



Equality and Equal Opportunity

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ABSTRACT

Legal equality has evolved from 'laws of justice'. Laws of justice are also known as 'due processes'. Article 7 of Universal Declaration of Human rights states that "All are equal before the law and are entitled without any discrimination to equal protection of the law". Thus, the courts are required to treat everybody equally regardless of their gender, Ethnicity, religion, socio-economic status. In reality everybody is not protected and they are not entitled to utilization of equal opportunity.

KEYWORDS

Equality, Equal Opportunity, Equal protection, Law, Judges, Social Implications.

Introduction

According to Cambridge Advanced Learner's Dictionary, 'Equality' means the right of different groups of people to have a similar social position and those received same treatment. On the other hand equal opportunity means the principle of treating all people the same, and not being influenced by a person's sex, race, religion, etc. Right to Equality is a fundamental right and has been included in the Part III of the Constitution of India. Constitution also provides remedies when fundamental rights are violated. The remedy in case of violation of fundamental rights is subject to certain conditions. Unless the conditions are fulfilled there is no scope and there is no opportunity. In ensuring equal opportunity, there must be a cordial relation of three powers of the state. These are well known as judiciary, executive and legislature. Cordial relations, the relation in which neither judiciary nor executive and legislature dominates the others. However in reality executive and legislative power is superior.

Separation of Power

The concept of separation of power has evolved from the Doctrine of Montesquieu. Montesquieu in his book 'The spirit of laws' came up with the idea, the power of the state must be assigned to three different authority. These authorities are, as stated earlier, Legislature, Executive, and Judiciary. It is stated also that no authority should influence in the action of other. But in a modern state, such assumption is absurd as for the well being of the state balanced interaction is needed.

Logic behind balanced interaction

It is stated in our Indian Constitution that in case of violation of right, the aggrieved party may enter into appearance and may seek relief under Article 226 or Under Article 32 of the Indian Constitution. Under Article 226, it is the High Court which issues WRIT (an order) and under Article 32 it is the Apex Court, i.e. the Supreme Court of India issues WRIT. WRITs are of different in nature. These are (1) Habeas Corpus, (2) Mandamus, (3) Quo-warranto, (4) Certiorari and (5) Prohibition. Which kind of WRIT is to be opted is dependent on the subject matter of the WRIT. In all cases the petitioner of the WRIT is liable to justify the 'maladies'. Although it is almost a impossible task to justify the maladies because, adducing evidence in WRIT is different from adducing evidence in a Trial Suit. The burden of proof of any violation is on the petitioner of WRIT petition and if he or she is weak then he or she is likely to be deprived of equal opportunity.

Adjudication of WRITs

WRITs of all types are dealt with High Courts or Supreme Court in a similar way. Surprisingly the procedure remains the same just like the procedure in which Review, Revision, Reference, and other Miscellaneous Applications are usually dealt with. To have an equal opportunity the lawyers of the petitioner have distinctive liabilities to his or her clients. But it has been seen that the opportunity to the parties of getting relief sometimes influenced by the prejudice and preoccupation of the court. Problem is, nobody can raise question about propriety of a court in dealing with a particular WRIT. However, majority of the people, these days, are much vocal and judicial interference in executive action are being criticized in the name of judicial activism. Unless executive action is declared unconstitutional and direction by the court is passed the scope of getting equal opportunity is very less. It is the court, which declares any action to be in conformity with law or not.

Challenges in availing of Opportunities

Part III of the Constitution of India is dealing with fundamental rights and Part IV of the Constitution deals with Directive Principles of State Policy. Part III is negative, whereas Part IV is affirmative, in nature. That is in case of Fundamental Rights, direction of constitution is not to violate it and the direction is to the state and its institution, where public interest (interest of the citizens) is involved. On the other hand Part IV states, what are the actions the state is expected to perform. Court can interfere in matters of Part III but court does not have any jurisdiction in matters of Part IV that is on actions of the state related to Directive Principles of State Policy. Ironically facilitation of equal opportunity is closely and equally connected with Fundamental Rights as well as Directive Principles of state Policy. Meanwhile executive functions of our country, in majority of cases, are under question of fairness and so equality and equal opportunity is under challenge. Fairness of justice is also known as Natural Justice. Natural Justice is an integral part of administrative action and policy. It is an agreed fact that the principle of natural justice establishes unbiased system of administration, which is not influenced by any narrow interests of administrators. In reality executive functions (of which administrative function is a subordinate category) often deviates from the line of constitutional obligations. Legislative actions are also casual in nature, devoid of public necessity and thoughtless exercise of legislators. As example: the Criminal Procedure Code (CRPC) is having Sections 265 A to 265 L in Chapter XXI, those were inserted by the Criminal Law Amendment Act 2005, which was declared to be effective from 5

July 2006. We know Right to Sue is a fundamental right so Right to Appeal. In Section 265 G of CRPC it has been stated "The Judgment delivered by the court under Section 265 G shall be final and no appeal (except the special leave petition under Article 136 and WRIT petition under Articles 226 and 227 of the Constitution) shall lie in any Court against such judgment". How legislative action may be different and in non-compliance of Constitutional directives. Infact these sections were introduced for reducing the number of pending cases. The recent days Lakhs of cases are pending before different court and government has no fund to establish new courts, many courts are vacant as the judge was retired and since then no one came and took charge. Statutory framework or legal framework must promote constitutional obligations as embodied in Preamble of the Constitution or somewhat in the basic structure of the Constitution. Otherwise many legislative actions in itself will create inequality and morelikely there will be no scope for equal opportunity.

Social Implications

According to Herbert Spencer status in the society are said to be structure and dynamics of it are its functions. Social norm which evolve from regulatory framework have a very important correlation with social rationales. People are social rationales. Laws regulate them to control society. But the system which does not have any scope of interaction of structures and functions is hardly to appropriate in ensuring social equal opportunity.

Few WRIT Petitions in favour of the argument

WRIT PETITION (Cri) No 7 OF 2011 of THE GAUHATI HIGH COURT. The case of the petitioner, in brief, is that both the petitioner and Smt Nitu Singh are aged about 27 years. The petitioner came in contact with Smt Nitu Singh when they were prosecuting their B.Com. course and they had become friends. The friendship blossomed into love over a period of time and after a courtship of about four years, after informing their respective parents, they solemnized their marriage in the year 2009 under the Special Marriage Act, 1984 before the Marriage Officer (M), Kamrup, Guwahati. After the marriage, they started living together as husband and wife along with the parents of the petitioner. At the time of marriage, Smt Nitu Singh was prosecuting her Master's Degree. After about 3 / 4 months of living together in the matrimonial house, Smt Nitu Singh wanted to go and stay with her parents so as to prepare herself for her ensuing M. Com. Final examination and also to be with her parents as her mother was undergoing medical treatment. Her parents were also living in Guwahati. After completion of her examination, Smt Nitu Singh requested the petitioner to allow her to go to Hazipur, Patna with her parents for the purpose of treatment of her mother and accordingly, she had left for Bihar, on 14.3.2010. Though there were telephonic talks in between the petitioner and his wife till May 2010, she had not come back to the matrimonial house and she had stopped all channels of communication from the month of June 2010. The attitude of the respondent Nos 1 and 2 had also changed in the meantime. On one occasion, they abused the petitioner and told him that their

daughter did not want to go back to Guwahati and, therefore, they would not send her back to Guwahati. It is stated by the petitioner that, subsequently, he managed to have a word with his wife on 13.8.2010 and 14.8.2010 over telephone and he having expressed his willingness to go to Bihar to take her back, Smt Nitu Singh consented to it but the conversation was snapped as he could realise that someone had snatched away the telephone from his wife. The petitioner says that his wife was confined in the ancestral house, the address of which is given in the petition. But Hon'ble Court observed "we find no merit in the application and, accordingly, the writ is refused. The petitioner may take such steps as may be available to him in law for redressal of his grievances."

W.P. (C).Nos. 22187 of THE HIGH COURT OF KERALA AT ERNAKULAM along with other Writ Petitions. In Roopakala Prasad vs. UGC The writ petitions have been filed when, on 18.9.2012 the University Grants Commission notified the minimum qualifying percentage of marks in relation to NET Examination of June 2012. . It is averred that the change was notified only after the evaluation of answer papers and immediately before the publication of results. Hon'ble court held "Therefore, the fixing of the higher aggregate marks as 65%, 60% and 55% for three categories, that too just before the announcement of the result, cannot be justified as the same is not supportable in law in the light of the principles already discussed. What was absent in the regulation cannot be introduced at the fag end of the examination, just before the announcement of the result, whatever may be the justification for the same. In the light of the above, the writ petitions are allowed. The proceedings fixing the category-wise qualifying criteria for Lectureship eligibility impugned in the writ petitions, is quashed. It is declared that all the petitioners who have obtained the separate minimum prescribed in the notification for Papers I, II and III, have cleared the NET and appropriate follow up actions will be taken to issue certificates to them within one month from the date of receipt of a certified copy of this judgment.1

Conclusion

In functioning of the state, political will of the people as well as its leaders have great influence. Political parties are the key role players in parliamentary democracy. But if the process of attaining power in narrow interest, continues, democratic ideas could hardly provide protection to the weaker section of the society and in such circumstances where is equal opportunity.

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