



The Rule of Law is not an absolute Rule of Justice

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ABSTRACT

The idea of equality expressed in the Preamble of the Indian constitution that equality before law and prohibits unreasonable discrimination between persons. The Universal Declaration of Human Rights Says: "All are equal before the Law and are entitled without any discrimination to equal protection of the law. Every person, whatever is his rank or conditions, is subject to the jurisdiction of ordinary courts. It means that no man is above the law. But The concept of equality does not mean absolute equality among the human being for justice.

KEYWORDS :

Introduction

The incorporation of a formal declaration of fundamental Rights in Part III of the constitution is deemed to be a distinguishing feature of a democratic state. These rights are prohibitions against State. The State cannot make a law which takes away or abridges any of the rights of citizens guaranteed in part III of the constitution. If it passes such a law it may be declared unconstitutional by the courts. Fundamental Rights were deemed essential to protect the rights and liberties of the people against the encroachment of the power delegated by them to their Government. In the historic judgment of *Maneka Gandhi v Union of India*¹, Bhagwati, J., observed: "These Fundamental Rights represent the basic values cherished by the people of India since the Vedic times and they are calculated to protect the dignity of the individual and create conditions in which every human being can develop his personality to the fullest extent. Individual needs constitutional protection against the state. The rights which are given to the citizens by way of fundamental rights are guarantee against state action as distinguished from violation of such rights from private parties. The fundamental rights as incorporated in the Indian constitution can be classified into six groups (i) Right to equality² (ii) Right to freedom³ (iii) Right against exploitation⁴ (iv) Right to freedom of Religion⁵ (v) Cultural and educational Rights⁶ (vi) Right to constitutional remedies.⁷ Out of six one of the major fundamental right is Right to equality to every citizen of India. The idea of equality expressed in the Preamble that equality before law and prohibits unreasonable discrimination between persons.

Equality before Law

'The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India'⁸ consequently there are two expressions "equality before the Law" and "equal protection of the law." Both these expressions aim at establishing equality of status in the Preamble of the Constitution. The Universal Declaration of Human Rights Says: "All are equal before the Law and are entitled without any discrimination to equal protection of the law"⁹

The concept of equality does not mean absolute equality among the human being which is physically not possible to achieve. It is a concept of implying absence of any special privilege by reason of birth, creed or the like in favour of any individual and also equal subject of all individuals and classes to the ordinary law of land.

Rule of Law:

Every person, whatever be his rank or conditions, is subject to the jurisdiction of ordinary courts. It means that no man is above the law. Every official from the prime Minister down to constable or a Collector of taxes is under the same responsibility for every act done without legal justification as any other citizen.¹⁰ The Rule of law requires that no person shall be subjected to harass, uncivilized or discriminatory treatment even when the object is the securing of the paramount exigencies of law and order.¹¹ The Rule of Law embodied in

Article 14 is the "basic feature" of the Indian constitution and hence it cannot be destroyed even by an amendment of the constitution under Article 368¹² of the Constitution.¹³

There are three meanings of the Rule of Law thus-

1.Supermaxy of Law: It means the absolute supremacy of law as opposed to the arbitrary power of the Government.

2.Equality before the Law: It means subjection of all classes to the ordinary law of the land administered by ordinary law courts. This means the one system of Law and one system of courts for all; for public officials and private persons.

3.The constitution is the result of the ordinary law of the land.: It means that the source of the right of individuals is not the written constitution but the rules as defined and enforced by the courts.

Equal Protection of the Laws.-This has been interpreted to mean subjection to equal law, applying to all in the same circumstances¹⁴ There should be no discrimination between one person and another. The rule of law imposes a duty upon the state to take special measure to prevent and punish brutality by police methodology.¹⁵ Article 14 of the constitution denotes that the guarantee of equal; protection of laws is available to any person which includes any company or association or body of individuals. The protection of Article 14 extends to both citizens and non-citizens and to natural persons as well as legal persons.

Equality on Grounds of Religion, Race, Caste

The Guarantee under Article 15 is available to citizen only and not to every person whether 'Citizen or Non-Citizen as under Article 14.

(i)The First clause of Article 15 directs the state not to discriminate against a citizen on grounds only of religion, race, caste, sex or place of birth or any of them. If law makes on any of the grounds it can be declared invalid. In the case of *Nainsuphdas v State of U.P.*¹⁶ a law which provided for elections on the basis of separate electorates for members of different religious communities was held to be unconstitutional.

(ii)The Second clause prohibits citizens as well as the states from making such discrimination with regard to access to shops, hotels etc. and all places of public entertainment, of public resort, wells, tanks, roads etc.

(iii)The third clause empowers the state to make special provisions for the protection of women and children. Women and children require special treatment on account of their very nature. Article 15(3) empowers the State to make special provisions for them. The reason is that "Women's physical structure and the performance of maternal functions place her at a disadvantage in the struggle for subsistence

and her physical well-being becomes an object of public interest and care in order to preserve the strength and vigour of the race.

(iv) The fourth clause is the state to make special provisions for the protection of interests of the Backward classes of citizens.

(v) The fifth clause is the provision for Reservation of Backward and S.C & S.T classes in private Educational Institution.

Equality of Opportunity in Public Employment:

(i) Article 16(1) guarantee equality of opportunity for all citizen in matters of 'employment' or 'appointment' to any post under the state. However prevent the state from prescribing the necessary qualifications and selective tests for recruitment for Government services. The qualifications prescribed may, besides mental excellence, include physical fitness, sense of discipline, moral integrity, loyalty to the State. Where the appointment requires technical knowledge, technical qualification may be prescribed. The Character and antecedents of candidates may be taken into consideration for appointments in Government services.¹⁷

(ii) Article 16(2) No discrimination can be made on these grounds of descent and residence. In the matter of appointment in Government services the provincial slogan 'Madras for Madrasis', Bengal for Bengalis', Mysore for Mysorens are most unhealthy for the growth of the truly federal democracy.

(iii) Article 16(3) Discrimination on the ground of residence however there may be good reasons for reserving certain posts in state for residents only.

(iv) Article 16(4) it empowers the state to make special provision for the reservation of appointments of posts in favour of any Backward class of citizens which in the opinion of the State are not adequately represented in the services under the state.

Abolition of Untouchability :

Article 17 abolishes "Untouchability" and forbids its practice in any form. The enforcement of any disability arising out of Untouchability is to be an offence punishable in accordance with law.

Conclusion:

1. The equality before the law does not mean the power of the private citizen is the same as the powers of the public officials. For example: Police officer has the power to arrest while no private person has this power. In this case Rule of Law is not applying and also not the violation of the Rule of Law but the rule of law does require that these powers should be clearly defined by law and that abuse of authority by public officers must be punished by ordinary courts in the same manner as illegal acts committed by private persons.

2. Article 361 provides that the President or the Governor of State shall not be answerable to any court for the exercise and performance of the powers and duties of the office or for any act done or purporting to be done by him in exercise and performance of those powers and duties. No criminal proceedings shall be instituted or continued against the President or the Governor of State in any court during his term office. No process for the arrest or imprisonment of the President or the Governor of State shall be issued from any court during his term office.

3. Certain members of society are governed by special rules in their professions i.e Lawyers, doctors, nurses, members of armed forces and police. Such class of people is treated differently from ordinary citizens.

4. Article 15(3) empowers the state to make special provisions for Women and children. Again it would not be violation of Article 15 if educational institutions are established by the state exclusively for women or the reservation of seats for women in a college does not offend against the rule of Law. But Section 497¹⁸ of Indian Penal code which only punishes man for adultery and exempts the woman from punishment even though she may be equally guilty as an abettor this is clearly violating the Rule of Law. The Article 15(3) provides for only special provisions for the empowering of women but you can't exempt the women from punishment.

REFERENCES

- Kagzi, M.C. Jain, The Constitutional of India Vol.1 & 2.-New Delhi: India Law House, 2001. | | Pylee, M.V. Constitutional Amendments in India-Delhi : Universal Law, 2003. | | Datar, Arvind P. Datar on Constitution of India -Agra : Wadhwa & Co., 2001. | Seervi, H.M. Constitutional Law of India Vol. I & II, III-Bombay: N.M. Tripathi, 1991 | | Pandey, J.N Constitutional Law of India-Allahabad, Central Law Agency 2008 | | Mathew, P.D. Fundamental Rights in Action-New Delhi: Indian Social Institute, 1996 | | Hansaria, B.L. Does India need a New Constitution Calcutta: Eastern Law House, 1998 | | Saraswati, Shashi Nath Right to Equality in the Indian Constitution: A Gandhian Perspective /Shashi Nath Saraswati.-New Delhi: Concept Publishing House, 2002. | | Kashyap, Subhash C.(ed.) Perspectives of the Constitution-New Delhi: Shipra Publishers, 1995. | | Jain, M.P. Indian Constitutional Law Vol- 1, 2-New Delhi: Wadhwa and Company Nagpur, 2003 | a