Role of the Supreme Court of India for Extending the Scope of the Right to Equality in India

Ms. Megha Ojha
Senior Research Fellow, Business Law,
University School of Law, Gujarat University, Ahmedabad

&

Dr. Mayuri Pandya
Associate Professor, Sir L.A. Shah Law College, Ellis Bridge, Ahmedabad

Received: 10 May Revised: 18 May Accepted: 26 May

Abstract

‘Right to Equality’ is a fundamental right in India, it is provided under Article 14 of the Indian Constitution. Right to Equality ensures equality before law and equal protection of law, however, India has adopted protectionist approach for empowering vulnerable sections of the society. Therefore, Equality has given broader scope, which has created many positive changes in present social structure. In spite of it, due to socio-economic conditions of the country, discrimination or biasness still exists. The Supreme Court of India has tried to extend the scope of the ‘Right to Equality’ through its judgements to ensure equality in true sense. In this context, the paper is an attempt to understand role of Supreme Court to ensure and to extend scope of the ‘Right to Equality’ in India.

Key words: Right to Equality, Gender Justice and Equality, Role of Supreme Court.

Introduction

‘Right to Equality’ is provided as a fundamental right in India under Article 14 of the Indian Constitution. Article 14 provides that “the State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India”. The principle of equality is recognised as one of the basic feature of the Indian Constitution. The Preamble of the Indian Constitution is also highlights the principle of equality as one of the basic principle. The Supreme Court in the case of (Kesavananda Bharati v. State of Kerla, 1973) and subsequently in several other cases following it including (Indra Sawhney (II) v. Union of India, AIR 2000) has declared ‘Right to Equality’ to be part of the basic feature of the Constitution.

In the constitution of other countries the ‘Right to Equality’ is expressed similarly as it is expressed in Art.14 of the Indian Constitution. However, the Article 14 only guarantees the ‘Right to Equality’, and Articles 14 to 18 constitutes the ‘Right to Equality’. More specifically, the concept of equality as provided under Article 14 of the Indian Constitution, is similar to the concept of equality enshrined in Article 7 of the Universal Declaration of Human Rights, 1948. Article 7 of the Universal Declaration Human Rights, 1948 declares that “all are equal before the law and are entitled to equal protection of laws without any discrimination.”
The concept of equality as per Art 14 of the Indian Constitution could be interpreted in wrong way; and in social and religious life of a person, it might not remove inequalities. Therefore, makers of the Indian constitution expressly abolished and prohibited some inequalities and/or discriminatory practices which were prevailing in India at that time.

To establish equality in true sense wide powers have given to the State, so that every individual can get equal protection and opportunities for their overall development. These extending powers have been given to the State through provisions of Article 15(1), 16(1) and 17. Under Articles 15, 16 and 17 state can take necessary steps to control discriminatory practices by taking protectionist approach towards weaker sections of the society.

As it is known fact that condition of an individual always influence by circumstances, and when a person is in different/ unequal situation, then same treatment in all respect to those who are in unequal status, due to their circumstances can’t be treated equally according to universal concept of equality. Therefore, same treatment to those who are in unequal condition/situation would only result in injustice.

By understanding the fact that all people are not born equal; and due to many peculiar and distinguished circumstances/conditions, a person may not be treated equally in practical life, therefore, without considering/ understanding actual condition and status, equal treatment in all respect would only increase inequalities in society. As per universal concept of equality, there remain always possibilities that people may not be treated equally, if their class/ status or conditions are not same. Therefore, Indian concept of equality does not accept this universal principle of equality. According to Indian concept of equality “equals may be treated equally whereas unequal may be treated differently”.

The Supreme Court in case of (Chiranjit Lal v. Union of India, AIR 1951) has held that “different classes or sections of people need to have differential treatment, which should be based on their varying needs. If a disable person/s is/are unable to enjoy their rights and the fundamental freedoms guaranteed to them on par with other person/s by reason of their condition, then it is obligation of the State to provide him/them differential treatment to bring him/them in same level.” The same position was also undertaken in case of (Ashutosh Gupta v. State of Rajasthan, SCC 2002) in this case the Supreme Court has held that “if the law is based on rational classification, such law would not be discriminatory (and thus constitutional).”

In the case of (Jagannath Prasad v. State of Uttar Pradesh, AIR 1961) the Supreme Court has held that “equal protection of laws does not mean that every law must have universal application throughout the country irrespective of differences in circumstances. It implies equality of treatment to persons who are similarly situated and that the like ones should be treated alike without discrimination on the basis of race, religion, caste, social or economic status.”

In the case of (Gauri Shankar v. Union of India, AIR 1995) the SC has held that “Article 14 implies that equals should not be treated unlike and unlikes should not be treated alike. If varying needs of classes require differential treatment, it might lead to classification among groups of persons.” The basic understanding of the principle of equality has also reiterated in the case of (M.G. Badappanavar And Anr. Etc vs State Of Karnataka And Ors). In this case the Supreme Court has
held that “any treatment of equals unequally or unequal equals equally will be a violation of the basic structure of the Constitution.” In case of (Kedar Nath Bajoria vs The State Of West Bengal, 1953) the Supreme Court held that “the equal protection of law guaranteed by 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 the power of distinguishing and classifying persons or things for the purposes of legislation.”

It is clear from above discussion that in India, if any law which was enacted by the parliament on differential bases but with aim to empower every individual to enjoy their guaranteed rights and freedom, then such law would be constitutional because it can give guaranteed rights and freedom to everyone on an equal bases. Thus it can increase equalities in society.

By understanding differences in circumstances among class/group, if a law has made which can spread equality in society then such law would be constitutional. In the case of (Charanjit Lal Chowdhury v. Union of India, AIR 1951) the Supreme Court has held that “under Indian concept of equality a juristic person is also entitled to the Right to Equality”. However, in the case of (State of Gujarat v. Ambica Mills Ltd, 1974) it was held that “application of the ‘Right to Equality’ may differ to corporate (legal person) vis-a-vis natural person.”

More specifically, perusal of Article 15 and 16 clearly reveals that Indian concept of equality also demands equal treatment and prohibits unequal treatment. Therefore, in India much peculiar or special legislation, which are applicable in certain circumstances on particular class and/or group of people have been made, however, all such legislations does not obnoxious to the fundamental principle of equality. Therefore, in Indian Constitution any amendment which may violate the basic principle of equality would be invalid.

In many cases the ‘Right to Equality’ has been invoked before Supreme Court and various High Courts. Towards positive equality Indian courts have given judgement by adopting protectionist approach, so that everyone can be treated equally. Jurists had separated the concept of equality and classified in separate category in Indian context. As per Indian Constitution “State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India”. Under Article 14 two concept of equality are provided (1) Equality before law, and (2) Equal protection of law.

**Principle of ‘Equality before Law’ and ‘Equal Protection of Law’**

‘Equality before law’, also known as equality under the law; and ‘equal protection of law’ enables everyone to enjoy their rights and freedom and ensure equal opportunity for all. Therefore, equality before law and equal protection of law are subjectively different concept. Both concepts ‘equality before law’ and ‘equal protection of law’ can be explained as below:

- ‘Equality before law’ ensures equality in the eye of law and it means that no one is above the law. The phrase ‘Equality before law’ has slightly negative connotation, because it means that law does not discriminate. According to the concept of ‘Equality before law’ every individual should be treated equally irrespective of their birth, position, gender, religion, race, caste or other personal attributes. Thus, privileged, underprivileged and unprivileged all are put on the same par under the phrase of ‘equality before law’.
‘Equal protection of law’ means that every person in similar condition shall be treated equally and hence it provides equal opportunities with aim to establish “Equality of Status and Opportunity”.

The concept of ‘equality before law’ as well as ‘equal protection of law’ enables everyone so that they can secure their rights and freedom equally through State. As “Equality of Status and Opportunity” are also embodied in the Preamble of the Constitution; and through the concepts of ‘Equality before law’ and ‘Equal protection of law’ it can also be achieved successfully.

Further it is well experienced that all persons are not equal by nature, position or circumstances etc. Therefore according to Article 14 the State can treat different persons in differently because Article 14 not forbid reasonable classification of person, objects, and actions by legislature for the purpose of achieving equality in true sense. Therefore, if circumstances demands differential treatment, then for attaining equality, the State can do differential treatment because such protective discrimination/ differential treatment is also a facet of equality. This is called “Doctrine of Reasonable classification”.

This ‘Reasonable classification test’ was enough to justify law or administrative actions, but till 1970 only. After 1970 ‘Right to Equality’ has acquired new dimensions; and hence after 1970 through number of judgements, which were pronounced by Indian courts with aim to abolish inequalities in society, the Indian concept ‘equality’ got changed; and after this phase it has attained extending scope by various landmark judgements. Here in this paper few iconic and latest judgments that have given broader scope and helped in changing/abolishing inequalities in Indian societies have been discussed.

Application of the ‘Right to Equality’: Extending horizons

Towards positive equality in Indian, and for affirmative action many new developments have been introduced through number of cases by Indian Courts. The cases which were decided by the Supreme Court have given wide scope to the ‘Right to Equality’.

Moreover, the Supreme Court of India has established certain important aspects of the ‘concept of equality’ which has given broader scope and elucidating permissive stems for broaden the fundamental ‘Right to Equality’. In many cases, the Court has given importance to positive right so that State can take appropriate action and can make effective policies to minimise inequalities among citizens. In case of (E. P. Royappa vs State Of Tamil Nadu & Anr, 1973) it has 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”. In case of (Maneka Gandhi vs Union Of India, 1978) it has held that “Article 14 strikes at arbitrariness in State action and ensures fairness and equality of treatment.” In (Union Of India And Another vs Tulsiram Patel And Others, 1985) the Supreme Court has held that “non-observance of the principle of natural justice in State action violates Article 14.”

Recently in Sabarimala temple case the Supreme Court has held that "Devotion cannot be subjected to gender discrimination". By this judgement the Supreme Court has removed a ban, which was preventing the women (between age group of 10 and 50 years) from entering Kerala’s Sabarimala temple on bases of ancient customs. In the said case Constitutional Bench of the
Supreme Court held, by 4-1 Majority, that practice of barring entry to women between the ages of ten and fifty in Sabarimala temple, was unconstitutional. (Pandya M. O., Jan 2019).

Constitution Bench of Hon’ble Supreme Court in the case of (Secretary, State of Karnataka and others v. Uma Devi (3) and others, 2006) has held that “absorption, regularization or permanent continuance of temporary, contractual, casual, daily wage or ad hoc employees appointed/recruited and continued for long in public employment dehors the constitutional scheme of public employment.” In the case of (Narendra Kumar Tiwari vs The State Of Jharkhand, 2018), it has held that “pernicious practice of indefinitely continuing irregularly appointed employees would be perpetuated contrary.” In this case the court further stated that “Regularisation Rules must be given a pragmatic interpretation”.

In the case of (Bajaj Allianz general Insurance Company Ltd. vs. Pooja & ors., 2017) H.C. of Chattisgarh has held that “the benefit of Future Prospects shall also be applicable where the income of the deceased is ascertained on the basis of minimum wages.” In the case of (Secretary, State Of Karnataka And ... vs Uma devi And Others, 2006) it has held that “all public employment should be done with proper rules in place and all eligible persons should be in a position to participate in it in a fair competition. Only as a one-time relaxation, some relief were given to those who had completed more than 10 year of service”.

In case of (Motor General Traders & Anr. Etc. ... vs State Of Andhra Pradesh & Ors. Etc., 1983) the SC has held that “provisions which was perfectly valid at the commencement of the Act could be challenged later on the ground of unconstitutionality and struck down on that basis. What was once a perfectly valid legislation, may in course of time, may become discriminatory and liable to challenge on the ground of its being violative of Article 14” In case of (Malpe Vishwanath Acharya & Ors vs State Of Maharashtra & Anr, 1997), the Court reiterate the same principle on reasonable and validity of Law at different point of time. In (Dinesh Kumar vs Yusuf Ali, 2010) the court stated that “the law ought not to be unjust to one and give a disproportionate benefit or protection to another section of the society.”

In (Siddalingamma And Anr vs Mamtha Shenoy, 2001) the Court held that “while determining the case of eviction of the tenant, an approach either too liberal or too conservative or pedantic must be guarded against. If the landlord wishes to live with comfort in a house of his own, the law does not command or compel him to squeeze himself and dwell in lesser premises so as to protect the tenant's continued occupation in tenancy premises. However, the bona fide requirement of the landlord must be distinguished from a mere whim or fanciful desire. It must be manifested in actual need so as to convince the Court that it is not a mere fanciful or whimsical desire. The need should be bona fide and not arbitrary and the requirement pleaded and proved must neither be a pretext nor a ruse adopted by the landlord for evicting the tenant. Therefore, the Court must take relevant circumstances into consideration while determining the issue of bona fide need so that the protection afforded to a tenant is not rendered illusory or whittled down."

Speaking on the burden of proof the court held in case of (State Of Maharashtra vs Manubhai Pragaji Vashi & Ors, 1995) and (Fylfot (I) Ltd. And Another vs Union Of India And Others, 1995) that “no doubt, it is for the person alleging arbitrariness who has to prove it. This can be done by
showing in the first instance that the impugned State action is uniformed by reason inasmuch as there is no discernible principle or; which it is based or it is contrary to the prescribed mode of exercise of the power or is unreasonable. If this is shown, then the burden is shifted to the State to repel the attack by disclosing the material and reasons which led to the action being taken in order to show that it was an informed decision which was reasonable."

On 'Right to Equality' the Court clarified that “Article 14 does not require that the natural resources of the country can be disposed of only by public auction. (Re: Natural Resources Allocation, Special Reference No. 1 Of 2012 Vs. State, 2012) Similarly in case of (Narendra Kumar Tiwari and others v. The State of Jharkhand and Others, 2018) the Supreme Court has held that “the State ought to have considered the entire issue in a contextual perspective and not only from the point of view of the interest of the State, financial or otherwise, the interest of the employees is also required to be kept in mind.” Towards gender equality, in case of (Vishaka & Ors vs State Of Rajasthan & Ors, 1997) the Right to Equality has been invoked with aim to prohibit sexual harassment at work place.

It is clear from above cases that new development in equality is more focused on positive side hence affirmative actions towards equal treatment and equal opportunities are increasing, by decisions of the Supreme Court of India.

Conclusion

In Indian, as per new trends of the concept of equality, it is obligation of the State to give equal protection by way of affirmative actions towards unequal, and also to provide additional facilities and opportunities to unprivileged person/group. Extending scope of the Right to Equality that has been introduced by the Supreme Court of India though various judgements, has empowered the State to take any affirmative action to assure equality to all; and such actions of the State would not be invalid, even though are discriminatory in nature; if they have been taken with aim to support every individual to attain equal opportunity and protection. Moreover, as equality is envisaged in the Indian Constitution as a basic principle, hence it is obligatory of the State to treat unequals or unprivileged with utmost care and attention.

References

1. Indra Sawhney v. Union of India And Others (The Supreme Court December 13, 1999).
4. Charanjit Lal Chowdhury v. Union of India, SC 41 (Supreme Court on India AIR 1951).
6. Dhanwati & Ors. vs. Ram Avtar & Ors., MACT No. 70/2018 (Delhi District Court November 29, 2018).

7. Dinesh Kumar vs Yusuf Ali, CIVIL APPEAL NO. 4244 OF 2006 (Supreme Court of India May 26, 2010).

8. E. P. Royappa vs State Of Tamil Nadu & Anr, 1974 AIR 555, 1974 SCR (2) 348 (Supreme Court of India November 23, 1973).

9. Fylfot (I) Ltd. And Another vs Union Of India And Others, AIR 1996 Cal 291 (Calcutta High Court September 25, 1995).


11. Indra Sawhney (II) v. Union of India, SCC 168; SC498 (Supreme Court of India AIR 2000).


15. M.G. Badappanavar And Anr. Etc vs State Of Karnatakka And Ors, Appeal (civil) 6970-6971 of 2000 (Supreme Court of India December 1, AIR 2001 SC 260).

16. Malpe Vishwanath Acharya & Ors vs State Of Maharashtra & Anr, WRIT PETITION (C) NOS. 17 AND 824 OF 1996 (Supreme Court of India December 19, 1997).


20. Narendra Kumar Tiwari vs The State Of Jharkhand, CIVIL APPEAL NOS.7423-7429 OF 2018 (Supreme Court of India August 1, 2018).


23. Secretary, State Of Karnataka And ... vs Uma devi And Others, Appeal (civil) 3595-3612 of 1999 (Supreme Court of India April 10, 2006).

24. Secretary, State of Karnataka and others v. Uma Devi (3) and others, Appeal (civil) 3595-3612 of 1999 (Supreme Court of India April 10, 2006).

25. Siddalingamma And Anr vs Mamtha Shenoy, Appeal (civil) 7292 of 2001 (Supreme Court of India October 18, 2001).


27. State Of Maharashtra vs Manubhai Pragaji Vashi & Ors, 1996 AIR, 1 1995 SCC (5) 730 (Supreme Court of India August 16, 1995).

28. Union Of India And Another vs Tulsiram Patel And Others, AIR 1985 SC 1416, 1985 SCR Supl. (2) 131 (Supreme Court of India July 11, 1985).

29. Vishaka & Ors vs State Of Rajasthan & Ors, AIR 1997 (Supreme Court of India August 13, 1997).