses made by state government of Karnataka, UP and Union territory of Delhi on the basis of ‘domicile’ or residence within the state or on the basis of international preference for students who have passed qualifying examination excluding all students not satisfying the residence requirement, regardless of merit was unconstitutional and violates Article 14. In K.Nagraj vs. State of A.P., the court held that the reduction of age of retirement was not arbitrary and unreasonable and violation of Article 14. In Surendra Kumar vs. State of Bihar, the Supreme Court quashed the nomination of candidates by the government for the admission to medical college in state of J & K as violation of Article 14. The court directed the government to adopt definite criteria and follow pre-defined norm. In Indian Express Newspapers vs. Union of India, it was held that the classification of News paper into small, medium and big newspapers on the basis of their circulation for the purpose of levying customs duty on newsprint is not violation of Article 14. In Central Inland Water Transport Corporation Ltd. vs. Brijo Nath, the Supreme Court held that service rules empowering the government corporation to terminate services of permanent employees without giving reasons on three months notice or pay in lieu of notice is violation of Article 14 being unconscionable, arbitrary, unreasonable and against public policy as it wholly ignores the audi alteram parttem rule (i.e. hear the parties). In
Revathi vs. Union of India, the Constitutional validity of section 198(2) of Cr. PC and section 497 of IPC which disables the wife from prosecuting her husband for adultery was challenged that it was violation of Article 14 of Constitution. The Supreme Court held that there was discrimination based on sex and these provisions were valid.

In Arti Gupta vs. State of Panjab, it was held that reduction of minimum qualifying marks from 35% to 25% in order to accommodate more Scheduled Castes and Scheduled Tribes Candidates to fulfill the reserved quota is not arbitrary and violation of Article 14 of the Constitution. In State of Maharashtra vs. Madukar Balkrishna Badiya, the validity of the Bombay Motor Vehicles Tax Act, 1958 as amended by the Maharashtra Act of 1987 and 1988, was challenged, the court held that the Act was violation of Article 14 of the Constitution.

In A.R. Antulay vs. RS Nayak, the appellant challenged the Constitutional validity of the directions given by the supreme court in the case R.S Nayak vs. A.R Antuley, (1984) 2 SCC 183. Pursuant to which the case was withdrawn from the special judge and was tried by the High Court which convicted him of certain offence under section 161 and 165 of IPC and Section 5 of corruption Act 1947. It was held that by giving direction the Supreme Court has unintentionally caused the appellant denial of rights under Article 14 denying him the equal protection of law by being singled out for a special procedure not provided by law. The singled out of the High Court for a speedier trial by the High Court for an offence of which the High Court has no jurisdiction and the denial to him the right of appeal to the High Court was found violation of Article 14.

In P & T Scheduled Caste /SCHEDULED TRIBE employees welfare Association vs. Union of India, the validity of the new policy
of promotion was challenged. The court held that this was discriminatory and violation of Article 14. Deepak Sibal vs. Punjab University the appellants challenged the constitutional validity of the admission rule in the evening classes of the three years LL.B course of the Punjab University. It was held that the classification between the government and semi government employees for the purpose of admission to evening class to the exclusion of the other employees was unreasonable unjust and violation of Article 14 of the Constitution In Bhagwanti vs. Union of India, it has been held that the classification between marriage during service and marriage after retirement for the purpose of giving family pension is arbitrary and violation of Article 14.

The concept of equality envisages the idea that all men are born free and equal, and there should be no discrimination on the basis of religion, race, caste, sex, colour or creed. Hon’ble Justice Methew emphasized that the claim of equality in fact a protest against unjust, undeserved and unjustified inequalities. It is symbol of man’s revolt against chance, fortune, disparity unjust power and crystallized privileges. Equality is one of the Human Rights, which was declared in order to maintain humanism in our society. The Human rights are basic socio political conditions to which every human being is entitled. The equality among men means that every citizens physically strong or weak, effective or non- effective, rich or poor, is entitled to equal opportunities along with all other members of the society. In a broader perspective, equality as a principle of distributive justice amounts to no more than that men amounts to no more than that man should all be treated in the same way save where there is a sufficient reason to treat them differently.
value of equality demands the giving of favored treatment to the deprived and the weaker sections of the society, to enable them to complete with fairness and with advanced members of the society. The equality in fact involves an equilibrium creating or equilibrium oriented compensatory discrimination. It takes into account social, economic and educational inequalities by affirmative actions.

Equality helps in promoting brotherhood among human beings and it protects status and dignity of all men. It is the foundation of socialistic democracy based on secularism. It requires the state to take action legislative judicial or administrative to provide protection to weaker sections of the society. Equality as an aspect of justice has two phases namely, equality as a means of doing justice and equality as an end of justice. One may accept the notion of equality, social, economic and political as an end of justice. However, it is not practicable to accept the notion of equality without 'protective discrimination'. There are various synonyms used for protective discrimination in legal literature. They are reservation quotas, compensatory treatment or preferential treatment and adventitious aids etc. Protective discrimination is a means of doing justice. The road to distributive justice is a two lane highway, one requiring the equal treatment of the equals and the other requiring the unequal treatment of unequals. In order to discover substantive of distributive justice, it is necessary to establish a body of rights and duties and then to examine them in the light of the formal principle of equality. The aim being to excluded every form of individuous' discrimination not justified by relevant differences. The doctrine of equality envisages the idea of protective discrimination in all its manifestations. The notion of protective discrimination aims at unequal
treatment of unequal, i.e. those who were the victim of the man made asperities for centuries together now need to be compensated. Mere proclamation of abstract equality will be of no use to such persons groaning under the object poverty and deadening weightage of backwardness. They need protective discrimination or ‘advantious aids’ to participate in the mainstream of national life, the way, the Constitution, Vouchsafes and ordains for them. It is the legitimate aspiration of citizens in a welfare state that good education and security of job should be provided to all of them. If no protective discrimination is given to the weaker sections in the matters of education and employment, they will remain as they were and our professions of distributive justice will be a dream and an illusion to be vainly pursued in an organizing atmosphere of unequality ridden society.

Equality naturally gets priority under the Constitution of India in its preamble as well as which deals with the fundamental Rights of the citizens. The most important reason for laying emphasis on this right was due to the prevalence of discrimination on ground of religion, race, or place of birth in large scale during British rule. The fundamental rights guaranteed under the Indian Constitution are not based on the theory of natural rights and reasonable restrictions have been imposed on the exercise of different rights in the interests of community. Pandit Jawaher Lal Nehru in this connection rightly observed that individual can over side ultimately the rights of the community should injure and invade the rights of the individuals unless it to be for the most urgent and important reason.
Moreover, it can not be claimed that framers of the Indian Constitution drafted a wholly indigenous or a novel Constitution to achieve this objective of rightly balancing the interest of the individuals with those of the community. Dr. Ambedkar was quite correct when he observed that there could be nothing new in a Constitution framed so late in the history of the world. According to him "in a Constitution framed so late in the day are more apparent than in the formulation of the fundamental rights and specially in setting fourth systematically the rights relating to equality. The Indian society has been traditionally pluralistic and its culture has been defined by a rich variety of diversities. The question of formulating a set of fundamental rights guaranteed right to equality in such a social context, harmonizing the rights of the individual with those of community, could not be free from controversy or confusion. According to Sardar Ballabh Bhai Patel, the Chairman of the advisory committee deserved: "These two schools viewed the matter from two different angels one school of thought considered it advisable include as many rights enforced. The other school considered it advisable to restrict fundamental rights to a few essential things that may be considered fundamental Between the two schools there was a considered to be a very good means." The framers of the Constitution also made it clear that there could be no other fundamental rights of the individual than those guaranteed by the Constitution of part III. Contrary to this, the Ninth Amendment of the Constitution of United States provides that the enumeration of certain rights in the Constitution shall not be construed to deny or disparage others retained by the people. In the absence of such a provision in the Constitution of India, it is logical to sum up that there is no scope for the courts in India to formulate any
more fundamental rights by the application of the doctrines of implied and inherit rights of the individual. The provision of the Indian Constitution relating to right to equality prohibits all kinds of unjustified in equalities. The concept of equality is based on the principle of natural justice that all individuals should be treated alike. In the context of social sciences, the concept of equality refers to some time to certain properties when men are held to have in common but more often to certain treatments which men either receive or ought to receive. The concept of equality is, in fact, an indication of the fact that all men are ultimately equal. It is therefore, a noble ideal which provides dignity to all individuals. Nonetheless, the concept does not necessarily denote that every one should be treated alike regardless of individual abilities. Absolute equality is, in fact, an impossibility and what equality really signifies is that among equal laws should be equal and equally administered too. It further denotes that every one who is classified as belonging to the same category, for a particular destination is to be dealt with in the same manner. The concept of equality is closely attached with the concept of justice. This is what the Supreme Court and the High Courts of India emphasize through their various judgments. In the Constitution of India, Right to equality is provided under Article 14, 15, 16, 17 and 18. Article 14 lays down the general rule which prohibits the state from denying any person equality before law or the equal protection of the laws. While succeeding Articles 15, 16, 17 and 18 provide particular applications of the Rule. In the Constituent Assembly, provision relating to right to equality were examined in considerable details. The Advisory committee on fundamental Rights dealt only with the equal treatment of laws 'but added the due process' clause regarding
the right to life and liberty.\textsuperscript{49} The Drafting committee submitted the term equality before law for equal treatment of law and added a new phase, viz, 'equal protection of the laws'.\textsuperscript{50} Originally in the draft Constitution the right to personal liberty was combined together in one Article. But after the second reading stage decision was taken by the Constituent Assembly to provide equality before in a separate Article. The Constitution advocates for the abolition of social disabilities. According to the Advisory Committee, the state not to discriminate against any citizen on the grounds only of religion, race, caste or sex with regard to trading establishments, or the use of wells, tanks, road places of public resort which were maintained partially or wholly by public funds.\textsuperscript{51} The Drafting committee accepted these non-discriminatory provisions and added the words or any of them to clear any doubtful or double meaning.\textsuperscript{52} Some of the members opposed detailed provisions for abolition of social disabilities which according to them could be removed sooner or later by social reforms. Prof. Saxena considered it essential to prepare the ground to give effect to these changes by the Constitution.\textsuperscript{53} However, majority of the members were in support of embodying these provisions in the constitution. Somnath Lahiri pointed out that there should be no discrimination either on social grounds, political beliefs and faiths. Hence, he thought an amendment wanted to add the words 'political creeds' under the clause (4) of the interim report on fundamental rights which was not accepted. The Advisory committee accepted for equality of opportunity for all citizens in matter of public employment The state was authorized to legislate suitably to safeguard the interests of such section of society. The Draft committee passed these provisions and added the word 'backward' to signify that class of
people which was not adequately represented in the public services. Some members were of the opinion that the term backward could not be defined in brief and this might create confusion. Aziz Ahmad Khan wanted to drop the word ‘backward’ altogether but Dharam Prakash was in favour of replacing the term ‘backward classes’ by ‘depressed classes’ or ‘Scheduled Castes’ to make it more clear. On the other hand, Pt. H.N. Kunzru opposed to the principle of reservation of seats for backward classes in matter of public empowerment which according to him would lead to social disharmony. He, however, suggested for a time limit for such reservation subject to further extension of the Parliament if considered it desirable. Dr. Ambedkar while rejecting this proposal observed that it was a compromise formula of the three divergent views expressed by the members and the public at large in this connection. These were equality of opportunity for all, no reservation of any kind for any section of the community and due representation to backward communities in the administration. He therefore, claimed that under such circumstances no better formula could be in clause 3 of Article 10 of the Draft Constitution. Advisory Committee had not prescribed residential qualification for public employment through the matter was raised in the constituent Assembly. A.K Ayyer wanted to insert a new clause which could empower Parliament to enact a law, if essential for any state to limit a certain class of employment for the residents of that state. T.T Krishnamachari, however considered this suggestion as unnecessary. Dr. B.R.Ambedkar too did not like this idea. He observed that the argument that resident should not be qualification to hold appointments under state is perfectly valid and a perfectly sound argument. Some members objected to the inclusion of
the provision of abolition of untouchbility in dealing fundamental rights. According to them it was a social evil and could not be removed through Constitutional provision unless the caste system was abolished.\textsuperscript{62} Dr. S.C.Banerjee observed that the Untouchbility was not a disease, namely caste system.\textsuperscript{63} Moreover, there could be no appropriate definition of untouchbility and according to \textit{D.N.Dutta} ‘Unless there is a definition it can not be considered as an offence’.\textsuperscript{64} Members like R.K.Choudhary and Naziruddin Ahmad vainly tried to define untouchbility but their definition could not be accepted by the house.\textsuperscript{65} Finally the provision for the abolition of untouchbility was carried through by the unanimous vote of the Constituent Assembly.

Likewise, titles were also abolished under 7 of the interim report on fundamental rights which provided that the Union Government was not to confer any ‘heritable title, nor was any person holding any office of profit or trust under the state to have any title from any alien state without the permission of the Government’. However, in the draft Constitution the qualifying word ‘heritable’ was dropped\textsuperscript{66} and a saving clause not being a military or academic distinction was added at the second reading stage.\textsuperscript{67} Meanwhile, Bala-krishna Sharma opposed abolition of titles on ground of social tradition of the country and psychology of the people.\textsuperscript{68} Another members Mr. Prakash wanted distinction to be made between titles and awards by the state. Award/title by the state should be abolished.\textsuperscript{69} Further more, H.V. Kamath enquired from Dr. B.R Ambedkar whether the abolition of titles was a justifiable rights\textsuperscript{70}. The latter replied in the negative and observed that infact it was not a right but a duty upon an individual and a condition of combined citizenship by itself is not a justifiable right.\textsuperscript{71}
However, the pursuit for equality and distributive justice has often led to conflicts between the guaranteed individual rights and social justice to people belonging to backward classes and weaker section of the society while the guaranteed fundamental rights are enforceable. The claim to social justice by the members of the backward classes and weaker sections is not enforceable as such, unless the state passes a law in that direction. Since, the Constitution authorizes the state to make preferences for them. While the state to action in implementing the preferential schemes have to encouraged, it has also be seen that in the exercise of the powers the government does not abuse or misuse its power, so as to impair the interest of others. The government has to perform a formidable task of balancing the competing claims of different sections of the society. The harmonization is required to resolve this conflict between ‘need and basic claims’ of the backward groups to protective discrimination and the rights of the members of the advanced sections to which they became entitled because of their performances, contribution and merit. The Court also performed a tremendous task in ensuring that the protective discrimination is confined strictly to constitutionally permissible objectives and of over seeing that a balance is struck between the fundamental rights of the individual and social justice to the backward classes. The equality in physical sense to achieve physical equality, we often have to resort to the principle of proportion equality which speaks for the treatment of equals equally and unequal unequally and proportional equality speaks for the treatment of equals. In the opinion of Mathew it does not imply that men are identical or equal in intelligence, strength, talent or in many other respects. As a normal principle, its meaning might be summed up
in this way: human beings are entitled to be treated as they are equal on all matters important to them and matters really important to them are matters that are common to man.\textsuperscript{72} Rashdall was of the opinion that the principle does not require that every person be given an equal share of wealth or of political power, but rather equal consideration in the distribution of ultimate good.\textsuperscript{73} The equality of men means that every citizen of whatever capacity, is entitled to equal consideration from all members of society. Physically strong or weak, effective or non-effective, rich or poor, he is to be regarded as such opportunities of self-development as he is capable of grouping or even to share protection or sustenance of that he is incapable through natural defects or undeserved misfortunes, of maintaining any foothold for himself in society. In a broader perspective, equality as a principle of distributive justice amounts to no more than that men should all be treated in the same way save where there is a sufficient reason to treat them differently. But this version if equality seems to leave open what is to count as a sufficient reason and all kind of invidious distinction could make entry that way.\textsuperscript{74} However, belief in this aspect of equality viz, one man should not be feared, to another without sufficient reason, is a deep rooted principle of human thought like other ends, it can not itself be defended or justified other acts.\textsuperscript{75} Plato's remarks about law is equally applicable to the concept of equality that a perfectly simple principle can never be applied to state of things which is the reverse of the simple.\textsuperscript{76} Aristotle observed that the origin of all quarrels and complaints can be traced to the fact that the doctrine of proportional equality has been violated, as when equals have been or are awarded unequal shares, or unequal equal shares. He maintained that award should be made
according to merit, but, there is no consensus as to what constitute merit. The differential treatment would be unjustified, if the persons concerned are not distinguishable because in such cases the equals would be treated unequally which will be tantamount to the principle of proportional equality. The doctrine of differential treatment has been expounded by Rousseau thus it is precisely because the force of circumstances tends to maintain it.  

John Rawls in his book: “A theory of justice” demands the priority or equality in a distributive sense and setting up of social system so that no one gains or loses from his arbitrary place in the society without giving or receiving compensatory adventures in return. His basic principle of justice is “all social primary goods- liberty and opportunity, income and wealth, and the basis of self-respect are to be distributed equally unless an unequal distribution of any or all of these goods is to the advantage of least favoured one of the essential element of Rawl’s conception of justice is what he calls the principle of redress. This is the principle that undeserved un equalities call for redress, and since inequalities are somehow to be compensated for society must, therefore, treat more favourably those with fewer native assets and those borne into less favourably social positions. Thus, the Rawal’s Theory of justice and redress principle furnish an answer to the problem that equality of opportunity must yield equality of Results. In a society, the individuals possess certain needs in common, thus they are to be treated equally until and unless those needs are minimally met. In this context, Laski maintains: Equality therefore involves up to the margin of sufficiently 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 man we are, of course there in, 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 strong. This involves a payment by society to men and women who limp after its vanguard. The equality of state depends on its fair treatment. To act otherwise is to regard them not as person but as instrument.

The value of equality demands the giving of favoured treatment to the deprived and the weaker sections of the society, to enable to compete with fairness with the well to do and more advanced members of the society. Thus, the measures which are designed to promote an effective equality by giving preferential treatment to the un equals and to different from the distributive justice. The equality in fact, therefore, involves an equilibrium creating an equilibrium oriented and compensatory discrimination. The compensatory discrimination notion takes into account social, economic and educational inequalities and seeks the elimination of the existing inequalities by affirmative actions. This policy is justified because unequal characters of human beings are not as a result of innate superiority, but of unequal environment are removed or eliminated. There will be a greater chance to attain a stage of real and effective equality. The call of the moral perspective of equality value is: equals must be treated equally. Un equals must be treated unequally not to perpetuate the existing inequalities but to achieve and maintain a real state of effective equality. The Indian society is a caste- ridden and economically imbalanced society. The strictness of caste barriers from centuries together has led to the social isolation and economic oppression of a section of society. The doctrine of social equality would be meaningful in the Indian society only if protective discrimination 'or
initial advantage 'or privilege' is given as an equalizer to those who are too weak socially, economically and educationally to avail the advantage of guaranteed freedoms on the footing of equality. It demands equality in fact, which alone can be the basis for social equality. The Indian Constitution makers did provide both doctrines to impart distributive justice to its citizens.\textsuperscript{81} According to Mr. justice Subba Rao the concept of equality in practice can only be worked out by accepting two principles: (i) to give equal opportunity to every citizen of India to develop his own personality in the way he seeks to do, and (ii) to give aids to the under privileged to face boldly the competition of life. Though these two principles appear to be conflicting but the harmonious blending of both give equal opportunities to all citizens to work out their way to life. Doctrinaire insistence of an abstract equality of opportunity leads to in practice to inequality which the doctrine seeks to abolish.\textsuperscript{82} The Indian society is traditionally caste ridden and caste oriented. Therefore, equality in fact, can be realized by treating on the one hand, the forward classes and the under-privileged classes differently. In other words, it is a device of protective discrimination or 'adventitious aid' in favor of the latter which alone can equate them with the former. On the other hand, it requires the removal of all social evil or factors perpetrating social inequality of distributive justice a living reality. A principle of equality under Article 14 of the Constitution provides that the state shall not deny to any person equality before the law or equal protection of laws with in the territory of India. The spirit behind this Article is undoubtedly to secure to all persons, citizens or non- citizens, the equality of status and of opportunity referred to in the glorious preamble of the Constitution. Equality before law is negative concept
which ensures that there is no special privilege in favor of any one. All are equal subject to the ordinary law of land and that one person, whatever, be his rank or condition is no above the law. The concept, equal protection of laws is positive concept. It postulate for the application of the same law alike and without discrimination to all person similarly situated.\textsuperscript{83} It denotes equality of treatment in equal circumstances. It implies that among equals the law should be equal and equally administered that the like should be alike without distinction of race, religion, wealth, social status or political influence. All persons are not equal by nature, attainment or circumstances. The varying needs of different classes or sections of people require differential and separate treatment. The state is required to deal with diverse problem arising out of an infinite variety of human relations. It is necessary to have the power of making laws to attain particular ends or objects and for that purpose of distinguishing selecting and classifying persons and things upon which laws are to operate.\textsuperscript{84} The state can make reasonable classification in making legislation. The doctrine of classification is only a subsidiary rule evolved by the court to give a political content to the guarantee under Article 14 by accommodating it with the political needs of the society.\textsuperscript{85} The classification should rest on real and substantial criteria and should be supported by an intelligible object intended to be pursued by the legislature. The legislature should neither treat unequals as equals, nor equals un equals without any rhyme or reason or intelligible purposive differences relatable to the legislative purpose spelled out by it. The doctrine of classification should not be allowed to eat up the doctrine of equality. Neither the Courts nor the legislature should make anxious and various effort to discover, some how,
somewhere, the basis for classification just to get the enactment declared as Constitutional. The protection of equal laws should not be allowed to be replaced by the protection of law making reasonable classification, otherwise, the guarantee of equality may be replaced by over worked methodology of classification. The Supreme Court has laid down the following principles which should be kept in mind by the judges while deciding the Constitutional validity of laws in reference to Article 14 of the Constitution. That the law may be Constitutional even though it relates to a single individual or institution.\textsuperscript{86} That there is always a presumption in favour of the constitutionality of the enactment. That it must be presumed that the legislature understands and correctly appreciates the need of its own people and that its discriminations are based on adequate grounds. That while good faith and knowledge of the existing conditions on the part of the legislature are to be presumed, it can not be carried to the extent of always holding that there must be some undisclosed and unknown reasons for subjecting certain individuals or corporations to hostile or discriminating legislation.\textsuperscript{87} These very principles have constantly been followed by the Supreme Court whenever it is called upon to adjudge. The Constitutionality of any particular law as discriminatory and violation of Article 14 of the Constitution. The rule of equality within Article 14 and 16(1) will not be violated by a rule which will ensure equality of representation in the services for unrepresented classes after satisfying the basic needs of efficiency of Administration. Article 16(2) rules out some basis of classification including race, caste, decent, place of birth etc. Article 16 (4)'s classification explains that classification on the basis of backwardness does not fall within Article 16(2) and is legitimate for the
purpose of Article 16(1). If preference shall be given to a particular under represented community other than a backward class or community other than a backward class or under represented state in an all India service, such a rule will contravene Article 16(2). A similar rule giving preference to an under represented backward community is valid. Our Constitution aims at equality of status and opportunity for all citizens including those who are socially, economically and educationally backward. The claims of members of backward classes require adequate representation in legislative and executive bodies. If members of the Scheduled Castes and tribes, who are said by this Court to be backward classes, can maintain minimum necessary requirement of administrative efficiency, not only representation but also preference may be given to them to enforce equality and to eliminate inequality. Article 15(4) and Article 16(4) bring out the position of backward classes to merit equality. Special provisions are made for the advancement of backward classes and reservation of appointments and post for them to secure adequate representation. The basic concept of equality is equality of opportunity for appointment. Preferential treatment for members of backward classes with due regard to administrative efficiency alone cum-mean equality of opportunity for all citizens. Equality under Article 16 could not have a different content from equality under Article 14. Equality of opportunity admits discrimination without reason and prohibits discrimination without reason. Discrimination with reason means rational classification for different treatment having nexus to the constitutionally permissible object. Laws are violative of Article 14 on the ground that there is a classification without a difference on the basis of classification is irrelevant to the purpose of the Act. A
classification based on language, religion, race sex, or place of birth is not possible. Article 14 of the Constitution says that 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 first expression ‘equality before the law’ is taken from the English common law which is a declaration of equality of all persons within the territory of India, implying thereby the absence of any special privilege in favour of any individual. No Man is above law. Every person whatever by his ranks or condition, is subjected to the Jurisdiction of ordinary Courts. The second expression ‘the equal protection of the laws’ which is rather a corollary of the first expression and is based on the last clause of the first section of the 14th Amendment to the American Constitution, which directs that equal protection shall be secured to all persons within the territorial jurisdiction of the union in the enjoyment of their rights and privileges without favours or discrimination. Thus Article 14 uses two expressions to take the concept of equal treatment a binding principle of state action. It will be difficult to imagine any violation of the expression, ‘the equal protection of the laws’, which would also be a violation of the expression, ‘equality before the law’. Equality before the law is a negative concept, while equal protection of law is a positive one, that no one can claim special privileges and that all classes are equally subjected to the ordinary law of the land, the latter postulates equal protection of all alike in the same situation and under like circumstances. No discrimination can be made either in the privileges conferred or in the liabilities imposed.

In relation to promoting, “equality of opportunity” could only means subjection to similar conditions for promotion by being subjected
uniformly to similar or same kind of tests. This guarantee was, in fact, intended to protect the claims of merit and efficiency as against incursions of extraneous considerations; the guarantee contained in Article 16(1) is not, by itself, aimed at removal of backwardness due to Socio-economic and educational disparities. Produced by past history of social oppression, exploitation or degradation of class of persons. In fact, efficiency tests, as part of a mechanism to provide equality of opportunity, are meant to bring out and measure actually existing inequalities in competence and capacity or potentialities so as to provide a fair and rational basis for justifiable discrimination between candidates. Whatever may be the real causes of unequal performances which imposition of tests may disclose, the purpose of equality of opportunity, by means of tests is only to ensure a fair competition in securing posts and promotion in government service, and not the removal of causes for unequal performance in competitions for these posts or promotions. Thus, the purpose of Article 46 and 335, which are really extraneous to the objects of Article 16(1), can only be served in such a context by rules which secure preferential treatment for the Backward classes and detract from the plain meaning and obvious implication of Article 16(1) and 16(2). Such special treatment mitigates the rigor of strict application of the principle contained in Article 16(1). It constitutes a departure from the principle of absolute equality of opportunity in the application of uniform tests of competence. Article 16(4) was designed to reconcile the conflicting pulls of Article 16(1). Representing the dynamics of justice, conceived of as equality in conditions under which candidates actually compete for posts in government service, and of Article 46 and 335, embodying the duties of
the state to promote the interests of the economically, educationally, and socially backward so as to release them from the clutches of social injustice. These encroachments on the field of Article 16(1) can only be permitted to the extent they are warranted by Article 16(4). To read broader concepts of social justice and equality into Article 16(1) itself may stultify this provision itself and make Article 16(4). The Learned Judge felt that the Backward classes Commission on the basis of whole report the government order has been passed had given good reasons in support of its recommendations. Accordingly the government order was upheld. The Supreme Courts Held:

"If we depart from the view that caste or community is an important relevant factor in determining social and educational backwardness for purpose of Article 15(4) and Article 16(4) of the constitution, several distortions are likely to follow and may take us away from the sole purpose for which those Constitutional provisions were enacted. Several factors such as physical disability poverty, place of habitation, the fact of belonging to a freedom fighters family, the fact of belonging to the family of a member of the armed forces might each become a sole factor for the purpose of Article 15(4) and Article 16(4) which were not at all intended to be resorted to by the state for the purpose of granting relief in such cases. While relief may be given in such cases under Article 14, Article 15(1) and Article 16(1) by adopting a rational principle of classification Article 15(4) and Article 16(4) can not be applied to them. Article 15(4) and Article 16(4) are intended for the benefit of those belong to caste/communities which are traditionally disfavored and which have suffered societal discrimination in the past. The factors mentioned above were never in the contemplation of the
makers of the Constitution while enacting these clauses.

Equality postulates not merely legal equality but also real equality. The equality of opportunity has to be distinguished from the equality of results. The various provision of our Constitution and particularly those of Articles 38, 46, 335, 338 and 340 together with the preamble show that the right to equality enshrined in our Constitution is not merely a formal right or a vacuous declaration. It is a positive right, and the state is under an obligation to undertake measures to make it real and effectual. A mere formal declaration of the right would not make unequal’s equal. To enable all to compete with each other on equal plane, it is necessary to take positive measures to equip the disadvantaged and the handicapped to bring them to the level of the fortunate advantaged. Articles 14 and 16(1) no doubt would by themselves permit such positive measures in favour of the disadvantaged to make real the equality guaranteed by them. However, as pointed out by Dr. Ambedkar while replying to the debate on the provision in the constituent Assembly, it become necessary to incorporate clause(4) in Article 16 at the insistence of the members of the Assembly and to allay all apprehensions in that behalf. Thus, what was otherwise clear in clause (1) where the expression “equality of opportunity” is not used in a formal but in a positive sense, was made explicit in clause(4), so that there was no mistake in understanding either the real import of the “right to equality “ enshrined in the constitution or the intentions of the constitution- framers in that behalf. Thus, what was otherwise clear in clause(1) where the expression “equality of opportunity” is not used in a formal but in a positive sense, was made explicit in clause(4), so that there was no
mistake in understanding either the real import of the “right to equality” enshrined in the Constitution or the intentions of the Constitution framers in that behalf. As Dr Ambedkar has stated in the same reply, the purpose of the clause (4) was to emphasize that “there shall be reservation look into, so to say in the administration. All legitimate methods are available for equality of opportunity in services under Article 16 (1). Article (1) affirmative whereas Article 14 is negative in language. Article 16(4) indicates one of the methods of achieving equality embodied in Article 16(1)\(^9\)

The majority view will results in the substandard replacing the standard and the reins of power passing from metricracy to mediocrity. Caste will be given precedence over merit and caliber. Article 16(4) has been virtually re-written by substituting caste by class. When you have removed the creamy layer, what are left with are still the members of certain caste only. Enforcing machinery.

The basic structure of the Constitution envisages a cohesive, unified, caste-less society- in which casteism petrified for centuries, should become merely the dust on the shelf of Indian History. By ensuring a fresh lease of life to the judgments fractures the nation and disregards the basic structure of the Constitution. The basic structure of the Constitution envisages a cohesive, unified, caste-less society- in which casteism petrified for centuries, should become merely the dust on the shelf of Indian History. By ensuring a fresh lease of life to the judgments fractures the nation and disregards the basic structure of the Constitution. Ambedkar’s main objective in the Constituent Assembly was to safe guard the interest of the Scheduled Castes. He said that he
had not the ambition of Drafting Constituon. It was charged the Constituent Assembly that the Draft Constitution was copy of the government of India Act, 1935. Ambedkar replied that there is nothing to be shamed of in borrowing. It involve nods no plagiarism. In his opinion to appoint a Constituent Assembly was super flous. The main thing was to delete those sections of government of India Act which were in Constituent with dominion status. The only work in the Constituent Assembly was to find out the solution of the communal problems. According to Dr Ambedkar the Legislature should not be trusted to prescribed the form of the Constitution. He justified that the form of administration must be incorporated in the Constitution. The most important dealing with the citizenship was that it had established a uniform or single system of citizenship for the whole country. This was in striking contrast to the double citizenship prevailing in federal states. Dr Ambedkar said that in all the dominion countries, the residents would be divided into three categories. This would mean that the citizens of the dominion residing in India would not be treated as aliens they would have same right which aliens would not have, but they would certainly not be entitled to get full rights of citizenship which was given to the people of India.
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127

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