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Doctrine of Reasonable Classification as an Exception to the Right to Equality: Critical Analysis in Light of the Legal Provisions and Relevant Case-Laws

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ABSTRACT

The paper at hand pertains to the subject of Constitutional Law and discuses whether or not the doctrine of reasonable classification can be considered to be an exception to the Right to Equality. As an author I take stand of how indeed the doctrine of reasonable classification is not an exception to the Right to Equality and what follows is a critical analysis fo the statement in the light of concerned legal provisions and relevant case-laws.

The paper discusses how there is no way one can deem the application of the reasonable classification doctrine to be an exception to the Right to Equality when aside from following the rules(pertaining to jurisprudence on equality), the very purpose it serves-is to help in furthering the application of the principle of equality enshrined in Article 14 by providing a mechanism to put into force the right of equality. The paper talks about how it bridges the gap between words being merely imprinted on paper on one hand, and having far-fetched consequences(and meting out justice) on the other. It explores as to how this doctrine achieves the same through the examples of four case laws, starting with the Anwar Ali Sarkar case. The cases of Dr.Subramanian Swamy vs Director, CBI & Anr, Hiral P. Harsora And Ors vs Kusum Narottamdas Harsora And Ors. along with discussions revolving around the CAA Bill exemplify how is it that the doctrine works. Important remarks by legal luminaries like Justice Bhagwati, H.M. Seervai and P.D.T. Achary also make crucial contributions to the flow of the article.

According to the dictionary, an 'exception' is "a person or thing that is excluded from a general statement or does not follow a rule"[2]. Coming to the question at hand, I beg to differ- The doctrine of reasonable classification is in no way, an exception to the Right to Equality. How can one call it an exception when aside from following the rules(pertaining to jurisprudence on equality), the very purpose it serves-is to help in furthering the application of the principle of equality enshrined in Article 14 by providing a mechanism to put into

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[2] Exception, Definition of Exception by Lexico, Lexico Dictionaries ,English (2020), https://www.lexico.com/en/definition/exception (last visited May 14, 2020).

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force the right of equality. It bridges the gap between words being merely imprinted on paper on one hand, and having far-fetched consequences(and meting out justice) on the other. This paper explores as to how this doctrine achieves the same through the examples of four case laws, starting with the *Anwar Ali Sarkar* case.

Under Article 14 of the Constitution, it is mandated that "the State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India"[3] and "the Indian Supreme Court applied the theory of classification, evolved by the American Supreme Court for giving content and true meaning to right to equality. According to this doctrine 'equal protection of laws' prohibits class legislation but permits reasonable classification of persons or things"[4].

Naturally, the question arises as to what comprises 'reasonable classification'. The "**Anwar Ali Sarkar case**"[5] enunciates the Locus Classicus pertaining to the the test of reasonable classification. Justice S.R. Das throws light on the two limbs of the test. The first limb is the presence of intelligible differentia and the second refers to how the same must have a rational relation with the object sought to be achieved by the act. He elucidates as follows-

"In order to pass the test, two conditions must be fulfilled, namely, that the classification must be founded on an intelligible differentia which distinguishes those that are grouped together from others and that the differentia must have a rational relation to the object sought to be achieved by the Act. It is necessary that there must be nexus between them"[6].

Justice S.R. Das also throws light on two aspects that need to be considered when it comes to "adjudging a given law as discriminatory and unconstitutional"[7] and applying the reasonable classification test.

"First it has to be seen whether it observes equality between all the persons on whom it is to operate. If the impugned legislation is a special law applicable only to certain a class of persons, the court must further enquire whether the classification is founded on a reasonable basis having regard to the object to be attained, or is arbitrary. Thus, the reasonableness of classification comes into question only in those cases where special legislation affecting a class of person is challenged as discriminatory"[8]

[3] The Constitution of India, http://legislative.gov.in/sites/default/files/coi-4March2016.pdf.
[4] V.K. Sircar, The Old and New Doctrines of Equality : A Critical Study of Nexus Tests and Doctrine of Non-Arbitrariness ebc-india.com (1991), https://www.ebc-india.com/lawyer/articles/91v3a1.html
[5] Anwar Ali Sarkar vs The State Of West Bengal, AIR 1952 Cal 150 (India)
[6] Id. at 3.
[7] Id. at 3.
[8] Id. at 3.

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Next, he goes on to expound on the theme of 'nature of legislative classification' and how it needs to be ensured that the same has been evolved on the basis of some rationale.

"This classification must be on different bases. The classification must not be arbitrary but must be rational, that is to say, it must not only be based on some qualities or characteristics which are to be found in all the persons grouped together and not in others who are left out but those qualities or characteristics must have a reasonable relation to the object of the legislation"[9]

The main theme of the paper is answering the question-'why the doctrine of reasonable classification is not an exception to the Right to Equality' and the following excerpt from Justice S.R.Das's judgment does a brilliant job in shedding light on the same-

"All persons are not, by nature, attainment or circumstances, equal and the varying needs of different classes of persons often require separate treatment and, therefore, the protecting clause has been construed as a guarantee against discrimination amongst equals only and not as taking away from the state the power to classify persons for the purpose of legislation"[10].

Thus, it is of umpteem importance to take into cognizance the intricate albeit critical difference between classifying on the basis of a rationale that passes the reasonable classification test(to further the dissemination of justice by enduring proper application of Article 14) on one hand; and classifying arbitrarily-with the dearth of the former-on the other. In this context, it also becomes imperative to note how the judgment at hand points at the subtle shades of grey that guide the thin-line differences between discretion and discrimination-when it comes to the government exercising its powers.

Just as the Anwar Ali Sarkar *case,* the judgment in '**Dr.Subramanian Swamy vs Director, CBI & Anr**'[11] comprises a major authoritative pronouncement on Article 14 and the importance of the doctrine of reasonable classification therein.

The point of contention in the case at hand is "the constitutional validity of Section 6-A of the Delhi Special Police Establishment Act, 1946" which was inserted in 2003.[12] Dr. Swamy argues- on grounds of being unreasonable and acting as a barrier to fair investigation- as to how this section violates Article 14 the Constitution and needs to be struck down.

[9] Id. at 3.
[10] Id. at 3.
[11] Dr.Subramanian Swamy vs Director, CBI & Anr (2005) 2 SCC 317
[12] In these petitions challenge is to the constitutional validity of Section 6-A of the Delhi Special Police Establishment Act, 1946 (for short, "the Act"). This section was inserted in the Act w.e.f. 12-9-2003. It, inter alia, provides for obtaining the previous approval of the Central Government for conduct of any inquiry or investigation for any offence alleged to have been committed under the Prevention of Corruption Act, 1988 where allegations relate to officers of the level of Joint Secretary and above.

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The text of the judgment throws light on two critical questions that ought to be considered before arriving at a conclusion. Firstly, "can classification be made on the basis of the status/position of the public servant for the purpose of inquiry/investigation into the allegation of graft which amounts to an offence under the PC Act, 1988"[13]. Moreover, "Can the Legislature lay down different principles for investigation/inquiry into the allegations of corruption for the public servants who hold a particular position?"[14] The question of whether such classification can be said to be based on sound differentia-is also brought into the picture here.

Answering the same, the bench explicitly states how "the classification made in Section 6-A neither eliminates public mischief nor achieves some positive public good". It in fact-"advances public mischief and protects the crime-doer"[15].

It is held by the bench how the classification between public-servants on the basis of rank-when accused of the same offence of corruption-can never be said to be on the basis of "intelligible differentia; especially when the question of discriminating against those similarly situated-comes to light."[16]

Moving on, another major take-away from the case is-if the object of the legislation in question itself is discriminatory in the first place, one doesn't delve further into applying the reasonable classification test. The following excerpt from the decision of the bench sheds light on the same while also addressing the aspect of reasonable classification-

"If the object itself is discriminatory, then explanation that classification is reasonable having rational relation to the object sought to be achieved is immaterial. It seems to us that classification which is made in Section 6-A on the basis of status in the Government service is not permissible under Article 14 as it defeats the purpose of finding prima facie truth into the allegations of graft, which amount to an offence under the PC Act, 1988. Can there be sound differentiation between corrupt public servants based on their status? Surely not, because irrespective of their status or position, corrupt public servants are corrupters of public power."[17]

Another classical illustration of the application of reasonable classification and principles of article 14 is the case of '**Hiral P. Harsora And Ors vs Kusum Narottamdas Harsora And**

[13] Dr.Subramanian Swamy vs Director, CBI & Anr, supra no.10, at 4
[14] Id. at 5.
[15] Id. at 5.
[16] Id. at 5.
[17] Id. at 5.

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Ors'[18].

The facts of the case are as follows- Kusum Harsora along with her mother had filed a complaint under the 2005 Domestic Violence Act against her brother Pradeep, his wife as well as her sisters, accusing them of various acts of violence. The problem arises when the application filed before the Metropolitan Magistrate comes into the picture for it capitalizes on the loophole that "as the complaint was made under Section 2(a) read with Section 2(q)[19] of the 2005 Act, it can only be made against an adult male person"[20] Since 3 out of the 4 respondents-Pradeep's wife and his other two sisters were females, they were required to be discharged on grounds of "not being adult male persons"[21].

While the Metropolitan Magistrate refused such an order, the "Bombay High Court, on a literal construction of the 2005 Act, discharged the aforesaid three respondents from the complaint"[22].

However, the Supreme court steps in and overturns the Bombay HC decision by looking at the facts at hand through the lens of the reasonable classification doctrine. The 2 member bench comprising of Justice **Kurian Joseph and Rohinton Fali Nariman-** very aptly recognises the true purpose of the impugned enactment by looking at the preamble of the act- which is, to effectively protect women who are victims from any kinds of domestic violence. They take into cognisance how "perpetrators and abettors of such violence can, in given situations, be women themselves"[23] before proceeding further.

They explicitly state the lack of intelligible differentia in discerning who can be called a respondent. They state-

" the definition of "respondent" in Section 2(q) is not based on any intelligible differentia having any rational relation to the object sought to be achieved by the 2005 Act. The restriction of such person to being an adult male alone is obviously not a differentia which would be in sync with the object sought to be achieved under the 2005 Act, but would in fact be contrary to it"[24]

They go on to explain how the classification effected in the case at hand-can neither be deemed as real nor substantial. Borrowing the legendary phrase- "To overdo classification is

[18] Hiral P. Harsora And Ors vs Kusum Narottamdas Harsora And Ors ,AIR 2016 SC 4774
[19] THE PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT, 2005, http://legislative.gov.in/actsofparliamentfromtheyear/protection-women-domestic-violence-act-2005
[20] Hiral P. Harsora And Ors vs Kusum Narottamdas Harsora And Ors, supra n.17, at 5
[21] Id. at 5
[22] Id. at 5
[23] Id. at 5
[24] Id. at 5

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to undo equality"[25], the bench explains their decision of "striking down the words "adult male" before the word "person" in Section 2(q)" [26]by giving multiple concrete reasonings. They emphasize heavily as to how "these words discriminate between persons similarly situate, and far from being in tune with, are contrary to the object sought to be achieved by the 2005 Act"[27]. They also draw a parallel with the Subramanian Swamy judgment while trying to put across their point:

"the microscopic difference between male and female, adult and non adult, regard being had to the object sought to be achieved by the 2005 Act, is neither real or substantial nor does it have any rational relation to the object of the legislation. In fact, as per the principle settled in the Subramanian Swamy judgment, the words "adult male person" are contrary to the object of affording protection to women who have suffered from domestic violence "of any kind". "[28]

Treading the same path as the previous three cases when it comes to highlighting the importance held by the reasonable classification test, the arguments revolving around the Citizenship (Amendment) Act, 2019 also go on to prove how important it is for any legislation or piece of state action to fulfil both the limbs of the criteria set out in the doctrine so as to ascertain the legality or illegality of the same. Arguments put forward by P.D.T. Achary(former Secretary General of the Lok Sabha)also centre around this very point. Achary insists "if the Act can show an intelligible differentia in the classification of beneficiaries under the Act and rational nexus between the differentia and the object of the Act, it will be safe but otherwise, not"[29]. He contends that the impugned "law violates Article 14 and no rational nexus can exist nor can it have any relevance"[30]. Explaining the object of the Act which groups foreign communities who've been subjected to religious persecution(excluding Muslims from the ambit of the same), Achary highlights how any classification, howsoever reasonable, which violates the constitutional policy is not reasonable classification. He goes on to substantiate his argument by contending that it is imperative to bear in mind that "the object itself cannot be discriminatory, for otherwise, for instance, if the object is to discriminate against one section of the minority, the discrimination

[25] Id. at 6
[26] Id. at 6
[27] Id. at 6
[28] Id. at ^
[29] *CAA must meet Article 14"s reasonable classification test: Achary*, Outlook-The News Scroll (2019), https://www.outlookindia.com/newsscroll/caa-must-meet-article-14s-reasonable-classification-test-achary/1692588 (last visited Jan 21, 2021).
[30] Id. at 7.

cannot be justified on the ground that there is a reasonable classification"[31]

Just as there are two sides to a coin, there exist strong critics of the reasonable classification test along with a host of legal scholars and eminent jurists-who lend their support in favour of the doctrine. While Justice Bhagwati on one hand contends that the reasonable classification test is "unpractical", H.M. Seervai on the other hand, disagrees with the same. Refuting the same, he states that "there is nothing unpractical about a doctrine which effectively secures equal protection of law to persons by declaring the law based on impermissible classification to be void while leaving to the State a wide field for making laws based on permissible classification"[32].

It goes without saying, that I couldn't agree more with the eminent jurist and lend my full-hearted support to his stance. I firmly believe that the doctrine of reasonable classification is not an exception to the Right to Equality.

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[31] Id. at 8.
[32] H.M. Seervai, former Advocate-General of Maharashtra (1957-1974) and Jagdish Swaroop, former Solicitor-General of India, in their commentaries on the Constitution of India

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