

WORKING PAPER

- PROJECT: Fundamental Rights in the Indian Constitution, their scope, operation and trend.
- TOPIC: The Right to Legal Equality.

PRELIMINARY EXPLANATION

ONE of the research projects adopted by the Indian Law Institute after the Seminar on Research Topics, which was held in Delhi from 14 December to 21 December, 1957, was a study of the fundamental rights guaranteed by the Constitution, and of the scope, trend and direction of judicial interpretation of the constitutional provisions concerned with those rights.

The plan of work adopted by the staff of the Institute assigned to this project was, first, to ascertain as far as possible the meaning of the constitutional provisions concerned and the intention of the framers of those provisions; and, second, to ascertain the legal operation, and hence the trend and direction, of those provisions as revealed by a study of reported cases in which the relevant articles of the Constitution were in issue. One of the topics chosen for initial examination was the Right to Legal Equality, and, in particular, 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.”

This paper is an attempt to describe, very briefly, the nature of the work done so far, and to indicate some of the questions which require further research.

NATURE AND SCOPE OF WORK DONE

It is clear that the right to legal equality is one of the most important of the rights guaranteed by the Constitution. It is proclaimed in the preamble, and six separate articles in Part III of the Constitution are devoted either to the guarantee of equality directly as in articles 14 & 16 (1) or to the same end indirectly by prohibiting discriminations as in articles 15, 16(2), 17, 18 & 29(2). When the people of India solemnly resolved to constitute India a Sovereign Democratic Republic, care was taken to establish “Equality of status and opportunity” as a basic principle of such a democracy.

But the notion of equality of all men before the law had no firm indigenous roots in India. The first task then was to trace the origin and the history of this notion and to prepare an historical resume of the

ideas involved. From the early Stoic philosophy through religious doctrines of human brotherhood, through the political ideals of the French and American revolutions, to the modern principles of legal equality, the nature and importance of this right were seen developing.

The right is now guaranteed by express words in the Constitution, however, and it is those words and their precise operation which most concern the people of India. What was the intent of Article 14 at the time of its framing? To answer that question a study of the debates of the Constituent Assembly was undertaken, and a study of those materials which appeared to have been most relied on by those who had been charged with the framing of the Constitution in this respect—in particular the American Bill of Rights and American Supreme Court decisions applying and interpreting those Rights.

What is the precise scope of Article 14 and what is its effective operation as applied by the Court?

To answer those questions a detailed analysis of the article itself and of all the reported cases where its operation had been in issue was made.

More than two hundred reported cases were analysed in the course of this study; and more than ninety statutes and subordinate legislative measures, which had been challenged before the Courts as offending Article 14, were examined. A preliminary paper drawing together with the substantive results of this work has been prepared, together with consolidated tables showing the relevant cases and their results, and also tables showing the items of legislation so far challenged in the Courts and the judicial rulings with respect to them.

PRELIMINARY CONCLUSIONS

The preliminary conclusions reached as a result of this work may be briefly summarized as follows:

1. Article 14 operates as an injunction restraining State action. It is not aimed at private discriminations.
2. It operates as an injunction restraining all State action, whether by the Union or the States, and whether by the Legislatures, the Executives or by the subordinate agencies of those Governments.
3. Article 14 operates as a protection for all persons whether or not they are citizens of India—and in this context “persons” include not merely human beings but all “persons” in the contemplation of the law though not governmental bodies.
4. Article 14 appears to assert two principles drawn from two distinct historical sources:—
 - (a) the principle of “equality before the law” drawn from the English Common Law as expounded by Dicey in his famous discussion of the Rule of Law.

- (b) the principle of “equal protection of the laws” drawn from the fourteenth amendment to the American Constitution as interpreted by the Supreme Court of the United States.

Although several High Courts have treated these two principles as distinct from one another, the nature of the distinction, if any, and its significance have yet to be clarified by the Supreme Court.

- 5. Article 14, operating as it does to inhibit State action, does not confer a right to equality directly upon individuals. Indirectly it confers the benefits of equality of treatment upon individuals, but this is the result merely of the denial of force and validity to any law which answers the description contained in the Article.
- 6. The Article does not require all laws to have universal application, that would assume absolute equality among all men which would be absurd. Men are in fact not equal, and differing treatment of different groups may well be consistent with the principle of equality enshrined in the Constitution. Identical treatment in unequal circumstances would itself produce inequality.
- 7. It follows that the State may classify persons for differential treatment where the classification may be seen to be for some inequality. Even a legislation specifically directed at a single named corporation, providing temporarily for its public management, has been sustained as based on a reasonable classification for a legitimate purpose at least where the problem presented by the corporation was of public importance and was not shown to be existing in other corporations. However, legislation purporting to determine the right of succession of particular individuals instead of allowing those rights to be determined in judicial proceedings under generally applicable law has been condemned as denial of the equal protection of laws. The distinction between these two situations seems to be justified by the different considerations involved.
- 8. The presumption of the constitutional validity of laws applies in this area as in others but that presumption may be rebutted by showing:—
 - (a) that on the face of the statute there is differential treatment of individuals and that there is no classification on rational basis, either in the need or nature of the law or in the facts, which can explain or justify such differential treatment;
 - (b) that the statute provides for differential treatment on the basis of a classification which is arbitrary or irrational in that it is either—(i) not based upon an intelligible differentia which distinguishes those who

are grouped together from the others, or (ii) not reasonably related to the object sought to be attained by the Act.

9. For a law to delegate to an executive or other agency an unfettered discretion to treat differing cases differently is as objectionable as if it offended directly under 8(a) or (b) above.
10. Both the requirement that classification must be based on an intelligible differentia and the requirement that such a classification must have reasonable relation to the object sought to be achieved, are objective tests and are not subjective in nature. In other words the mere fact that the legislature honestly believed that there was a reasonable basis for differentiation and did not intend to be arbitrary or discriminatory will not justify legislation which, objectively considered, fails to meet the standards indicated above.
11. The discovery by the Court of a rational basis for classification, or of a reasonable connection with the legislative objective, need not be on the basis of a classification expressed on the face of the statute. The mere absence of such express classification from the law itself or even such absence together with the delegation of a wide discretion to the Executive may not be sufficient to invalidate the law, if the Court can discover any principle or policy laid down by the legislature which will enable rational selection or classification to be made and, in the appropriate case to be used by, and to guide, the delegated authority. (See the last paragraph of 'Commentary'.)
12. Discriminatory application of an otherwise valid statute is also within the inhibition of Article 14, but this would more accurately be described as a failure to follow the correct interpretation of the statute or a failure to apply the statute according to its express terms.
13. A procedural law may offend Article 14, and be void as a consequence, just as much as any substantive law.

COMMENTARY

In applying the constitutional guarantee of "equal protection of the laws" the Supreme Court has drawn heavily upon the American experience available from the decisions of the Supreme Court of the United States. It has not, however, anywhere followed those decisions blindly. It has recognized that the basic concepts of rational classification, reasonable nexus, arbitrariness etc., are not susceptible of precise *a priori* definition, but must be applied and given concrete expression from case to case. Because of this, and in the light of the propositions set out above and the growing number of relevant cases, it is clear that the study of the operation of Article 14 is and will be a continuous one. Its impact on particular governmental actions will be seen in more and more circum-

stances and its precise scope will be worked out as differing approaches of the High Courts come to be resolved by the Supreme Court.

Many questions arising under the broad propositions summarized above remain for more precise elucidation, but one major question deserves special attention.

The Supreme Court has said (see proposition 11 above) that a statute which provides for differential treatment of persons, whether itself directly or by delegating a wide discretion, may be valid in spite of the absence of any express justifiable classification, if it discloses a guiding principle or policy which may be used to justify and control differential treatment (whether discovered from the whole frame of the Act, or from the surrounding circumstances of which judicial notice may be taken or even from the preamble). We must now ask what tests or subordinate concepts or principles can be erected so as to give the general principle a more consistent and predictable operation.

This question is not capable of a clear or authoritative answer from the decided cases now available. More work is necessary before any useful answer can be given. It is tentatively suggested that the principle or policy to be established should provide an intelligible basis for an effective control over the administrative action and a guidance to the Courts to determine whether the power had been validly exercised or whether the legislature itself has transgressed the limit imposed by the Constitution. However, it is submitted that the Courts should be cautious in accepting words like "public interest", "speedy trial", "administrative convenience", etc. as sufficient justification for an official discrimination.

FURTHER RESEARCH

It has already been stated that the results of the work described above are more elaborately presented in the form of a paper and consolidated tables of cases and statutes. The final shape of the paper has to be decided after the valuable experience of the conference has been brought to bear on this working paper which epitomises that paper. On the basis of the views expressed on the approach and the substance of this paper, further study has to be directed to the remaining Articles of the Constitution relating to the right to legal equality—i.e. Articles 15, 16(2), 17, 18 and 29(2).

