

## ABOUT THE COLLEGE

The Lala Lajpatrai College is established in 1972 and developed as one of the leading educational institutions in Mumbai. It Re-Accredited by NAAC with 'A' grade in 3rd Cycle. The College runs various courses in Junior and Senior section to augment the needs of the society. The courses covered are B.Com, BMS, BBI, BAF, B.Sc. IT, BMM, and M.Com. It also conducts vocational courses.

The college has an active Placement Cell, Research Cell (<http://llrc.weebly.com>), Research Centre, U.G.C Network Resource Centre, Career & Counselling Cell. The library is being developed as a 'Learning & Research Centre' (<http://lalalibrary.weebly.com>). The college believes that education is more than just academics. In this endeavour the college aims at inculcating a winning attitude and empowering students with necessary skills to face the challenges of an ever changing world. The college aware of the new trends in education and have responded to the changing needs of students and teachers.

Every year college conducts national level seminars, conferences and workshops. There are many curricular and extra-curricular activities take place from all departments for the students to promote independent thinking and active learning. The activities are DLLE, Investment Club, N.S.S., Rotaract Club, BMS Week, Mebido, Mood Fiest, Protigy, Siege, Techfest, Tsunami and Industrial visits & summer school programmes. The colleges has developed all class rooms from chalk to virtual and library as learning resource centre to research centre. For more information visit college site on <http://lalacollege.edu.in>



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Human Rights  
in Contemporary India:

(A MULTI-DIMENTIONAL APPROACH)

Issues and Challenges in

Dr. Neelam Arora  
Dr. Jayadev H. Kadli  
Dr. S.V.Lasune



# Issues and Challenges in Human Rights in Contemporary India:

(A MULTI-DIMENTIONAL APPROACH)

[A Proceeding of U.G.C. Sponsored National Seminar held on 23rd January, 2016  
in Lala Lajpatrai College of Commerce & Economics, Mumbai-34]



Dr. Neelam Arora • Dr. Jayadev H. Kadli • Dr. S.V.Lasune

## ABOUT THE BOOK

The idea of human rights in ancient civilization and religious doctrines, the term human rights became part of political usage only after the Second World War. However majority of the scholars trace the origin of the rights in Magna Carta; the English Bill of right (1689); American (1776) and French declaration of right (1789) and the soviet charter of rights. The vision of human rights is set out in the documents such as UDHR 1948, ICCPR 1966, ICESR1966 etc. these international frame works provide for and ambitious set of rights, focusing equality, liberty and dignity, resulting into justice to all. The concept of human rights has its origin both in domestic and international efforts. In 21st century significant challenges remain for achievement of new generation of human right.

In India, two important developments were Indian Independence and the drafting of the Constitution of India. Since the Constitution was drafted at the time that all this excitement was taking place in the international arena, the drafting process was heavily influenced by human rights. This is evidenced in our Constitution, especially in the chapters dealing with Fundamental Rights and the Directive Principles of State Policy.

This book is a narration of some of the 'issues & challenges in human rights in contemporary India' covers a series of articles/research papers dealing with multi-dimensional approach of human rights i.e. covered different issues like, right to equality, economic-social-cultural and ethnic issues in human rights. Prison administration and reforms, problems and rights of senior citizen, women related issues, health and social care, justice for children, custodial death, immigration, and detention issues. It also covers constitutional and legal provisions for protection of human rights and international perspective of human rights.

Begin with duties of a man and rights will follow  
as spring follows winter  
-- Mohandas Gandhi

Peace can only last where human rights are  
respected, where the people are fed, and where  
individuals and nations are free  
--- Dalai Lama



**ISSUES AND CHALLENGES IN HUMAN  
RIGHTS IN CONTEMPORARY INDIA:  
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**VOL - 1**

*Editors*

**Dr. Neelam Arora  
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Dr. S.V.Lasune**



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## PREFACE

Human rights issues have attained a global recognition. The world over a number of conventions and declarations are signed by a number of countries including India in acceptance of social, economic and political human rights of their citizens. A number of legal and constitutional provisions are enacted in the form of Acts, Fundamental rights, Directive principles highlighting the human rights of citizens. Gender inequality, child abuse, exploitation of the weaker sections of society, and problems of employment are some of the common human right issues faced the world over. Human rights also recognize the rights of prisoners who are in police custody. Human right is not present in the books of law, but it is an attitude and a mindset which has to be adopted by all concerned.

The conference held on 23rd January 2016 on 'Issues and Challenges in Human Rights in Contemporary India: A Multi-Dimensional Approach' threw light on a number of areas like Right to Equality, Economic, Social, Cultural and Ethnic issues in Human Rights, Prison Administration and Reforms, Problems and Rights of Senior Citizen, Women related issues, Justice for Children, Constitutional and Legal Provisions for Protection of Human Rights.

The volume on the proceedings includes the preface, foreword and papers presented by the scholars. The volume will be of immense help to students, research scholars and professionals who can get a glimpse of the various aspects pertaining to human rights. The reader will be compelled to think and act. Awareness about human rights will spread thereby making a positive contribution in respecting every human being irrespective of his caste, creed, gender, status, nationality and position in life.

**Dr. Neelam Arora**  
Chairperson - UGC National Seminar

## FOREWORD

It is with great pleasure that I write a foreword to this unique exposition and analysis of Human Rights. Reflecting the fundamental importance of the idea of Human Rights is at the forefront of academic thought. There has been a growing realization that human rights cannot be taught only from formal documents. It is through seminars, conferences and other scholarly gatherings. The University Grants Commission (U.G.C) has been supporting such efforts to initiate at the college level.

The human rights are increasingly becoming the subject of concern for legal fraternity, academicians, researchers, policy makers and voluntary organisations. It is said that the awareness of human rights is largely limited to the educated sections of society, while ideally it is necessary to create awareness about human rights at all levels. Human rights education thus, can be one of the crucial components of human rights education in India.

The book traces the history of human rights development from codes of Ancient Egypt and Mesopotamia to the human rights law of today in India. The book also focuses on the challenges of implementation.

The greatest value of this book is seen by looking in to the contributors like professors, practicing lawyers and Principals of different colleges. The wealth of experience and information that authors' have been uniquely placed to make available to all. The result is a book that is published.

Education and awareness are keys to creation of a human rights culture in the country. The present publication, I am sure, will prove to be a useful material for the students, teachers and professionals and in general whole society. The various sub-themes included in the national seminar will enhance each one of us to know about the Human Rights situation in present India.

**Mr. Harshad Bhikanrao Ahirrao**  
DYSP – Arthur Road Jail, Mumbai

## ACKNOWLEDGEMENTS

We would like to express our deep sense of gratitude to our College Chairman **Dr. Kamal Gupta** and Trustee **Dr. Sunil Gupta** for their invaluable guidance, constant financial support, and constructive suggestions for the betterment of the National seminar.

We would like to thank sincerely our principal **Dr. Neelam Arora** for her continuous effort in creating a positive environment and encouraging all teachers throughout the National Seminar. We humbly extend our Thanks to Law college principal **Dr. Smita Karve** for providing valuable suggestions throughout the seminar.

We submit heartiest gratitude to our College **Seminar & Conference Committee** for giving us the opportunity to embark upon the topic Human Rights and for their continued encouragement throughout the seminar.

We would like to convey our heartfelt thanks to **National Seminar Committee** who worked over the past few months on building a bridge between the national level participants and our College.

We wish to thank all the staff members of the **IT department, office, accounts, and library** for helping us directly or indirectly in completing this seminar successfully. We also thankful to **Mr. Prakash** (College Photocopying and Material Centre) and our **students** for their continued material support throughout the seminar in helping all necessary work.

Most importantly, we would like to thank all the **seminar participants** and **speakers** who attended this executive event. Finally, we also thank all **paper contributors** without them this proceeding is not published. Finally, we thank the **Mark Publishers, Jaipur** for quality printing and publishing the proceeding that catches everyone's attention.

**Dr. Jayadev H. Kadli**  
Convener - Seminar &  
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# 14

## RIGHT TO EQUILITY

*Mr. Dipak Vitthal Pawar*

### **Meaning of Equality:**

Equality basically means access or provision of equal opportunities, where individuals are protected from being discriminated against. Discrimination in equality can occur in race, sex, health, religion, family structure, age, politics, disability, culture, sexual orientation or in terms of believes.

Equality is the basic feature of the constitution of India and treatment of unequally will be violation of basic structure of the constitution of India

### **The ideal of equality under Indian Constitution:**

It has been seen that the Preamble to our constitution promises 'equal of status and opportunity to all citizens and that this is the ideal of equality embraces both social and political equality. So far the ideal of social equality is concerned it is embodied in a series of Articles, of which Art.14 is the genus, and succeeding Arts. 15-18 contain particular application thereof. Our constitution is wedded to the concept of equality which is the basic feature of the constitution.

Even a constitutional amendment which offends basic feature is declared as invalid. The state, its agencies and other local bodies being charged with public duty are bound to take action which must be in accordance with Art.14. The liability given to the state

and its instrumentalities by the statute enacted under the constitution did not exempt them from honouring constitution itself and they continued to be ruled by Art.14. The equality clause under Art.14 of the constitution does not speak of mere formal equality before law but embodies the real concept of real and substantive equality, strikes at this inequalities.

- (A) ARTICLE 14 provides that the State shall not deny to any person equality before law or the equal protection of the laws within the territory of India.
- (B) The Right to Equality guaranteed under Art. 14 consists of two parts namely
  - (i) Equality before Law.
  - (ii) Equal protection of Laws.
- Article 14 bars Discrimination and prohibits Discriminatory Laws.
- The expression "Equality before law" and "Equal protection of law" does not mean the same thing. Meaning of these expressions has to be found and determined having regard to the context and scheme of our Constitution.
- The benefit of "Equality before law" and "Equal protection of law" accrues to every person in India, whether a citizen or not." We are a country governed by Rule of Law.

1. *Equality before the Law*: Equality before Law "only means that amongst the equals, the law should be equal and should be equally administered, and that the like should be treated alike. The "equality before the law" owes its origin to the English Common Law. The doctrine of Equality is a dynamic and evolving concept. It is embodied not only Arts. 15-18 as well as in Arts. 3, 39, 39 A, 41 and 46. It is a Negative concept because it implies the absence of any privilege in favour of any individual and equal subjection of all classes to the ordinary law.

It means that no man above the Law of the land and that every person, whatever is his rank or status is subject to ordinary law of land. The concept of equality before law does not involve the idea of absolute equality amongst all, which may be a physical

impossibility. Art.14, guarantees the similarity of treatment and not identical treatment.

2. *Equal Protection of Law:*

- a) The phrase "Equal Protection of the Law" owes its origin to the American Constitution. This is Positive Concept as it implies equality of treatment in equal circumstances both in privileges conferred and liabilities imposed. So all the persons must be treated alike on reasonable classification and equally administered. The guarantee of equal protection applies against substantive as well as procedural laws.
- b) Limitation of the Doctrine of Equal Protection:
  - i. Every law cannot be made universally applicable. There are different class of persons who require special treatment.
  - ii. State has power to classify persons for legitimate purpose. Every classification is likely to produce some inequality and mere production of equality is no enough.

*International Covenant* : Article 26- All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Once it is conceded that the phrase "equality before law" has a separate content than "equal protection of law", the question arises, what would be the effect of incorporating the doctrine of equality before law in a written guarantee of fundamental rights and, in particular, along with the analogous guarantee of equal protection. The guarantee of equal protection would be satisfied if there is some reasonable basis for differential treatment. But even though a person may be differently circumstanced, e.g., if he is under a sentence of imprisonment, he may still be entitled to some basic human rights which may be deduced from the right of equality before the law,

- a) Right to recognition as a human being before the law.
- b) Right of access to courts of law.
- c) Right to a fair and public hearing by an independent and impartial tribunal established by law. The contents of "Equality before Law" are indeed much wider today than in the days of Dicey.

**Object of Article 14:**

The aim or the object of this Article to ensure that invidious distinction or arbitrary discrimination shall not be made by the state between a citizen and a citizen who answers the same description and the differences which may obtain between them are of no relevance for the purpose of applying a particular law reasonable classification is permissible. Article 14 provides that the state shall not deny to any person whether citizen or not, equality before the law and equal protection of law. It does not mean that same law must be applicable to all but the law should deal alike with all in one class; there shall be equality of treatment under Equal circumstances. So the object is that "equals should be treated unlike and unlike should not be treated alike. Likes should be treated alike. The object of Art. 14 is wider and is to ensure fairness and equality of treatment.

**1) Test of Reasonable Classification:**

If all men are treated equal and remained equal throughout their lives, then the same laws would apply to all of them. But we know that men are unequal. Equality does not mean that all men are protected by the same laws. It is here the Doctrine of classification steps in. All persons are not equal by nature or circumstances, the varying needs of different classes or sections of people require different treatment. This leads to classification among different groups of persons or class. For the purpose of this Article, even a single institution can form a class by itself and while deciding the question of violation of Article 14, it is to be seen whether there are any reasonable basis on which a single or group of persons are left out of the group. Though discrimination is prohibited, that cannot be applied to nullify a discrimination recognized by the Constitution



itself. Art.14 prohibits class legislation and not classification for purpose of legislation.

A classification would be justified unless it is patently arbitrary. If there is any Reasonable basis for classification, the legislature would be entitled to make a different legislation. The legislature is competent to make classification. It is upon the legislature to identify the class of the people to be given protection and on what basis such protection is given. Court cannot interfere. Art.14 does not require that the Legislative classification should be scientifically or logically perfect. Classification for the purpose of legislation cannot be done with mathematical precision.

*a) The two tests of classification are as follows:*

1. **Intelligible Differentia:** The classification must be founded on an intelligible differentia which distinguishes those that are grouped together from other, and
2. **Rational Relation:** That differentia must have a rational relation to the object sought to be achieved by the Act.
  - Where the law is challenged as offending against the guarantee in Art 14, the first duty of the court is to examine the purpose and policy of the Act and then to discover whether the classification made by the law has a reasonable relation to the object which the Legislature seeks to obtain. The object of the Act is to found in its Title, Preamble and Provisions.
  - It is not possible to exhaust the circumstances or criteria which may accord a reasonable basis for classification in all cases. It depends on the object of the legislature. In order to be 'Reasonable', a classification must not be arbitrary but must be rational.

*b) Basis of Classification:*

1. The basis of classification may be geographical.
2. The classification may be according to difference in time.
3. The classification may be based on the difference in nature of trade, calling or occupation, which is sought to be regulated by the legislation.

*c) Classification Authorized by the other provisions of the Constitution:*

1. Any law making special provision for Women (or Children) under Article 15 (3) cannot be challenged on the ground of contravention of Art. 14.
2. Where the Constitution itself makes a classification, the charge of discrimination cannot be levelled against such separate treatment. **REASONABLENESS** and **FAIRNESS** is the Heart and Soul of Article 14

*d) Where the classification is not reasonable,* the impugned legislative or executive action would be held arbitrary and violate of Art. 14; but the content of and reach of Art.14 must not be confused with the doctrine of classification.

- i. Extending a benefit to one class of establishment and denying to the other class enumerating in the same para of the Act was held to be arbitrary and bad.
- ii. For deciding whether a particular decision was arbitrary or reasonable, the existing circumstances at the time of taking the decision had to be examined and not those prior to the decision. It has held that right to equality now means not only right to be not discriminated, but also protection against arbitrary act of State.
- iii. Equality is not violated by the mere conferment of discretionary power; it is violated by arbitrary exercise of these on whom conferred.
- iv. Due to spreading of arbitrariness there is requirement to state reasons in an order or decision. The recording of reasons in a decision would shield it from attack on the ground of arbitrariness or unfairness in the decision making process.

**Affirmative action needs protective discrimination:**

While in the earlier cases, the Supreme Court understood the guarantee of equality in Art. 14 to mean absence of discrimination, in later cases, the courts has come to hold that in order that equality

of opportunity may reach the **backward classes and minority**, the State must take affirmative action by giving them a preferential treatment or protective discrimination.

- To make Equality a living reality for the large masses of people, those who are unequal's cannot be treated by identical standards. It may be equality in law, but it would certainly not be real equality. It is necessary to take into account de facto inequalities which exist in the society and to take affirmative action by way of giving preferences to the **socially economically disadvantaged persons**. Such affirmative action though apparently discriminatory is calculated to produce equality by eliminating De Facto inequalities and placing the weaker sections of the society on a footing of equality.
- When competing rights between the general and the reserved candidates require adjudication and adjustment with the rights of general candidates, the doctrine of violation of Art. 14 have no role to play, as some protective discrimination itself is a facet of Article 14 and it does not again deny equality to the reserved candidates.
- The very concept of equality is valid classification for preferences in favour of disadvantaged classes of citizen to improve their conditions so as to enable them to raise their position of equality with other more fortunate classes of citizen. That the object of positive discrimination was **empowerment of backward class** adequate sharing of power.

**Principle of natural justice:**

Doctrine of natural justice means fairness in action. It means Right to be heard before adverse action is taken. Principle of Natural Justice is an integral part of the guarantee of equality assured by Art.14. Natural Justice is applicable to judicial, quasi-judicial, administrative orders affecting prejudicially unless the said rule is expressly excluded. Principle of Natural Justice is requirement of Art.14.

***Right cannot be waived:*** A person cannot voluntarily get discrimination or waive his Fundamental Right against discrimination.

Any person:

- 1) Any person, natural or artificial, whether he is a citizen or an alien, is entitled to the protection of Article 14.
- 2) Government servants do not lose the protection of Article 14 by entering into Government service.
- 3) Even a prisoner in a jail is entitled to equal treatment under the Prison Rules<sup>44</sup>.
- 4) The State itself is a juristic person. Hence, where no special provision is made, the State has equal rights with other persons. The benefit of S. 5 of Limitation act under delay in filing appeal could be condoned, must be given to State also.

**Who can complain of the violation of equal protection?**

1. Only a person, who is aggrieved by the alleged discrimination, can challenge the validity of a law on ground of violation of Article 14. Thus the person aggrieved mean a person who suffers a legal injury.
2. The petitioner cannot complain unless he belongs to the class of persons who are alleged to have been discriminated against.
  - The orthodox view of **Locus Standi** has been modified and the class of persons entitled to enforce Fundamental Rights has been widened by the doctrine of "Public Interest Litigation" according to which any public minded individual is allowed to invoke Fundamental Rights under Art. 32 & 226.
3. The burden of showing that a classification rests upon an arbitrary and not reasonable basis or the discrimination is apparent and manifest is upon the person who impeaches the law as a violation of the guarantee of the equal protection.



4. When prima facie, a plea of discrimination is made out, the burden of proof shifts on the state to show that it is not so.

**Right to Compensation:**

Apart from liability to pay damages under the law of Torts the Supreme Court has also ordered to pay compensation to the citizen for loss or injury (physical or mental), caused by the arbitrary action of the public authority.

**Right to equal access to the Courts:**

Equal access to the courts for vindication of legal right may also be regarded as a condition of equal protection and a person should not be deprived of such protection unless there is any reasonable basis of such classification. By 'just grievances' is meant the adjudication of disputes relating to his rights. When the legislature seeks to deprive a citizen of his right to access to the court without any reasonable basis for this special treatment, there is denial of equal protection. Access to the court is a right vested to every citizen and that the same cannot be denied even when the statutes are silent. Access to the Court is an important right to every citizen.

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

- a. The condition precedent to such free legal aid is that the accused is indigent or illiterate and is otherwise unable to engage a lawyer.
- b. This right as soon as the accused is arrested and subsists throughout the trial.
- c. This right is not dependent upon the accused applying for such assistance. Being a constitutional mandate, it is a duty of the Magistrate or Sessions Judge to inform the accused that if he is unable to engage a lawyer, he is entitled to free legal aid.
- d. The assistance offered must be effective for a meaningful defence. Assigning an inexperienced lawyer will not discharge the obligation of the State.

**Conclusion:**

Right to equality is a Fundamental Right. It can be enforced in High Court under Article 226 and in Supreme Court under Article 32. Fundamental Rights can be enforced only if the state violates it. Right to Equality is considered as basic feature of the Indian Constitution. Right to Equality under Art.14 is vested not only to citizens but to all persons. It includes equality before Law and Equal Protection of Law. No one is above the law of the land. Everyone is equal in the eyes of law. There should be no discrimination. Law must be equal and must be equally administered. So like must be treated alike and unlike. Equality before law is negative concept and Equal protection of law is positive concept. Reasonable Classification is allowed in the administration of justice. But it should have some relation to the object of the legislature. In every society there are two classes namely upper class and lower class. The standard of living of the upper class is high but that of lower class is low. As a result it is the duty of the state to uplift the lower class in the society to bring Equality. Absolute equality is impossible but there should not be inequality. Discrimination on the basis of caste, sex, race, religion, language etc. must be not there at all. A sense of equality must be there then and then only will be unity in any state.

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