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EQUALITY BEFORE THE LAW AND EQUAL PROTECTION OF THE LAWS*

By

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Mr. President and Brother-members of the Bar of India,

It is indeed a rare privilege and I count it as sacred to address my colleagues in the legal profession in this momentous, august and learned gathering on a subject that is pregnant with topical, legal and political importance, *viz.*, " Equality before the Law and Equal Protection of the Laws ". In these days of conflicting rights, when rights and privileges are stressed more than duties and obligations, when the upward surge of new democratic forces particularly in young, immature, independent republics as India, tend to make the party in power and the executive feel more sacrosanct than even our courts of justice and the Constitution, it is betimes that in the very interests of the Freedom which we want to preserve at all costs, we must focus public attention on the supremacy of the Constitution to which the Executive, the Legislature and even the Judiciary are only subordinate and that as between the last three it is the Judiciary that must be deemed as interpreter of the Constitution and the resolver of conflicts when rights of the people, the Executive or the Legislature are in conflict *inter se.* The limitations which have to be always kept in view can be summed up in the three memorable golden rules propounded by Professor Berridale Keith :

(i) That the judicial decisions should be upon fixed principles already established ;

(ii) Legislation must favour the limitation of executive and judicial power to deal arbitrarily with individual rights ;

(iii) The Government should jealously respect its legal limitations.

It is wise to remember we are in a federal state and so we must appreciate the meaning of double allegiance to the State Laws and the Federal Laws. A federal people must exhibit a high sense of political education and legalism, *i.e.*, 'a general willingness to yield to the authority of law courts' which courts alone can decide what the Constitution at any given moment is. As Professor Dicey would put it :

" A Federal System can flourish only among communities imbued with a legal spirit and trained to reverence the law, is as certain as can be any conclusion of political speculation. Federation substitutes litigation for legislation and none but a law-abiding people will be inclined to regard the decision of a Suit as equivalent to the enactment of a Law "

and the learned constitutional expert would add :

* A thesis read before the Eighth Madras State Lawyers' Conference at Salem on 30th December, 1952, under the presidency of the Hon'ble Mr. Justice T. L. Venkatarama Ayyar.

"The main reason why the United States of America has carried out the Federal System with equal success is that the people of the union are more thoroughly imbued with legal ideas than any other existing nation."

I have ventured to quote Professor Dicey in detail as there is a prevalent fashion even among the highly educated gentry who climbed up the ladder of political power in our country (not to speak of the Cromwells of lesser calibre) to decry the interpretative jurisdiction of Courts of Law and to hail their own conceptions of what is good for the country as pearls of wisdom. They would appear to desire that powers of Courts of Law must be eschewed for their own party ends forgetting the next party in power may do just the contrary. It is well to again quote Dicey:

"yet any nation who cannot acquiesce in the finality of even possibly mistaken judgment is hardly fit to form part of a federal state."

It is, therefore, wise for politicians as well as the laymen in India to realise that respect for the Constitution, for the law of the land, for the rule of law and for courts of justice are the pivots on which our Indian Federation could march forward in the field of successful Federalism. Unless we, the people, exhibit to the fullest, traits of federation and legalism we cannot dream of an unalloyed federal constitution divested of even the few unitary tendencies that may be present in the Indian Constitution as it is to-day.

Gentlemen, my esteemed friend, Mr. M. K. Nambiar, Bar-at-Law, addressed our last conference at Kozhikode on "Fundamental Rights." It is my turn now to particularly dilate on a special aspect of these fundamental rights, *viz.*, "Equality before Law and Equal Protection of the Laws". The Constitution of India presents in Part III, (Article 12 to 35) the Magna Carta of India. It vouchsafes to the citizens of India certain fundamental rights which are inviolable and are to be guaranteed to him by any governmental party in power. The tyrrany of the majority in representative party governments of latter days had necessitated such constitutional guarantees as a permanent safeguard to minorities. This charter of liberty is a sheet-anchor for all young democracies. Lest authority should corrupt, constitutional limitations are made the safety-valves for the essential well-being and happiness of free citizens. In England, Parliament is supreme. Tradition, conservative outlook, representative and responsible cabinet system and a supreme Parliament form the real guarantee to the people of England of the inherent rights, of liberty of the individual, liberty of speech, liberty of association and equality in the eyes of law. Professor Dicey would assert that in England:

"The right to individual freedom was part of the Constitution (unwritten) because it is inherent in the ordinary law of the land; the right is one which can hardly be destroyed without a thorough revolution in the institutions and manners of the nation."

Individual liberty in England and equality before law can be secured by resort to 'writs' or 'remedies' in courts of law. But the Parliament is so supreme that it can alter statutory or judge-made law. Magna Carta and the Bill of Rights merely declared the existing common law and bound only the executive and never the Parliament. By contrast we find in the American Constitution a recognition of Montesquieu's famous doctrine of 'separation of powers.' The visible element of this 'separation' is complete independence of the American judiciary which is supreme and as Dicey states it 'the judiciary in a Federal State is sometimes the master of the Constitution.' While the Congress is subordinate to the Constitution, it is the domain of the Supreme Court to interpret the Constitution. The Indian Constitution is a happy compromise between the supremacy of the Parliament and supremacy of the judiciary. In India, the Constitution is supreme, holding in subordination, the three powers, the executive, the legislature and the judiciary though the latter are given the unique privilege to resolve all conflicts and interpret the Constitution.

Equality before Law.

The two significant terms of constitutional importance in this thesis are 'Equality before Law' and 'Equal protection of the Laws.' The former is of English origin while the latter has been taken out of the American Constitution. The two

terms are not really identical. The 'Rule of Law' coined by Professor Dicey carried with it the concept of 'Equality before the Law'. In other words, in England 'No man was above the Law.' Whatever his rank or condition may be, he is subject to the ordinary law of the land and jurisdiction of the ordinary courts. The supremacy of the law implied the exclusion of arbitrary power and the equality of all citizens before the ordinary law of the land.

Equal Protection of the Laws.

The term 'Equal Protection of the Laws' is, however, a positive concept. It is imbedded in section 1 of the 14th Amendment of the Constitution of America. The 13th Amendment of 1787 abolished slavery in any form in the United States of America. But the most significant amendment, however, was the 14th passed by the Congress in 1868 by which all citizens of the United States of America (inclusive of the erstwhile slaves) cannot be deprived of life, liberty or property without 'due process of law' nor can any State deny to anyone 'Equal Protection of Laws' and it was particularly enjoined that 'no State shall abridge the privileges or immunities of the citizens of the United States of America.' The Constitution of Eire (Ireland) guaranteed under section 40 (1) that 'all citizens shall, as human persons, be held equal before law'. We have in section 13 of the Constitution of Burma the significant provision that 'all citizens irrespective of birth, religion, sex or race, are equal before the law, that is to say, there shall not be any arbitrary discrimination between one citizen or class of citizens and another.'

Profiting by experience of other federal countries we have inserted in the Indian Constitution Article 14 which enunciates 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'. The emphasis must be on the three words 'State', 'any person' and 'territory of India' to reveal that, that (i) the guarantee is only by the State and not by private citizens, (ii) the guarantee extends to any person not necessarily a citizen of India but any one (inclusive of foreigners) present in India, (iii) the guarantee extends throughout the territory of India.

Sir Ivor Jennings has expressed that

"Equality before the Law means that among equals the law should be equal and should be equally administered, that like should be treated alike . . . . The right to sue and to be sued, or to prosecute and be prosecuted, for the same kind of action should be the same for all citizens of full age and understanding and without distinction of race, religion, wealth, social status or political influence."

Dicey would explain that the term 'Rule of Law' meant 'the supremacy of the predominance of law as distinguished from mere arbitrariness.' This equality before law is not absolute but is subordinate (as succinctly laid in the Constitution of Eire) to differences of capacity, physical, moral and social functions. Any wrongful act or breach of the law will be dealt with in similar manner whether the offender is a peasant, public officer or a man of high social position. Maybe, each in his own sphere, may wield large powers but in the eye of law they are all one. Certain privileges and immunities are, however, offered in all Constitutions to heads of States, foreign sovereigns, ambassadors, foreign ministers, etc., but these should not be understood as undermining the doctrine of Equality before Law. In our own Constitution Article 361 provides for exceptional treatment to executive heads of the Union and the States, public officials, etc. Parliament has the power under Article 246 to legislate in respect of foreign ambassadors (Entry 11 of List I, VII Schedule) and of aliens. (Entry 17 of List I).

Equal Access to Courts.

We may state that equality before law connotes equal justice to all. Right of equal access to courts is a natural corollary to the equal protection clause and this was particularly stressed in an American case *Barbier* v. *Connolly*[1], where the doctrine of equal protection was elaborated this-wise

"That no impediment should be interposed to the pursuits of any one except as applied to the same pursuits of any one or others under like circumstances; that no greater burden should be laid upon one than are laid upon others in the same calling and condition. . . . . that in the administration of criminal justice no different or higher punishment should be imposed upon one than such

1. (1885) 113 U.S. 27.

as is prescribed to all for like offence . . . . . All persons should have like access to courts of the country for the protection of their persons and property, the prevention and redress of wrongs and the enforcement of contract."

This cardinal principle of equal access to court was put to test in India soon after the Constitution came into force in *Mahbub Begum and others* v. *Hyderabad State and others*[1]. In this instance the Begum and her children who had been declared to be heirs of the deceased Nawab Wali-ud-Daula Bahadur by a Special Court was sought to be deprived of that right by a sort of police action on the part of the Hyderabad State. The Nizam, the Rajpramukh, the then repository of legislative power enacted a special Act termed The Hyderabad Wali-ud-daula Succession (Decision of Disputes) Act XVI of 1950. By section 2 of the Act the claims of the Begum and her children secured by the decree were dismissed and section 3 barred any reference to this decision by Statute in any Court of Law. This was extraordinary and against all canons of natural justice. The Full Bench upheld the principles enunciated in *Barbier* v. *Connolly*[2] advocating equal access to court and equal protection, and further laid down that sovereign discretionary powers should not be abused by an arbitrary invasion of substantial rights secured to the citizens by offensive exactions and discriminations ; that the right to institute a suit in a court of law is a civil right which cannot be taken away by statute ; that it would amount to denial of equal protection of the laws to the Begum under Article 14 and the deprivation of property rights would further offend Articles 31 and 19 (*f*) of the Constitution. The Act XVI of 1950 though a State-made law was not a valid law and was therefore void under Article 13 (2).*

Equal Legal Aid.

Equal availability of the legal aid is another fundamental criterion to bring about true equality in the eye of law. It was in this sense that in England that necessity arose for passing the Legal Aid and Advice Act of 1949. Some such aids to the poor litigant by statute is necessary in India if the fundamental guarantee of equality before the law is fully to be realized by the poorest of citizens. In other words, law must be within the easy reach of all to enjoy the fruits thereof. By its very costliness or cumbersome procedure the poor or the ignorant should not be denied the opportunity to reap the benefits of equality before the law. In this connection I would commend an article on ' Legal Aid as Community Service ' penned for the magazine section of *The Indian Express* of 16th November, 1952, by our colleague at the Bar, Mr. K. V. Gopala Menon. We may emulate America in this by forming of legal aid societies all over our country. Assignment of counsel on paid or honorary basis to litigants in civil or criminal cases is beautifully organized on voluntary as also on statutory basis in America. We have statutory aid in India only in cases of murder. But our civil and criminal procedure must be so amended as to furnish legal aid in all civil and criminal cases whenever the court is of the opinion that the party is too poor to engage counsel. A special statute whereby legal aid societies can be formed and who could be compelled to aid courts of law in the aforesaid cases, is a natural culmination for the success of the doctrine of equal protection and equality before law.

Due Process of Law.

The American Constitution by the 5th Amendment directs the Federal Government to ensure ' Due Process of Law.' The application of this ' Due-Process ' clause brings within its ambit the guarantee of equal protection of laws. The 5th Amendment specifically sets out that

" no person shall be subject for the same offence to be twice put in jeopardy of life or limb ; nor shall he be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty or property without due process of law ; nor shall private property be taken for public use without just compensation."

In our Indian Constitution Article 31 guarantees compensation for acquisition while Article 21 ensures protection of life and personal liberty according

1. A.I.R. 1951 Hyd. 1 (F.B.). 2. (1885) 113 U.S. 27.

* *See* also on appeal to the Supreme Court : (1953) S.C.J. 61 (S.C.).

to procedure established by law. Article 20 gives protection against double prosecutions. But the words 'Due Process of Law,' has been significantly omitted in our Constitution to avoid all confusion and doubt. The general law of the land assures safe remedies such as open trial, full hearing, right of cross-examination, right of being represented by counsel, appeal, etc. Due process means a law which hears before it condemns, which proceeds upon inquiry and renders judgment only after trial according to forms of law appropriate to the case and just to the parties affected. Reasonable certainty is another requisite of due process. In England and America no one can be deprived of his life or liberty except for a clear breach of the law and without due process of law. But all that is provided in our Constitution is under Article 21, 'no person shall be deprived of his life or personal liberty except according to the procedure established by law.' Our Constitution does not secure due process of law. It secures only procedure established by law. In *A. K. Gopalan's Case*[1], the Supreme Court of India held that the words "Due Process of Law" were deliberate omissions in our Constitution and that American cases dealing with that principle cannot be held applicable to India that the word 'law' in Article 21 has been used in the sense of State-made or enacted law and not as an equivalent of law in the abstract or general sense embodying the principles of natural justice. 'Procedure established by law' therefore only connotes procedure prescribed by the law of the State. Due process of law, on the other hand, would take us into the doubtful mire of procedure sanctioned by settled usage or natural justice and therefore was purposefully omitted in our Constitution.

It is well to remember that in America the 'due process' clause was available to corporations as well as individuals, aliens as well as citizens of the United States of America. Article 14 of our Constitution can likewise be invoked by aliens in our country. In America the due process clause was a limitation on the Legislature as well as on the executive; secondly it related to substantive as well as procedural rights. If the police power of the State intervened due process, then the former must pass the test of reasonableness and should not be arbitrary, vide *Lochner* v. *New York*[2]. Due process includes natural justice, opportunity of a fair hearing, service of process, an impartial tribunal, *Turney* v. *Ohio*[3], absence of fraud, *Chicago, M. & St. P.R. Co.*, v. *Minisesota*[4], courts free from outside duress, *Frank* v. *Mangum*[5], etc. Denial of due process includes excessive penalties, *Missouri Pacific Ry. Co.* v. *Tucker*[6], un-uniform taxes, *McGowan* v. *Illinois Bank*[7], unequal administration of law by an official, *Snowden* v. *Hughes*[8], etc. Equal protection clause does not prohibit States from restricting the enjoyment of political privileges to certain classes of their citizens as they deem proper, vide *Blake* v. *McClung*[9].

Equal Protection to Negroes.

Negroes in America earned their emancipation by the 13th Amendment to the Constitution of the United States of America which postulated that neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted shall exist within the United States of America or any place subject to their jurisdiction. The 14th Amendment further enjoined all persons born or naturalized in the United States of America and subject to the jurisdiction thereof are citizens of the United States of America and of the State wherein they reside. It further guaranteed all privileges and immunities, equal protection of laws and due process of law. The Negro thus became a full-fledged American citizen. In the leading case *Norris* v. *Alabama*[10], Chief Justice Hughes reversed the conviction for rape, of nine negro boys on the ground that defendants had been denied due process of law such as disqualifying of nine competent negro jurors, on the ground of race. In the field of education in *Gaines, A negro citizen of Missouri*

1. (1950) 2 M.L.J. 42 : (1950) S.C.R. 88; (1950) S.C.J. 174 (S.C.).
2. 198 U.S. 45.
3. (1927) 273 U.S. 510.
4. 134 U.S. 418.
5. 237 U.S. 309.
6. 230 U.S. 340.
7. (1898) 170 U.S. 283.
8. (1943) 321 U.S. 1.
9. 172 U.S. 239.
10. 294 U.S. 587.

v. *University of Missouri*[1] an action brought for not admitting the negro in its law school, the same Judge Hughes opined:

"The petitioner's right here is a personal one, it was as an individual that he was entitled to the equal protection of laws and the State was bound to furnish him within its borders facilities for legal education substantially equal to that which the State offered for persons of the white race, whether or not other negroes sought the same opportunity."

But, however, American conscience was really not initially frank. In *Plessey* v. *Fergusson*[2] a subtle distinction was made that 'equal but separate' treatment of the two races would satisfy the 14th Amendment. The statute which allows rail-roads in Louisiana to provide equal but separate accommodations for white and coloured races was sustained. This halting doctrine came to an acid test in the case of *Sweat* v. *Painter*[3] which turned down the separate treatment practice and held the negro student was entitled to his full constitutional rights of the same legal education without any racial segregation. It is appropriate to mention here that though the Constitution of Federal America came into being in 1787, it took so late as 1865 and 1868 to usher in the 13th and 14th Amendments so as to give equality of treatment to negroes. Much of this however, was only on paper and only in 1950 by judicial interpretation in *Sweat* v. *Painter*[3] has the negro got out of the ring of racial segregation. In India, gaining by the American experience Article 14 has vouchsafed to all resident in India the equal protection clause, while Article 17 abolishes 'untouchability' in all forms. But it is regrettable that while even conservative India is far ahead of other countries in the matter of treatment of aliens and prohibits segregation in any form, in any section of its nationals, it is a tragedy that South Africa, which is said to be advanced in western civilisation should resort to primitive doctrines of racial discrimination and segregation. Its Apartheid Policy is fast becoming the ground for probably another Global War. It is betimes that saner counsels do prevail in the African continent so as to re-establish the divine theory of oneness of humanity and universal brotherhood which is the pivot over which any civilized government can function.

Even early periods of American negro distress appear to pale before the cruelties effected on this new-fangled apartheid policy of Africa. Police-torture with a view to forcing out confessions particularly from negroes charged with breach of the law was a blot on American civilization. In *Chambers* v. *Florida*[4] such tortures were deprecated as tyrranical, unjust and illegal and against due process of law. The negroes were set at liberty and the convicting judgment of the Supreme Court of Florida was reversed. In *Brown* v. *Mississippi*[5], it was pithily stated:

"To permit human lives to be forfeited upon confessions thus obtained (by torture) would make the constitutional requirement of due process of law a meaningless symbol."

The trite saying that justice must not only be done but seem to be done according to form rests on this principle of 'Due Process of Law.' In *Turney* v. *Ohio*[6], Taft, C.J., observed that:

"Every procedure which would offer a possible temptation to the average man as a judge to forget the burden of proof required to convict the defendant or which might lead him not to hold the balance nice, clear and true between the state and the accused denies the latter 'Due Process of Law'."

Onus of Proof and Duty of Courts.

The onus of proof in cases where the equal protection clause is alleged to have been violated is upon the person who assails the law, *vide*, *Lindsey* v. *National Carbonic Acid Gas Co.*[7] The function of Courts in the sphere of constitutional interpretation is aptly brought out by Sutherland, J. in *Atkins* v. *Childrens Hospital*[8] when he stated:

"The duty of Courts to hold an enactment either void or *ultra vires* is one of great gravity and delicacy and this power of Courts is subject to the guiding principles of decision which ought never to be absent from judicial consciousness; one is that Courts are concerned only with the Legislature's power to enact statutes and not with their wiscom; the other is that while unconstitutional exercise of power by the executive and legislative branches of Government is subject to judicial restraint the only restraint upon the exercise of power by Courts is their own self-restraint."

1. 305 U.S. 337 (351).
2. (1896) 163 U.S. 537.
3. (1950) 339 U.S. 629.
4. (1940) 309 U.S. 227.
5. 297 U.S. 278.
6. (1927) 273 U.S. 510.
7. (1911) 220 U.S. 61.
8. 265 U.S. 535.

The presumption is generally in favour of the constitutionality of an Act. As laid down in *Ogden* v. *Saunder*[1],

"It is but a decent respect due to the wisdom, the integrity and patriotism of the legislative body by which any law is passed to presume in favour of its validity until its violation of the Constitution is proved beyond all reasonable doubt."

Cooley limited the legislative power in these words :

"Legislatures have their authority measured by the Constitution. They are chosen to do what it permits and nothing more."

In *State of Madras* v. *V. G. Row*[2], Patanjali Sastri as Chief Justice of the Supreme Court described the difficult role of courts of law on India, under Article 13, thus :

"What is sometimes overlooked is that our Constitution contains express provision for judicial review of legislation as to its conformity with the Constitution unlike in America where the Supreme Court has assumed extensive powers of reviewing legislative Acts under cover of the widely interpreted 'Due Process clause' in the 5th and 14th Amendments ; if then the Courts in this country face up to such important and none-too-easy task, it is not out of any desire to tilt at legislative authority in a crusader's spirit but in discharge of a duty plainly laid upon them by the Constitution. This is especially true as regards 'The Fundamental rights,' as to which this Court has been assigned the role of a sentinel on the '*quivive*.' While the Court naturally attaches great weight to legislative judgment it cannot desert its own duty to determine finally the constitutionality of an impugned statute. We have ventured on these obvious remarks because *it appears to have been suggested in some quarters* that the Courts in the new set-up are out to seek clashes with the legislatures in the country."

In *Sunil Kumar Bose and others* v. *The Chief Secretary of the Goverment of West Bengal*[3] while striking down as *ultra vires* the Constitution the Bengal Preventive Detention Order of 1950 (issued by the President of the Republic) on its application to Bengal Criminal Law Amendment Act of 1930 and West Bengal Security Ordinance, 1949, which later two Acts were void under Article 13 (1), their Lordships of the Calcutta High Court summed up in forcible language :

"The Parliament of India is not supreme in the sense in which the Parliament of England is Our Parliament is subject to the Constitution,"

and discussing that there can be no delegation of legislative power of the President to the Courts their Lordships added :

"The effect of the order of the President is that the judiciary is converted into a legislature with limited powers and the executive is converted into a judiciary whose decisions are final. . . . . We also (the Judges) swore to uphold the Constitution and the laws. In our opinion we would be false to our oath if we give effect to this Adaptation of Laws Order, 1950, even though this Order may have emanated from the President of the Indian Republic. It has always been the tradition of this Court to stand between the subject and any encroachment of his liberty by the executive or any of the authorities however high. Amidst the strident clamours of political strife and the tumult of the clash of conflicting classes, we must remain impartial. This Court is no respecter of persons and its endeavour must be to ensure that above this clamour and tumult the strong calm *voice of justice shall always be heard. Fiat justitia ruat coelum.*"

Gentlemen, these are golden words. That is our ideal, to speak out boldly, truly and justly. Politicians and men in power may be erratic in their views, expressions and decisions. But courts of justice are there to protect the citizen from all such eccentricities and illegalities. Men in power, therefore, naturally would aspire to whittle down powers of courts of law so that they may give vent to their autocratic trends. But we of the legal profession, as guardians of the public and the general mass of citizens, must be alert and fight against any such curtailment of the powers of courts of law.

Fundamentals of Equal Protection.

We may now examine some of the fundamentals of the Equal Protection Clause. Justice Field stated in what is called *The Slaughter house cases*[4]

"That only is a free Government in the American sense of the term, under which the inalienable right of every citizen to pursue his happiness is unrestrained, except by just, equal and impartial laws."

Mr. Justice Packham in *Lochner* v. *New York*[5] stated

"No state can deprive any person of life, liberty or property except by due process of law."

1. 12 Wheat. 213 at 270.
2. (1952) 2 M.L.J. 135 : 1952 S.C.R. 597 : (1952) S.C.J. 253 on appeal from (1951) 1 M. L.J. 628 (F.B.).
3. A.I.R. 1950 Cal. 274.
4. 16 Wat. 36.
5. 198 U.S. 45.

Thus monopoly in slaughter-house trade was struck down in the former case while in the latter the court struck down the statute limiting employment in bakeries to 60 hours per week and 10 hours per day as "meddlesome interferences with the rights of individuals to work as long and as hard as they liked." But in *Muller* v. *Oregeon*[1] the ten-hour day for women labour was sustained as a very reasonable restriction taking into consideration 'women's physical structure and the performance of maternal functions.' 'Due Process of Law' implies reasonableness of the measure and so the Minimum Wage Law was sustained as reasonable in *Settler* v. *O'Hara*[2]. In *Barbier* v. *Connolly*[3] the discretionary autocratic powers of the supervisor in the licensing rules was struck down as it was discovered there was horrid discrimination in that not one of the 200 chinese applicants was given the permit while the 320 laundries which were permitted had only wooden buildings contrary to rules and that only one of the white applicants was denied license. Justice Mathews forcibly put it:

"The very idea that one man may be compelled to hold his life or the means of living or any material right essential to the enjoyment of life at the mere will of another, seems intolerable in any country where freedom prevails."

Then follows this classic observation from his Lordship:

"Though the law itself be fair on its face and impartial in appearance, yet, if it is applied and administered by public authority *with an evil eye* and unequal hand, so as practically to make unjust and illegal discriminations between persons in similar circumstances, material to their rights, the denial of equal justice is still within the prohibition of the Constitution."

In *Yick Wo* v. *Hopkins*[4] the same view was expressed thus:

"A denial of equal protection may lurk in the practical administration of a statute even if not required by its words."

In other words, the procedure by which Government is administered must in every instance meet the laws standard of what is rational, legal, just and appropriate. Reasonable certainty is another requisite of due process. To victimise a person as belonging to an unlawful 'gang' when the word 'gang' is not properly defined, is repugnant to the due process clause as being vague, indefinite and uncertain. In the sterilization cases *Skinner* v. *Oklahama*[5], the statute which decreed that habitual criminals should be sterilized so that felony may be eradicated by preventing any offspring to the felons, was questioned as unconstitutional. Considering it curious that offences against prohibition laws, revenue laws, embezzlement or political offences were considered as not involving heritable moral turpitude as felony, their Lordships held

"the classification of habitual criminals as too loose for so serious a business. Those who stole were sterilized. Those who embezzled were untouched . . . . . The power to sterilize further led to devastating effects. In evil or reckless hands it can cause races or types which are inimical to the dominant group (in power) to wither and disappear. There is no redemption for the individual whom the law touches. . . . . This is in violation of the constitutional guarantee of just and equal laws. *The guarantee of equal protection of the laws is a pledge of the protection of equal laws*" vide, *Yick Wo* v. *Hopkins*[4].

But the State in its exercise of the police power can, however, curtail the rights of citizens in a limited sphere for purpose of the welfare of the commonweal in matters such as safety, morals, health, economic welfare and general prosperity of the community—vide *Mackay Jewellers* v. *Bowron*[6]. But this police power must be strictly limited to the actual requirements of an advancing complex society. All safeguards must be taken in this regard so as not to invade any fundamental right guaranteed to the citizen.

The State also can make *class legislation*, only it must be reasonable classification. In *Barbier* v. *Connolly*[3], their Lordships said:

"Special burdens are often necessary for special benefits such as for supplying water, preventing fires, lighting districts, cleansing streets, opening parks and many other objects. Regulations for the purpose may press with more or less weight upon one than upon another but they are designed not to impose unequal or unnecessary restrictions upon anyone but to promote with as little inconvenience as possible, the general good."

1. 208 U.S. 412.
2. 243 U-S. 629.
3. (1885) 113 U.S. 27.
4. 118 U.S. 356.
5. (1942) 316 U.S. 535.
6. 139 A.L.R. 1188.

Classification and statutes limiting the rights of a class for their own welfare is legal. In *Radice* v. *New York*[1], a statute was sustained which prohibited employment of women in restaurants after 10 P.M. Child labour can also be regulated. This is on the principle expounded by Frankfurter, J., in *Tigner* v. *Texas*[2] that

"The Constitution does not require things which are different in fact, or opinion, to be treated in law as though they were the same."

In the interests of public welfare, legislation may regulate certain interests such as women, infants, imbeciles, insurance companies, railways, banks, corporations, etc. But this demarcation of a class must be reasonable, not arbitrary or capricious and must be in the interests of general public welfare. Thus liquor which is injurious to health can be regulated by legislation, other drinks not injurious can be left alone. Night work may be prohibited in case of infants and women. Municipal sewage pumping and clearance may be prohibited from being in the heart of a residential locality as injurious to health. Further there can be no guarantee of same laws and same remedies to different areas of the State which may vary in its needs. Vide *Missouri* v. *Lewis*[3]. The problem of segregating residential houses in one place, model apartment houses in another, industries in the third, shops in the fourth, is a feature of modern town planning. Such 'zoning' cases cannot be questioned as discriminatory. In *Village of Euclid* v. *Ambler Realty Co.*[4], zoning was upheld on the ground that growing urban life must be regulated for which all private rights must be subordinated to public good. This exercise of police power of the State is specifically needed in the matter of urban areas though it may be out of place for village communities.

Equality in law implies equal protection in *taxing laws*. This does not imply that each must be taxed equally but only connotes that persons of the same class or category placed in similar circumstances should be taxed equally by one standard; vide *Magoun* v. *Illion's Bank*[5]. The scale of taxation for the learned professions, trades, income from agricultural property, cinema and theatrical performances, etc., is regulated with different standards appropriate to each. Charitable institutions, public libraries charity shows—these may be exempt from taxation. But if the administration of tax laws results in intentional and systematic discrimination, it will be offending the doctrine of equal protection—vide *Bohler* v. *Callaway*[6].

Equal protection which is available in the legislative field is open also in the field of *execution or administration of laws*. In *Yicko* v. *Hopkins*[7] Justice Mathews declared

"It seems intolerable that a man should hold any public right at the pleasure of another. The guarantee of equal protection of laws is a pledge of the protection of equal laws."

Equal protection includes *equal access* to courts—vide *Barbier* v. *Canolly*[8]. But it does not mean same laws, or same remedies in all courts but only equal laws for a set of persons similarly placed in Tribunals of one particular caregory. There may be special courts for particular emergencies but the procedure and form of trial shall be based on the principle of freedom, liberty, natural justice. In India the procedure must be one prescribed by law. Per Article 14 of the Constitution of India the protection is only against State action and not of private individuals. In the latter event the ordinary law of the country must be resorted to for redress only when there is an actionable wrong suffered or committed.

Delegated Legislation and Administrative Tribunals.

The complexity of modern life, social and economic problems have necessitated the administration of certain aspects of law to departments of law which have created Tribunals to decide administrative and quasi-judicial issues. Dicey's vision of the Rule of Law, the supremacy of parliamentary legislation and the majesty or law courts, must have had a rude shock at the growth of these delegated bodies.

1. 264 U.S. 292.
2. (1940) 310 U.S. 141.
3. (1879) 101 U.S. 22.
4. (1926) 272 U.S. 365.
5. (1898) 170 U.S. 283.
6. 267 U.S. 479.
7. (1886) 118 U.S. 356.
8. (1885) 113 U.S. 923.

Dicey knew only of the administrative bodies (separate courts) in France called Droit Administration which determined the position and liabilities of all officials of the State, the civil rights and liabilities as between citizen and State by a special procedure. Dicey never foresaw that Tribunals and delegated legislation will be the order of the day all over the modern world. There is, however, a danger inherent in this craze for tribunals if it is not properly regulated and manned. To remit the maintenance of constitutional right to the region of judicial discretion was felt as shifting the foundations of freedom from the rock to the sand—vide *Local Government Board* v. *Arlidge*[1]. When that is so, how much worse would it be when it is all relegated to the discretion of arbitrariness subject to no judicial appeal or review. This would tend to a denial of equal protection of laws. Lord Hewart's scathing and classical work on 'The New Despotism' throws a flood of criticism on delegated legislation and administrative Tribunals. I am in safe company when I venture to quote our distinguished president of this conference Sachivothama Doctor Sir C.P. Ramaswami Ayyar from his jubilee address delivered at the Madras Advocates Association on 16th April, 1949. He cited the Eastern Economist and said :

"Whereas in India of to-day, the Legislature is really dominated by a single party and where the press is not yet functioning fully as the fourth estate of the realm, the executive must be kept in bounds until the opposition grows by a conscience of its own . . . . . Authority has tended to give the executive a taste for Blanket powers which it is almost impossible to contest in a Court of law. The last of our defences, the judiciary is being rendered less effective by reason of the drafting of our laws and ordinances which makes it almost impossible for the actions of the executive to be questioned."

Sir Erskine May, author of the celebrated 'Parliamentary Practice', opined that

"as the national conception of Government has moved towards the regulation of the day-to-day affairs of the community, departmental legislation attracts fresh attention and members of parliament feel that the powers which they have delegated require organized scrutiny."

Democracy should ever have a vigilant and watchful eye on the abuses of such delegated authority and their devices of circumventing parliamentary and judicial correctives. In India after the new constitution the limits of delegated legislation has been clearly set out in *State* v. *Basdeo*[2], Desai, J., stated:

"When an authority makes rules in exercise of the powers conferred upon it by the Legislature, the Act is the real authority behind the rules and the Legislature retains control over the authority and the rules. So long as it retains control it cannot be said that it has delegated the power. The Constitution forbids delegation of legislative power. But it does not forbid delegation of rule-making which however must be subordinate to and within the ambit of the parent Act and such rule-making must only be intended to carry out and enforce the law enacted. If these principles are violated then section 13 of the Constitution renders all such laws void and *ultra vires*."

An administrative Tribunal is the judicial counterpart of the parliamentary rule-making powers delegated to subordinate bodies. To quote again Sir C.P. Ramaswami Ayyar's memorable and golden utterance:

"The wide range and variety of governments' penetration into daily life lead to such phenomena as are exemplified in the recent controversies regarding industrial Tribunals . . . . . such an approach makes for the growth of rule-making powers for the creation of new institutions not subject to jurisdiction of Courts . . . . . majority rule, unless the principle of '*Audi Alterum Partam* (Hear the other side) is not only remembered but implemented may become impatient of forms and ceremonies which may restrain or appear to delay its programme . . . . . leading to the error of what has been called 'Etatisme,' the vesting of absolute and unchecked powers in authorities not subject to scrutiny or cross-examination"

and unless checked and regulated with all safeguards there will be the danger of totalitarianism ushering in a bureaucracy which will not be tender towards law, lawyers or sombre courts of justice. Mr. Justice P. Govinda Menon in our last conference at Kozhikode echoed the same sentiment in his learned opening address and deprecated the burdening of judicial functions to an administrator or administrative Tribunal out of all proportion to public need and very often to the detriment of public and private justice, with not even the facility of a judicial review. His Lordship added :

1. (1915) A.C. 120. 2. A.I.R. 1951 All. 44.

"The only silver lining in the cloudy sky is that the High Courts and the Supreme Court are now vested with wide powers under Articles 32 and 226 of the Constitution to give such directions and pass such orders (in the matter of these Tribunals) by issue of writs such as *certiorari*, prohibition, *mandamus*, etc."

Our learned Chief Justice P. V. Rajamannar, visualizing all these difficulties enunciated the following six safeguards for the efective working of administrative Tribunals : *Vide* Article in The Golden Jubilee number of the *Indian Review*, 1950.

1. As far as possible an attempt should be made to insist on separation of judicial and administrative functions of all these specialised bodies. Members of these Tribunals who have to discharge judicial functions should be chosen by an independent commission independent of the party in power. The choice should include the Lawyer and the Judge elements.

2. The hearing before these Tribunals should be open to the public and unless inexpedient there should be a right of hearing if it is so desired by the party.

3. Tribunals should be required to give reasons for their decisions.

4. There should be provision for a right of appeal in important matters to a superior administrative Tribunal.

5. The decisions of these Tribunals should be open to review by a Court of law though on very limited grounds such as complete lack of jurisdiction, bias, pecuniary interest and failure to observe the fundamental canons of 'natural justice' which term though vague will certainly act as a good safety valve.

6. Lawyers should not be debarred from appearing before such Tribunals. These rules may include such sound basic principles as (1) No one to be a Judge of his own case; (2) no party should go unheard; (3) the decision should be in good faith.

I have dilated a little on these administrative Tribunals as they are tending to be the order of the day and unless checked with the above safeguards, they will soon become the instruments of oppression and arbitrariness leading to a denial of justice and equal protection of laws.

The March of the Doctrine of Equality before Law and Equal Protection in India after the Constitution.

The Indian judiciary always ranked very high in the matter of erudition, impartiality and justice. This was so, before and after the British period of suzerainty in India. On the wake of our freedom and on the establishment of the Supreme Court of India, the bulwark of justice has been trebly strengthened and from 26th January, 1950, when our Constitution came into full force, we find our Courts upholding the rights guaranteed in our Magna Carta and generally guiding society along the lines modelled out by the provisions relating to the directive principles in our Constitution. It was in *Keshava Madhava Menon* v. *State of Bombay*[1], the Supreme Court first deduced that (i) inconsistent laws get rendered void by virtue of Article 13 (1) only from the commencement of the Constitution, the past and pending transactions on the date of the commencement of the Constitution remaining unaffected; (ii) only the repugnant provisions are rendered void and not the whole impugned Act subject to the principles of the doctrine of severability. In *Amintalal* v. *Government of Mysore*[2], the impugned Act authorised the executive to forbid all persons residing in a particular area from partaking in the manufacture of beedies, the object being to prevent agricultural labour being diverted from the 'Grow More Food Campaign.' It was held that while the Act was invalid with reference to women, children, the weak and the infirm who could not be employed for agricultural labour, the language of the Act covered restrictions both within and without the limits of constitutionally permissible legislative action [*Vide* Article 19 (6)], the whole Act was void and it cannot be severed at all.

1. (1951) S.C.R. 228 : 1951 S.C.J. 182. 2. A.I.R. 1951 Mys. 26.

Whether singling out one company for special statutory control is discriminatory was discussed in the leading case under Article 14 in the judgment of the Supreme Court in *Charanjit lal Chowdhury* v. *The Union of India and others*[1], where the majority Bench, Kania, C.J., Mukherjee and Fazl Ali, JJ., enunciated the following principles:

(i) the presumption is always in favour of the constitutionality of an enactment since it must be assumed that the Legislature understands and correctly appreciates the needs of its own people, that its laws are directed to problems made manifest by experience and its discriminations are based on adequate grounds.

(ii) This presumption may be rebutted in certain cases by showing that on the face of the statute there is no classification at all and no difference peculiar to any individual or class and not applicable to any other individual class, and yet the law hits only a particular individual or class.

(iii) The principle of equality does not mean that every law must have universal application for all persons who are not by nature, attainment or circumstances in the same position and the varying needs of different classes of persons often requiring separate treatment.

(iv) The principle does not take away from the State the power of classifying persons for legitimate purposes.

(v) Every classification in some degree is likely to produce some inequality and mere production of inequality is not enough.

(6) If a law deals equally with members of a well-defined class, it is not obnoxious and it is not open to the charge of denial of equal protection on the ground that it has no application to other persons.

(7) While reasonable classification is permissible such classification must be based upon some real and substantial distinction bearing a reasonable and just relation to the object sought to be attained and the classification cannot be made arbitrarily and without any substantial basis.

The above has been summarised in a later case of the Supreme Court *State of Bombay* v. *Balsara*[2]. There is however one rational criticism that can be offered on one of the above propositions namely, that the selection of one particular individual or object is not necessarily bad ; unless such selection is not arbitrary, one can even agree with the dissenting Judges Das, J. and Patanjali Sastri, J., when they stated that other corporations were equally guilty of mismanagement like the Sholapur Company and yet the disabilities imposed by the impugned Act were not extended to such other companies. So the proposition of legislating for one individual as a particular class though logically unassailable, is very difficult in application as the chances of arbitrary selection are greater when only one particular individual or object is singled out. In *Gulf Railway Co.* v. *Ellis*[3], the principle is well laid that the selection is arbitrary if the Legislature visits a penalty upon the individual or corporation which is not imposed upon others guilty of a like delinquency.

The principle laid in *Yick Wo* v. *Hopkins*[4], that equal protection of laws extends also to *equal administration of laws*, came in for scrutiny in *Dhanraj Mills, Ltd.* v. *B. K. Kocher*[5]; where it was opined that in India such protection against executive arbitrariness does exist. But their Lordships felt that no capricious or even *mala fide* act or act in error by one official will make it actionable under Article 14 but that the discrimination alleged by executive action should be indicative of a State policy to discriminate under cover of administrative or executive power on the lines laid down in *Yick Wo* v. *Hopkins*[4].

In *Sheo Shankar* v. *State of M.P.*[6], it was enunciated that the term 'Equality before Law is a somewhat negative concept implying the absence of any special

1. (1951) S.C.J. 29 : (1950) S.C.R. 869.
2. (1951) S.C.J. 478 : (1951) 2 M.L.J. 141 : (1951) S.C.R. 682.
3. (1897) 163 U.S. 150.
4. 118 U.S. 356.
5. A.I.R. 1951 Bom. 132.
6. I.L.R. (1951)—Nag. 646 : A.I.R. 1951 Nag. 58 (F.B.).

privilege in favour of an individual while the term 'Equal Protection of Laws' is a more positive concept implying equality of treatment in equal circumstances. There is one dominant idea running through them, *i.e.*, Equal Justice.

There were *several prohibition cases* arising in the various High Courts of India where the Prohibition Act was attacked as offending various provisions of the Constitution. It was impugned as discriminating between country and foreign liquor in one case *Sheo Shankar* v. *State of M.P.*[1], where it was held that there could be no discrimination smelt out, as country liquor was more harmful and the classification was not improper. It was however held that giving preferential treatment under a rule to non-Asiatics does create an inequality attracting the application of Articles 13 and 14. But the unequal application of law by the Government under its rule-making powers being unconnected with the law itself does not render the law invalid ; only the administration of the law is invalid but not the law itself.

In *Fram Nusserwanji Balsara* v. *State of Bombay*[2], section 46 of the Bombay Prohibition Act which distinguished between Indian visitors to Bombay and foreign visitors was held to offend Article 14. But concessions to foreigners as a class under section 40 (1) (*c*) was found to be reasonable on the ground that the Legislature could not be expected to interest itself in enforcing standards of social reform which are peculiar to our country upon foreigners.

The Madras High Court held in *Krishnamurthy* v. *Venkateswaran*[3], that reasonable class legislation was *intra vires* and sustained, the Madras Agriculturists Relief Act (IV of 1938), as beneficial to all agriculturists.

In *V. G. Row* v. *State of Madras*[4], the Chief Justice Mr. P. V. Rajamannar felt the principle of equality before law was not violated by the existence of special laws providing for particular groups in the State ; but the learned Judge would concede that such a question may arise in the application or enforcement of the impugned Act.

In *Yusuf Abdul Aziz* v. *State*[5], an attempt was made to get an adjudication that section 497 of the Indian Penal Code was *ultra vires* as it discriminated and rendered only the offending man as guilty leaving the woman scot free. Their Lordships felt that the position of women in India was peculiar in that they were subject to certain hardships such as rival wives, customary and economic dependence on man and hence there was no discrimination merely on ground of sex if women as a class were exempt from the operation of section 497. In a changing society with full equality in status attained by women in the field of divorce, property and profession, this position may however change.

The position of aliens in India is far better than those in America and other countries. The privilege of Article 14 is open to citizens and resident aliens alike. In *M. B. Namazi* v. *Deputy Custodian of Evacuee Property, Madras and others*[6]. The Administration of Evacuee Property Ordinance, 1949, was called in question as discriminatory. This plea was negatived by the Court, as after all the provisions are intended to safeguard the rights and interests of the evacuee in cases where they had left India particularly abandoning their properties. In America where aliens are entitled to the protection of both the due process clause and the equality clause there is yet a discernable discrimination against aliens.

"An auctioneer's licence may be refused to an alien. He may be denied a licence to sell intoxicating liquors or to run a pool hall, or to operate motor buses" (*vide* Weavers' Constitutional Law, p. 404).

In *Terrance* v. *Thompson*[7], the Supreme Court of America held that each State had power to deny aliens, the right to own land within its borders especially if the alien had not declared his intention to become a citizen of America. One Court put it forcibly:

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1. I.L.R. (1951) Nag. 646: A.I.R. 1951 Nag. 58 (F.B.).
2. A.I.R. 1951 Bom. 210.
3. (1951) 2 M.L.J. 366.
4. (1951) 1 M.L.J. 628 : A.I.R. 1951 Mad. 147 (F.B.).
5. A.I.R. 1951 Bom. 470.
6. (1951)2 M.L.J. 1 : A.I.R. 1951 Mad. 930.
7. 263 U.S. 197.

"He owes no allegiance to our Flag or our Government. He may as far as we know be plotting our destruction. Why should we be presumed to give when we receive nothing."

In India under Article 31 no person shall be deprived of his property save by authority of law and the foreigner is not prohibited from owning property in India.

Protection in law should be equal to all and so in *Kameshwar Singh and others* v. *The State of Bihar and another*[1], the Bihar Land Reforms Act (XXX of 1950), was declared as *ultra vires* of Article 14 inasmuch as there was unequal protection to various kinds of landholders. It was held that compensation value if assessed at 20 times the net income in the case of the poor man and three times in the case of the rich landholder was certainly considered as an unreasonable classification denying equality in law.

Unequal access to Courts and arbitrary procedure adopted in the special Courts coupled with a *carte blanche* power to Government to forward any case in its discretion to these special Courts constituted under the West Bengal Special Courts Act (X of 1950) was determined to be a gross violation of the equal protection clause in *Anwar Ali* v. *State of West Bengal*[2]. The Act was *ultra vires* Article 14 read with Article 13. The majority Judges Fazl Ali, Mahajan, Mukherjea, Chandrasekhara Ayyar and Bose, JJ., in forcible language opined that

"to yield such an unregulated power to Government is so fatal in the interests of justice and the principles of 'equal protection' doctrine and 'due process of law'."

In an analogous case *Lachman Das Keival Ram* v. *State of Bombay*[3], the Bombay Public Security Measures Act (VI of 1947) was not sustained as it not only provided enhanced punishment and whipping but altogether eliminated the committal proceedings, allowed Government to arbitrarily choose the cases for trial under this Act, permitted the special Judge to record only a memorandum of the evidence and clothes him with new powers to refuse to summon defence witnesses and deprives the right of the accused for transfer of the case or for revision. The majority of the Supreme Court expressed that it was gross discrimination as between one tried under this Act and the one under the ordinary law and ordinary Courts and that Article 14 not only condemns discrimination in substantive law but also procedural law . . . . . To pass the test of reasonable classification in class legislations two conditions are to be observed:

(1) that the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others who are left out of the group ;

(2) that the differentia must have a rational relation to the object sought to be achieved by the Act,

Equality in law and equal protection in law was recognised in the matter of admission to Government educational institutions in *State of Madras* v. *Champakam Dorairajan*[4], where it was held that the communal G.O., which fixed the quota of each community for admission offended Article 29 (2) which guaranteed in such cases equal treatment regardless of religion, race, caste, language or any of them. In *Venkataramana* v. *State of Madras*[5], the Supreme Court again declared the communal G.O., of Madras in the matter of services as *ultra vires* of Article 16 (1) which guaranteed equality of opportunity, in the matter of public employment except to those who are classified by Government as 'Backward classes of citizens.'

Discrimination in taxation or municipal rental dues as between Government buildings and private building is also prohibited as unreasonable classification contravening Article 14, vide *Shyamal Mandal* v. *Municipal Board of Delhi*[6].

The West Bengal Social Disabilities Removal Act which enjoined that social services shall not be denied to any one of any caste was questioned in *Banamalai Das* v. *Pakhu Bhandari*[7], wherein a barber claimed his fundamental right to follow his

1. I.L.R. 30 Pat. 454 : A.I.R. 1951 Pat. 91.
2. A.I.R. 1952 Cal. 150.
3. (1952) S.C.R. 110 : (1952) S.C.J. 339.
4. (1951) 1 M.L.J. 621 : (1951) S.C.J. 313 (S.C.).
5. (1951) S.C.J. 318: (1951) 1 M.L.J. 625.
6. A.I.R. 1951 Assam 126.
7. A.I.R. 1951 Cal. 167.

calling without restriction per Article 19 (*g*) and that he should not be compelled to shave a cobler, against custom. Their Lordships held that there was no violation of the law and that the cobler should be given such a social service without unequal treatment and the words 'interest of the general public' in Article 19 would obviate any doubt even if the restriction is irksome to the barber.

Separate classification as Banks and corporations comes under the "reasonable" category and so there can be special and appropriate privileges over individuals, vide *Sikharchand* v. *Bank of Baghelkhand*[1], and *Badri Batan Lal Rawat* v. *Vindhya Pradesh Government and another*[2]. There will also be no discrimination while redressing special problems by reasonable classification such as landlord and tenant, creditor and debtor, agriculturists and non-agriculturists, vide *Krishnamurthy* v. *Venkateswaran*[3].

Equality in law and equal protection comes under the broad head of right to equality covered by Articles 14 to 18. The second head of Fundamental rights are the rights to freedom (Articles 19 to 22). Thirdly, rights against exploitation (Articles 23 to 24); fourthly, rights to freedom of religion (Articles 25 to 28); fifthly, cultural and educational rights (Articles 29 to 30); sixthly, right to property (Article 31).

Under the first head we have studied Article 14. Article 15 removes all disabilities in respect of access to any public place on account of race, religion, caste, etc. Article 16 guarantees equal eligibility for any office or employment under the State. Article 17 forbids untouchability in any form, while Article 18 forbids conferment of titles. It must be understood that any law which discriminates between man and man in *respect of any of the rights scheduled in Article 14 to Article 31 offends against the doctrine of equality in law and equal protection of laws.*

Among the rights to freedom, freedom of speech, expression and assembly (without arms), of association, movement, of residing and settling in any part of the country, of acquiring and holding property, of practising any profession, occupation, trade, etc., are all vouchsafed by Article 19. Articles 20 to 22 guarantee personal liberty. The Supreme Court in *Rashid Ahmed* v. *The Municipal Board, Kairana*[4], with Union of India and State of Uttar Pradesh as intervenors upheld the right of a vegetable seller to vend his trade, as the action of the Board in granting a monopoly to another citizen to carry on wholesale business in vegetables deprives the petitioner in plying his trade as the Board had put it out of its power to grant any licence to him. The restriction on the dealer was most unreasonable and contrary to the provision in Articles 19 (*b*) and 19 (1) (*g*). In *Muhammad Yasin* v. *The Town Areas Committee, Jalahabad*[5], the Supreme Court held that the Town Area Committee were not vested with powers by the V.P. Municipal Act to frame bye-laws to impose a fee otherwise than for the use or occupation of any property and so the bye-law which imposed a fee irrespective of any use or occupation was declared as most unreasonable and so could not be termed as a valid law within the meaning of Article 19 (*b*) read with Article 19 (1) (*g*). Such illegal imposition was held as an illegal restraint infringing the wholesale right of the wholesale dealer to carry on his occupation, trade or business guaranteed under Article 19 (*g*).

Right to property are specially guaranteed by Article 31 by which there shall be no compulsory acquisition of property or any deprivation of property except by authority of law and just compensation. All these constitutional rights (Articles 14 to 31) can be asserted by constitutional remedies open to the citizen under Article 32. These rights are made available not only under the Union Government but also the State Governments and local authorities by virtue of the provision in Article 12.

Conclusion.

Of all the articles the importance of Article 13 can only be visualised by the effective shield it affords the citizen when faced with unreasonable and illegal

1. A.I.R. 1951 V. P. 11.
2. A.I.R. 1952 V.P. 18.
3. (1951) 2 M.L.J. 366: I.L.R. (1952) Mad. 604.
4. (1950) S.C.J. 324 (S.C.).
5. (1952) S.C.J. 162 : 1952 S.C.R. 572 (S.C.).

restraint on his freedom exercised by those in authority. In *Jestingbhai Ishwarlal* v. *Emperor*[1], the Chief Justice Chagla opined :

" There is no limit placed upon the power of the Court to consider the nature of these restrictions. It being the duty of the Court to safeguard fundamental right, the greater is the obligation upon the Court to scrutinise the restrictions by the Legislature as carefully as possible."

As laid in *Middleton* v. *Texaspower and L., Coy.*[2], of course :

" It must be presumed that a Legislature understands and correctly appreciates the needs of its own people, that its laws are directed to problems made manifest by experience and that its discrimination are based upon adequate grounds."

Again the Legislature

" is free to recognise degrees of harm and it may confine its restrictions to those cases where the need is deemed to be the clearest." Vide *Radice* v. *New York.*[3]

In *State of West Bengal* v. *Anwar*[4], the following further principles were formulated that unless a just cause for the discrimination is put forth in the law itself the statute has to be declared unconstitutional. Again the test for determining whether equal protection has been denied is objective and not subjective. Intention of the Legislature is really irrelevant. The law would be unconstitutional if discrimination is the necessary consequence of the Act, whatever may be the intention of the Legislature. Further if uncontrolled or unguided power is conferred without any reasonable and proper standards or limits being laid down in the enactment, the statute itself may be challenged and not merely the particular administrative act. Equal protection may be denied not only by legislation but also by administration of a law. The guarantee of equal protection applies against substantive as well as procedural law.

Gentlemen, I have dilated enough on the broad principles of equality before the law and equal protection of laws. Suffice it for me that I have placed my thoughts before you to ponder over what is good in it and to pardon me for the rest. I am ever so thankful to all my learned brothers of the profession and elders assembled here to have given me such a patient hearing. Please allow me to close my thesis with these words. The measure of our service to our motherland rests on the amount of public good we do in producing a sense of legalism and federalism among the ignorant multitudes of Bharat by making them feel the richness of their heritage. Our Constitution with its *magna carta* of rights and duties is the monument showing the progress of our race in securing to our citizens the blessings of civilization under the reign of just and equal laws. Our citizens must as individuals realise that these priceless gifts of the fundamental right to life, liberty and pursuit of happiness in a welfare State are secured to them. But they must also realize that our Republic is a Government of laws and not of a jumble of men. To the extent we uphold our laws, and revere our law Courts, our precious gift of freedom can be retained by us till eternity. The strident voice of humanity is now waiting for the lead of India in the emancipation of mankind and for peace on earth. It behoves us as true sons of India to be full citizens of India by growing to the fullest in our constitutional and moral stature. We shall truly strive to reach perfection in our standards of life, and promote human happiness with law and justice as our twin guiding and unfailing stars. *Jai Hind.*

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1. A.I.R. 1950 Bom. 363 (F.B.)
2. 209 U. S. 152.
3. 264 U.S. 294.
4. (1952) S.C.R. 284 : (1952) S.C.J. 55.