

INTERNATIONAL JOURNAL OF LEGAL SCIENCE AND INNOVATION

[ISSN 2581-9453]

Volume 3 | Issue 3

2020

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Equality and Rule of Law in United States and United Kingdom

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ABSTRACT

Law is the one through which a country is governed. It provides a framework for implementation. Rule of law and Equality states that everyone should be treated equally in terms of law and principles of natural justice should be followed. This paper pertains how equality and rule of law were formed and are being implemented in United States and United Kingdom. Is equality and rule of law well implemented in a written Constitution or an unwritten constitution? The present paper deals with what is law, meaning of Equality and Rule of law, Equality and Rule of Law in United States, Equality and Rule of law in United Kingdom.

The rule of law should be respected so that the basic structure of our democracy is maintained and further strengthened

-Lal Bahadur Shastri

I. WHAT IS LAW?

One of the most difficult question is the above given, as it is difficult to make a definite and convincing reply. Reply varies according to different persons philosophers, doctors, lawyers and judges as per their own perceptions. Law must respond and be responsive to the felt and desirable compulsions of circumstances that would be equitable, fair and just and unless contrary in the Statute Court that must take cognizance of the fact and act accordingly². Various jurists from time to time have stated definitions of law like Austin states Law is a command issued from political superior to inferior and it also can be stated from a maxim “ubi societas ibi lex” i.e., Wherever there is society there is law. In a layman language we can say that “Law is a rule or order that is advisable or obligatory to observe”

II. EQUALITY

It is one of the ideals of a free democratic society. Equality is providing equal opportunity to

¹ Author is a LLM student at Jamia Millia Islamia, India.

² Pomal Kunji Govindji v Vrajalal Karasandas Purohit (1989) 1 SCC 458.479

individuals to make the most of the life and their talent valuable. One of the terms of equality is elimination of discrimination among the society. Providing same status, opportunities, responsibilities, rights for every person be it in a group, individual or society. Equality is one of the rights which is to be ensured by the government towards their citizens as well as to be provided to the non-citizens. Equality in one of the basic terms can be termed as *the fact of being equal in rights, status, advantages etc.*³ Every person on the planet is not born equal with physical as well as mental abilities. Everyone has their different capabilities and abilities, so in terms of equality the state has to provide equal opportunities to each one present. There are different types of equality which are to be ascertained by the Government: -

- *Natural Equality*

It states that all humans should be treated equally as every person has different physical, mental capabilities and psychological traits.

- *Social Equality*

Providing equal opportunities and rights to all classes in a society without discrimination.

- *Civil Equality*

Equality of rights and freedoms to all people and groups.

- *Political Equality*

Ensuring equal opportunities for individuals with uniform qualifications in the political process.

- *Economic Equality*

It represents equal and fair opportunities for work and earning for a livelihood. Equal distribution of wealth and resources available in a society.

- *Legal Equality*

The right to sue and to be sued in the Court of Law.

What is Equality in terms of law and various provisions in different Constitutions?

Equality is one of the most basic features of a Constitution of a country. It is one of the basic pillars of democracy. According to Jennings, 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 be sued, to prosecute and to be prosecuted for the same kind of

³ Definition of *equality* noun from the Oxford Advanced American Dictionary
https://www.oxfordlearnersdictionaries.com/definition/american_english/equality

action should be same for all citizens of full age understanding without distinction of race, religion. Wealth, social status or political influence.⁴ Different countries in their law have enumerated equality in different forms with a basic meaning to it. Some of them are as follows: -

India

Article 14 of The Constitution of India provides that state shall not deny equality before the law (absence of any special privilege in favor of any individual) or the equal protection of the laws (equal treatments in similar circumstances) within the territory of India. The concept of equality followed in The Constitution of India is egalitarian form of equality which is a concept in which state should take affirmative action in favor of disadvantaged section. One of the points to be noted is aim of both 'Equality before law' and 'Equal protection of the laws' is equal justice.⁵ The concept of 'Equality before law' is of British origin and the concept of 'Equal protection of Laws' has its credit from the American Constitution

United States

The concept of equality and liberty emerged in the United states during the wartime and were provided to the people by way of Section 1 of Fourteenth Amendment to the Constitution of America.

No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

The Section helps the United States Citizens to the extent that the states without due process of law deprive any person of life, liberty or property and also forbids the States that it shall not abridge the privileges and immunities of the citizens of United States. Equal Protection Clause is crucial in United States as its acts like a protection to the civil rights and promotes equal application of law.

United Kingdom

Human Rights have been conferred to people of United Kingdom from the development of Magna Carta in 1215. Equality in today's modern era in this country as a right is guaranteed under the Equality Act 2010 which protects people from discrimination on age, disability, gender reassignment, marriage or civil partnership, pregnancy and maternity, race,

⁴ Jennings, Law of the Constitution, 3rd Edition, P.4

⁵ Rameshwar Prasad v State of Bihar 1980 AIR 104

religion/belief, sex and sexual orientation.⁶

Japan

Japanese Constitution envisages the Right to Equality under Article 14. It states: -

All of the people are equal under the law and there shall be no discrimination in political, economic and social relations because of race, creed, sex, social status or family origin.

Peers and peerage shall not be recognized.

No privilege shall accompany any award of honor, decoration or any distinction, nor shall any such award be valid beyond the lifetime of the individual who now holds or hereafter may receive.

The above section states that all people are equal and there would be no discrimination on basis of political, economic and social relations. It also states that hereditary titles would not be allowed to continue to the next generation and is valid only to the person during his/her lifetime. The Japanese Constitution also does not allow privilege received under the award or honor to continue beyond the lifetime of that person who so has received it.

The right of equality should be given to each person born on this planet earth without discrimination and exceptions. If these discriminatory practices persist around the world, it is not for lack of legal rules in a society but for lack of implementation of these rules in the everyday life of our societies. Domestic judges, prosecutors and lawyers have a professional duty to turn existing domestic legal provisions on right to equality to truly effective legal concepts and if it is done consistently there would be genuine possibility of slowly turning the world into a friendlier place for all.

III. RULE OF LAW

The Concept of Rule of Law was propounded by Dicey in his writings in 1885 relating to the British Constitution. As asserted by Dicey these are the following undermentioned features existed in the British Constitution: -

Absence of Arbitrary Powers

No man is above law. No man is punishable except for a distinct breach of laws established in an ordinary legal manner before ordinary courts.

Equality before Law

Every man, whatever his rank or condition, is subject to ordinary law and jurisdiction of

⁶ Equality Act, 2010; <https://www.legislation.gov.uk/ukpga/2010/15/contents>

ordinary. No man is above law.

Individual Liberties

The general principle of the British Constitution and especially the liberties of the individual, are judge-made i.e. These are the result of judicial decisions determining the rights of private persons in particular cases brought before the courts from time to time.

These basic tenets expressed by Dicey remain relevant and significant in every democratic society. It is time that dictated by needs of practical government, a number of exceptions have been engrafted to these tenets, nevertheless the basic ideas are preserving and promoting. The concept of Rule of Law, as discussed in several international forums is given a socio-legal-economics content and a supernational complexion.⁷ The rule of law has no fixed or articulate connotation though the Indian Courts refer to this phrase time and again. If one looks into the salient features of the Constitution of India, one finds all the above tenets incorporated in that so that the Rule of Law may prevail.

IV. EQUALITY AND RULE OF LAW IN UNITED STATES

More than 200 years ago, federalist papers were published through a series of essays for promoting the ratification of the United States Constitution in a need for an independent judiciary. The Federal Courts were designed in such a way to ensure that the people's representatives acted only in authority given to them under the Constitution. Rule of Law is a principle under which all persons, institutions, and entities are accountable to laws. The concept of Rule of Law is safeguarded by the Courts which play an integral role to maintain the rule of law by hearing grievances voiced by minority groups or by people who hold minority opinions. In the American system of Government, Equality before law is an essential part which states when any right of a minority is infringed by majority whether intentionally or unintentionally the controversy of both the sides would be fit to be heard in Court⁸. United States Courts from time to time have taken regard of the Equal Protection Clause as stated in the Fourteenth Amendment to protect their citizens.

In the year 1905, Supreme Court struck down the New York Bakeshop Act which prohibited bakers for working more than 10 hours a week. The Court extracted that this move exceeded judicial authority and infringed on Lochner's "right to contract".⁹

Before 1962, American were not guaranteed access to legal counsels even after the Sixth

⁷ International Commission of Jurists, Delhi Declaration, 1959

⁸ Overview Rule of Law; <https://www.uscourts.gov/educational-resources/educational-activities/overview-rule-law>

⁹ Lochner v. New York, 198 U.S (1905)

Amendment, the Supreme Court after the Fourteenth Amendment said the state courts to provide counsel in criminal cases to represent defendants who are unable to pay their attorneys¹⁰.

Justice Lewis F. Powell said when a Medical student was being denied on account of its race, that rigid use of racial quotas violated the Equal Protection Clause of the Fourteenth Amendment.¹¹

By 1967, 16 states had still not repealed their anti-miscegenation laws that forbid interracial marriages. The United States Supreme Court in a unanimous decision concluded that Equal Protection Clause required strict scrutiny to apply to all race-based classifications.¹²

“Due Process” as a concept in the American Constitution has embodied its practical meaning through countless decisions of federal and state courts. In United States, the Constitution drafted by a special convention in 1787 is the most visible bulwark of Rule of Law. The history has shown us that the American effort to make the good promise of Rule of Law has been quite difficult as because of the capital and labor conflicts in the Nineteenth and Twentieth century as well as due to the Civil Rights Movement in 1960s. When the Constitution of United States was written and adopted slavery, Rights of Woman, Rights of Contract were subject to cruel lawful oppression. Most of this law was changed by the decisions of the Supreme Court as it took into account new learning and new conditions. A movement from formal to substantive justice took place. The change broadened the meaning of legal equality i.e., what it means to be equal in law. The Court decided that “separate but equal” facilities, including public transportation and other facilities met the standard of equal protection.¹³

The Constitution is only binding on those who are entrusted with power and applies to all officials including elected representatives of the people. In a constitutional system democracy is limited and is checked by the Constitution. We honor the will of people but we also ask: How is the will of people governed? The answer to this question was once called “the chain of Constitution”.¹⁴ Constitution is a framework by which self-government may go forward, each generation could decide for itself that what policies they should pursue so that they do not violate the constitutional rules and principles. Constitution is a “living” or “evolving” institution; we cannot at all know what a government is capable of doing through the due

¹⁰ Gideon v. Wainwright 372 U.S. 335(1963)

¹¹ Regents of California University v Bakke 438 U.S. 265 (1978)

¹² Loving v. Virginia 388 U.S. 1 (1967)

¹³ Plessy v Ferguson 163 U.S. 537.552(1896) (Harlan J. dissenting)

¹⁴ Thomas Jefferson, Draft Kentucky Resolutions para. 8(1798)

process, for example there can be no interpretation of meaning of commerce without taking into account the judicial notice of how a modern economy is organized. So, Rule of Law is an essential which have to be taken into consideration from time to time, with needs of present generation as the Supreme Court of United States decisions on racial segregation was a reflection of the modern scientific knowledge of the race differences in a relation to the modern generation.¹⁵

Finally, the importance of Rule of Law can be ascertained by a recent opinion by the Supreme Court of United States where it stated that it may be problematic to seek Rule of Law in every instance but there are some places where it is appropriate to do so. It can be said that the influence of the Rule of Law on the court could be seen as giving a direction to future conceptual debates.¹⁶

V. EQUALITY AND RULE OF LAW IN UNITED KINGDOM

Equality in the United Kingdom is now ascertained by the new Equality Act,2010, it brings together 116 separate pieces of legislation into one Single Act. The said legislation provides a framework to protect rights of individuals and equality of opportunity for all. The nine main pieces of legislation that have been merged into this Act are: -

Equal Pay Act,1970: - This Act prohibited any less favorable treatment between men and women in terms of pay and conditions of employment.

The Sex Discrimination Act,1975: - Protection of men and women from discrimination on the ground of sex or marital status.

The Race Relations Act,1976: - Prevention of discrimination on the grounds of race.

The Disability Discrimination Act, 1995: - Prevention of discrimination against disabled people.

Employment Equality (Religion or Belief) Regulations, 2003: - This Act was designed to combat discrimination in relation to people's religion or belief, or absence of religion or belief.

The Employment Equality (Sexual Orientation) Regulations, 2003: - Prohibits employers unreasonably discriminating employees on grounds of sexual orientation, perceived sexual orientation, religion or belief and age.

The Employment Equality (Age) Regulations 2006: - Prohibits discrimination on grounds of

¹⁵ Selznick, Philip (2005) "American Society and The Rule of Law

¹⁶ Bank Markazi v Peterson 136 S.1310 2016

age.

The Equality Act 2006: - Establishment of Commission for equality and Human Rights.

The Equality Act (Sexual Orientation) Regulations 2007: - Unlawful discrimination on grounds of sexual orientation in the provision of goods, facilities and services, education, disposal and management of premises and exercise of public functions.

The above-mentioned provisions of these different Acts have been incorporated in the new legislation in form of four types of discrimination as follows: -

Direct Discrimination

Treatment of a person worse than another person because of a protected characteristic (gender, race or sex).

Indirect Discrimination

It can be an unintentional discrimination, it occurs when an organization has a policy, requirement or practice that appears to apply to all but causes disadvantage to a particular group of people with protected characteristic.

Harassment

The character or behavior of a person is unwanted and relates to one or more of his protected characteristics.

Victimization

It occurs when a person is being treated differently as he/she made an allegation of or supported of a complaint or discrimination.¹⁷

In most of these cases the employer would be held liable if no steps were taken by him/her or the act which occurred was not within his knowledge. If the employer can successfully defend a claim if it can justify the treatment as a proportionate means of achieving a legitimate aim¹⁸ he would safeguard himself. The courts in the United Kingdom have justified the act and interpreted the said act in case of some conflicts by giving these relevant decisions: -

The Court of Appeal ruled once and for all that the Equality Act 2010 does protect individuals against victimization after their employment has ended.¹⁹

Employers can be liable under the Equality Act, 2010 for “associative discrimination”

¹⁷ The Equality Act – A Brief Summary, <https://www.moorepay.co.uk/blog/the-equality-act-a-brief-summary/>

¹⁸ Pnaiser v NHS England and another UKEAT/0137/15/LA

¹⁹ Rowstock Ltd and another v Jessemey (2014) 1 WLR 3615

(Discrimination against an individual because of his association with a person of protected characteristic.

The Employment Tribunal Fees implied by the government was held to be discriminatory under the Equality Act, 2010 and was invoked.²⁰

Employers can defeat a claim if they show the policy or role is justified, and that is a proportionate means for achieving a legitimate aim.²¹

Right to Equality is a basic right which should be provided to every individual, United Kingdom ratified the European Convention of Human Rights to secure rights both for their own citizens and other nationalities within their borders. These rights are relied by the court of law which can be seen through the above judgments. Now moving towards the rule of law in United Kingdom, Sir Edward Coke is said to be the originator of this concept and later Prof. Dicey developed this concept. The Rule of Law in United Kingdom has been developed over the centuries as brake on arbitrary power. First time the king was denied unfettered powers by the First Representative Parliament of England, the key clause that stated a form of Rule of Law or divesting the power of absolute monarchs was: -

*To no one will we sell, to no one we deny or delay right or justice.*²²

After this as various legislations and Bills were laid highest courts laid down the jurisprudence entrenching the doctrines related to Rule of Law. Lord Bingham argued that all persons and authorities within the state, whether public or private should be bound by the laws publicly and prospectively should be promulgated and publicly administered in the courts. Lord Bingham laid down 8 sub rules: -

- The Question regarding legal right and liability should be upheld by the courts.
- The Supreme Law of Land should be equally applicable to all
- Public Officials should exercise their duty in good faith
- Fundamental Rights should be protected by law.
- At reasonable cost method should be provided by statute to resolve civil disputes.
- Adjudicative procedures stated should be fair.
- Rule of Law states that the State should comply with its obligation to International Law.²³

²⁰ WR (on the application of Unison) v Lord Chancellor (2017) UKSC 51

²¹ Essop and others v Home Office (UK Border Agency) (2017) UKSC 27

²² Wade, Sir William (1996). "Sovereignty - Evolution or Revolution?". *Law Quarterly Review*. 112: 574

As of the 8 sub rules laid by Lord Bingham are still prevailing but in addition Constitutional Lawyers in the United Kingdom have extolled the role of judiciary to apply the common law to protect Rule of law. The main principles with judicial interpretation are mentioned herewith:

No one must be punished except for a breach of Law

The appellants were detained without trial as they were suspects for involvement in Terrorist Activity. The House of Lords held that indefinite detention without trial was illegal and justification laid should be exceptional.²⁴

Government under Law as to the principle of Equality Before Law

An appellant had been unlawfully deported to the United Kingdom, the Court of Appeal rendered that the conviction of appellant under Rule of Law and Administration of Justice was unlawful as it did not justify the state to act outside the law.²⁵

Individual rights are protected under rule of law through Judicial Review and Fair hearing by an independent judiciary

Lord Steyn held that the power of the Home Secretary to decide on tariff to be served by mandatory life sentence prisoners is striking anomaly in legal system. It should be tried and convicted only by the Courts.²⁶

Equality and Rule of Law in the United Kingdom also provides certain Exceptions as privileges, immunities and special powers from Ordinary Law as

- Member of Parliaments are immune from actions in torts of defamation. (Article 9 of the Bill of Rights)
- International Organizations and bodies are provided immunity and certain privileges from the state. (International Organizations Act 2005).
- Trade Unions are conferred immunities by state (Trade Union and Labour Relations (Consolidation) Act 1992).
- Immunity upon diplomatic staff and immunity from prosecution to Diplomats. (Diplomats Privileges Act 1964).

The concept of Equality and Rule of Law needs change as per the modern Era as the maxim

²³ Lord Bingham 'Rule of Law' 2007

²⁴ A and others v Secretary of State for the Home Department (2004) UKHL 56

²⁵ R v Mullen (2000) QB 520

²⁶ R (on the application of Anderson) v Secretary of the Home Department (2002) 4 ALL ER 1089

that 'King can do no wrong' is invalid in present circumstances. As we all know that United Kingdom is one the countries from where development of Rule of Law and Equality took place through various legislations and decisions. The power of judicial precedents is a unique feature of United Kingdom which still upholds the Rule of Law by taking effective steps as we can see. With the development of technology Rule of Law has changed its roots but the basic principles remain the state which is to uphold the integrity of the nation and liberty of individual.

VI. CONCLUSION

The above discussion about the Equality and Rule of Law tells us that both the country work towards protection of rights of individuals be it by making a legislation or by way of judicial precedents. United States has envisaged Equality in its Constitution through Fourteenth amendment whereas United Kingdom has stated this through an enactment known as Equality Act,2010. The Act has a convenience for a national of United Kingdom as it punishes for discrimination on different grounds through a single legislation where in United States it has been developed through judicial precedents and various other legislations are enacted for the same. But we have to think that be it two great countries, still the problem of Inequality persists among the individuals. The courts have played a wide role but still there should be some legislation where the grounds for equality are set out and implemented all over the world, as we all know we are same human beings just belonging to different states. Rule of Law has developed in both the countries through judicial precedents, but as we can see in United States due process of law is regarded the main principle which is based upon the principles of Rule of Law.

Both the courts of the countries are playing a vital role for implanting Rule of Law, we can say that the concept of Rule of Law has the same basic roots as were years ago that are Equality, procedure established by law and Individual liberties which we can also see in the country's Constitution.

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