

Touchstone On Article 14 Of The Constitution

“THE STATE SHALL NOT DENY TO ANY PERSON EQUALITY BEFORE THE LAW OR THE EQUAL PROTECTION OF THE LAWS WITHIN THE TERRITORY OF INDIA”

Equality before law- No one can be discriminated against anybody and everyone should be treated as equals.

Non-arbitrariness is necessary concomitant of the rule of law

Actions of government is required to be fair and reasonable

Arbitrary action is described as one that is irrational and not based on sound reason or as one that is unreasonable.

Article 14 guarantees is similarity of treatment and not identical treatment

The content of Article 14 got expanded conceptually so as to comprehend the doctrine of promissory estoppel, non-arbitrariness, compliance with rules of natural justice, eschewing irrationality.

Discretionary Powers- Arbitrariness

Statute vests a discretionary power in an administrative authority, the Court would not interfere with the exercise of such discretion unless it is made with oblique ends or extraneous purposes or upon extraneous consideration or arbitrarily, without applying its mind to the relevant consideration or where it is not guided by any norms which are relevant to the object to be achieved.

There is no place for any whim or caprice in the exercise of such discretionary power.

If the action taken by the authority is found to be illogical in nature and therefore violative of the Article 14 of the Constitution, the same cannot be sustained. Statutory authority may pass an order which may otherwise be bona fide, but the same cannot be exercise in an unfair or unreasonable manner.

Where the exercise of discretionary power is likely to affect prejudicially it has to be exercise in a bona fide and non-arbitrary manner.

Court would not interfere with matters of administrative policy or changes made thereof, unless the Government action is arbitrary or discriminatory or policy adopted has no reasonable nexus with the object which it seeks to achieve or it is mala fide

Person claiming Arbitrariness

Only a person who is aggrieved by the alleged discrimination, can challenge the validity of a law on the ground of violation of Article 14. A person aggrieved would mean a person who had suffered legal injury or one who has been unjustly deprived or denied of something which he would be interested to obtain in the usual course of similar benefits or advantages.

Eg. A person who has never applied for license under a statute cannot complain that the statute is discriminatory and a licence would have been refused to him if he had applied.

Article 14, 19, 21 are not mutually exclusive and they jointly aim at reasonableness and fairness.

Natural Justice

Audi alteram partem, Principle of Maxim- Opportunity of being heard, to participate in proceedings

Audi alteram partem is face of natural justice is also requirement of Article 14 for, natural justice is the antitheses of arbitrariness

Denial to necessary party of right to participate in the proceedings would amount to violation of Article 14

The right of audi alteram partem is a valuable right recognized under the Constitution of India wherein it is held that the principle of the maxim which mandates that none should be condemned unheard, is a part of the rule of natural justice. Such a right of hearing conferred by statute cannot be taken even by courts. ‘

Bias negates fairness and reasonableness by reason of which arbitrariness creeps in.

Principles of Natural Justice required to be observed by a court or tribunal before a decision is rendered involving civil consequences. They however cannot be stretched too far. Their applicant may be subject to provisions of statute or statutory rule.

This requirement of natural justice is applicable not only to judicial or quasi judicial orders but also to administrative order affecting prejudicially the party in question, unless it is expressly excluded by law which is otherwise valid.

The doctrine of natural justice is not merely a matter or procedure but of substance any action taken in contravention of natural justice is violative of fundamental rights guaranteed by Articles 14, 19 and 21 of the Constitution.

Exceptions- The doctrine of natural justice has not application when the authority concerned is of the opinion that it would be inexpedient to hold an inquiry

Legitimate Expectation

The principle underlying the legitimate expectation is based on the Article 14 of the Constitution and the rule of fairness.

Where a person's legitimate expectation was not fulfilled by taking a particular decision then the decision maker should justify the denial of such expectation by showing some overriding public interest. The doctrine of legitimate expectation is only an aspect of Article 14 of the Constitution in dealing with citizens in a non arbitrary manner and thus by itself does not give rise to an enforceable right but in testing the action taken by the government authority whether the arbitrary or otherwise it would be relevant.

Government Policy is not subject of Judicial Review

Right of the State to change its policy from time to time under the changing circumstances cannot be questioned, though the changed policy deviated from the judicial pronouncements of the Supreme Court.

Exception:

The Government Policy is not subject to judicial review unless it is demonstrable arbitrary, capricious, irrational, discriminatory or violative of constitutional or statutory provisions or unless the policy can be faulted on the grounds of mala fide, unreasonableness, arbitrariness or unfairness etc or until violation of mandatory provisions is found out and/ or it is held that decision is taken for unauthorized or illegal purpose.

A policy decision is subject to judicial review

- (a) If it is unconstitutional
- (b) If it is de hors the provisions of the Act and the regulations
- (c) If the delegate has acted beyond its power of delegations and
- (d) If the executive policy is contrary to the statutory or larger policy

No Equality for Illegal Acts

If any illegality or irregularity has been committed in favour of an individual or group of individuals, other cannot invoke the jurisdiction of the Courts and seek a direction that same irregularity or illegality be committed in their favour by the State or its agencies/ instrumentalities.

Where a benefit was illegally or irregularly extended to someone else, a person who is not extended a similar illegal benefit cannot approach a court for extension of similar illegal benefit. If such request is accepted it would amount to perpetuating the irregularity. If he wants, he can challenge the benefit illegally granted to others.

The fact that someone who may be not entitled to the relief has been given relief illegally is not a ground to grant relief to a person who is not entitled to the relief.

Equality of Relief

A claim on the basis of guarantee of equality by reference to someone similarly placed is permissible only when the person similarly placed has been lawfully granted a relief and the person claim the relief is also lawfully entitled for the same

Unreasonable and Arbitrariness cannot be sole ground for Striking Down a Legislation

No enactment can be struck down by just saying it is arbitrary or unreasonable. Some or other constitutional infirmity has to be found before invalidating the Act. An enactment cannot be struck down just because the Court thinks it unjustified. Parliament and legislature, composed as they are of the representatives of the people, are supposed to know and be aware of the needs of the people and what is good and what is bad for them. The Court cannot sit in judgment over their wisdom.

Equality of Law- Classifications Matters

So long all the persons falling in the same class are treated alike, there can be no question of violating the equality clause.

Examples of such Classification

1. Govt Employees provided with Government Accommodation
2. Allotment of Shops having having establishment of more than 30 years
3. Co-operative Societies exempted from operation of Provident Fund Acts

4. Reservation in favour of handicapped students
5. Essential Commodity
6. Higher pay based on experience and merit
7. Export promotion programme for earning foreign exchange
8. Government Property, Business
9. Wholesale Traders and Retailers
10. Schedule Casts/ Schedule Tribes
11. Male and Female
12. Social Security to Economically Weaker sections of the Society

Sub Classification would be violative of Article 14 of the Constitution.

Classification in Matter of Taxation

Taxation law is no exception to the doctrine of equal protection. A taxation law will be struck down as violative of Article 14 if there is no reasonable basis behind the classification made by it.

Court permits a greater latitude to the discretion of the Legislature in the matter of classification. State is allowed to pick and choose districts, objects, persons, methods and even rates for taxation it does so reasonably. State has wide discretion in respect of classification of objects, persons and things for the purposes of taxation. The legislature can devise classes for the purpose of taxing or not taxing, exempting or not exempting, granting incentives and prescribe rates of tax, benefits or concessions.

However as a matter of exception the method adopted by legislature should not be capricious, fanciful, arbitrary or clearly unjust.

Court would be slow to interfere with the legislative discretion in the matter of choice of a date for determining the basis of or commencement of liability for tax, even if no reasons are disclosed for choice of that particular date, unless it is shown to be capricious or whimsical in the circumstances of the case.

When a substantive unreasonableness is to be found in a taxing statute, it may have to be declared unconstitutional. Although the Court may not go into question of hardship which may be occasioned the taxpayers but where a fair procedure has not been laid down, the validity thereof cannot be upheld. A statute which provides for civil consequences must conform to the test of reasonableness, fairness and non-arbitrariness.

Right to Compensation-

The Supreme Court has advanced one step further in condemning arbitrary action on the part of statutory or other public authority, by laying down that,

apart from the liability under law of torts to pay damages for breach, of or negligence, in the performance of a statutory duty, - Writ Court will compensate a citizen for loss or injury (physical or mental), cause by arbitrary or capricious action on the part of public authority- L.D.A vs M.K.Gupta (1994) 1 SCC 243 (paras 10,11), Haryana Urban Development Authority vs Garg, (2005) 9 SCC 520

The discretion vested by a statute is to be exercised fairly and judicially and not arbitrarily

If the government fails to support its action of classification on the touchstone of the principle whether the classifications are reasonable having an intelligible differentia and a rational basis germane to the purpose, classification has been held as arbitrary and discriminatory.

Reasonableness is to be judged with reference to the object of the legislation

Above are the extracts taken from 15th Edition of Short Constitution of India by Justice A K Patnaik