

Importance of Doctrine of Reasonable Classification for Assuring Equality to All: A Critical Analysis in Light of the Legal Provisions and Relevant Judicial Decisions

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Abstract:

Equity delights in equality. It means that as per as possible equity would put the persons on an equal level so far as their rights and responsibilities are concerned. Equity acts in a such way that no person gets an undue advantage over the other or is put to unjustified loss. This article mainly focuses on the fact that all persons are not equal in their ability, skill, efficiency, proficiency and expertness etc. Reasonable classifications among the persons may be done according to their working capacity as well as working fields. In this paper efforts have been made to examine the factors or causes, based on which reasonable classification may be made. It has also been tried to develop a comprehensive idea for understanding the fact that classification shall be rational, reasonable or in accordance with the provisions of law of the country but shall not be arbitrary and discriminatory. This research is conducted on the basis of secondary data and are collected from various Court decisions i.e., cases, journals, books, reports etc.

Keywords: Reasonable classification, right to equality, discrimination, arbitrary, violation of rights.

1. Introduction

'*Acquitas est quasi aequalitas*' is a Latin maxim which means 'equality is equity.' The maxim expresses the objects of both law and equity in order to effectuate the conferment of privileges or imposition of liabilities. It denotes that when there are no reasons for any other basis of division of property, those entitled to it shall share it equally. But if there are reasons on any legal basis, in that case persons can be treated differently. Equality therefore means proportionate equality, that means benefits and burdens of common interests and obligations cannot be imposed upon an individual but should be spread equally over all, according to their contributions. Art.27 of the Bangladesh Constitution² provides that "all citizens are equal before law and are entitled to equal protection of law." It guarantees the people of the republic to be treated and protected them equally by law. 'Equality before law' means that among equals law shall be equal and shall be equally administered. There shall not be special privilege by reason of place of birth, gender, creed etc. 'Equal protection of law' means that all persons in like circumstances shall be treated alike and no discrimination shall be made. Art.27 does not guarantee absolute equality requiring the law to treat all persons alike (*S.A Sabur v. Returning Officer*).³ All persons are not

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same in position and nothing can be a greater inequality to treat unequal as equal (*Dennis v. U.S.*).⁴ The principle of equality does not require universal application of laws for all persons. In the case of *Farida Akhtar v. Bangladesh*,⁵ it was held that “by nature, attainment or circumstances all persons are not in the same position and the varying needs of different classes of persons often require different treatment.” The very object of the legislation is to draw the line in such a way that different people are treated differently. The court said that in the case of *Rajkumar Behani v. Bangladesh*,⁶ “the principle requires that no person or class of persons shall be denied the same protection of laws which is enjoyed by other persons or other class of persons in like circumstances in their lives, liberty and property and pursuit of happiness.”

2. Reasonable Classification:

A classification will be reasonable if it is based upon material and substantial difference having a reasonable relation between the objects or persons dealt with and the governmental objective sought to be achieved by the legislation in question (*Trimble v. Gordon*).⁷ In other words, the classification, to be valid, must rationally fulfill the purposes for which the law is enacted. In the case of *Retd. Govt. Employees Assn. v. Bangladesh*,⁸ it was held that, “to pass the test of constitutionality, the classification made in the legislation must fulfill two conditions- (i) the classification must be logically correct; i.e., must be founded upon some intelligible differentia which

distinguish the persons or things grouped together from others left out of the group, and (ii) the *differentia* must have a rational relation or nexus to the object sought to be achieved by the statute in question.” It must then be seen whether the *differentia* by which the classification has been made have any reasonable relationship with the object for which the law is made, or in other words, it has to be seen if the classification serves the purpose of the legislation. In order to determine reasonableness of a classification it is essential to discern the purpose of the impugned enactment. The validity of a classification depends on the existence of a rational nexus of the *differentia* of classification with the purpose that sought to be achieved by the enactment (*Shashikant v. India*).⁹ Here the difference between the *differentia* and the object of the legislation must be kept in view and the object of the legislation cannot by itself be the basis of the classification (*W.B. v. Anwar Ali Sarker*).¹⁰ Parliament passes a law to attain certain objectives and makes a selection of persons or things to whom or which to apply the law. The yardsticks used for the selection are the differentia which separate persons or things included within the purview of the law from the persons or things excluded from the operation of the law. Where a law made provisions for dissolution of several companies owning printing establishments and taking over their assets and undertakings leaving other similar printing establishments untouched and the classification was not shown to sub serve any legitimate governmental objective, the classification was unreasonable and the law was held discriminatory (*Hamidul Huq Chowdhury v. Bangladesh*).¹¹

Thus, a statute prohibiting diabetics from acting as trade union officials will be a law based on arbitrary classification. Here the disease is the *differentia* on the basis of which persons are classified as diabetic and non diabetic. Even though classification of diabetics is perfectly logical in the abstract and may be valid in health related legislation, the *differentia* has no rational connection with the purpose of any trade union related law can be expected to serve (*Air-way Electric Appliance Corp v. Day*).¹² Similarly, when of the two similarly situated surplus government servants, one is differently treated from the other in the matter of counting past services for fixation of seniority after absorption on the basis of a fortuitous fact that one got the nomination for absorption

2 The Constitution of the People's Republic of Bangladesh.

3 (1989) 41 DLR(AD) 30.

4 (1951) 339 US 162

5 (2008) 16 BLT (AD) 206

6 (1994) 2 BLT 169

7 (1977) 430 US 762.

8 (1994) 46 DLR 426.

9 (1990) 4 SCC 566

10 AIR 1952 SC 75

11 (1982) 34 DLR 190

while in service and the other got it after the post was abolished, the equality clause is violated (Director General, NSI v. Sultan Ahmed).¹³ But in a prohibition law which relaxed the rule of prohibition in warships, troopships and military and naval messes and canteen, the classification treating the military personnel differently was found to be reasonable and not arbitrary having regard to the nature of the duty and the service condition of the military personnel and the requirement of keeping up their morale (Bombay v. Balsara).¹⁴ Where confirmation and seniority was dependent upon passing departmental examination and having foundational training during the period of probation, but the respondent officers could not fulfill this condition as the government could not arrange such examination and training for them and by a subsequent SRO (Service Rules and Orders) relaxed the rules exempting these officers, the petitioners who were subsequently appointed and fulfilled this condition challenged the SRO as discriminatory, the Appellate Division held the classification non-discriminatory as the SRO sub served the governmental objective of removing injustice to the respondent officers (Ataur Rahman v. Muhibur Rahman).¹⁵

In *Raquib Uddin Ahmed v. Syndicate, Dhaka University*,¹⁶ the High Court Division declared that amendment to clause 8(2) of the First Statute of Dhaka University Ordinance, 1961 and clause 18(2) of the First Statute of Dhaka University Order, 1973 omitting the word "Muslim" from the name of *Salimullah Muslim Hall* and *Fazlul Haq Muslim Hall* was arbitrary and discriminatory. It is difficult to understand how an amendment made to a statute repealed 31 years before can be subject of judicial review. The issue at any rate has only academic interest which the court shall not adjudicate as held by the Appellate Division in *Kudrat-e-Elahi Panir v. Bangladesh*.¹⁷ It has to be noted that mere procedural irregularity, if there be any, does not necessarily lead to arbitrariness in the impugned decision and the High Court Division is silent as to how such procedural irregularity is arbitrary. Even if there has been any procedural irregularity vitiating the amendment, the infirmity attaches to the repealed law and cannot affect the provision of clause 18(2) of the First Statute of the P.O. no.11 of 1973 which does not suffer from any procedural irregularity. It is submitted that the High Court Division has failed to notice the essence of the equality clause of art.27 of the Constitution. The right to equality stated in simple terms means persons under like circumstances and conditions should be treated alike both in conferment of privileges and in the imposition of liabilities (Jibendra Kishore Acharya v. East Pakistan).¹⁸ By omitting the word "Muslim" from the two Halls, no benefit has been conferred to and no liability has been imposed on any person and as such the question of discrimination does not arise. Except for claiming and holding that the impugned action is discriminatory, neither the writ petitioner nor the court has explained how the impugned action violates equality clause and it is submitted that the judgment is devoid of any reason with regard to the issue of inequality. The decisions cited by the High Court Division in support of its finding of discrimination, it is submitted, are not applicable in the instant case.

3. State and subjects:

The state is a definite class distinct from the subjects and the legislature has a wide power to legislate according to differential treatment to the State and individuals, provided that the differentiation has a reasonable relationship with the object of the legislation. Existence of public interest will generally render sufficient justification for differential treatment between State and individuals. A law may be made granting a monopoly to the State in respect of certain trade or business affected with public interest excluding others from the said trade or business (Sagir Ahmed v. UP).¹⁹ The government, even as a banker, can be put into a separate class and special facility for recovery of the dues of government banks can be accorded in view of the fact that the dues of the government are the dues of the entire people and quick recovery of the dues of the government is in the public interest.

12 (1924) 266 US 71

13 (1996) 1 BLC (AD) 71

14 AIR 1951 SC 318

15 (2009) 14 BLC (AD)62

16 (2005) 57 DLR 63

17 (1992) 44 DLR (AD) 319

18 (1957) 9 DLR (SC) 21

Imposition of customs duty at a lower rate for imports by a statutory authority is not violative of Art.27²⁰ (*Bharat Surfactants (Pvt) Ltd v. India*).²¹ It is not impermissible to provide for a summary procedure for eviction of tenants or occupants from government premises. The legislature may exclude the buildings belonging to the government or local authorities from the application of rent control law (*Baburao v. Bombay Housing Board*).²² The longer period of limitation provided under art. 149 of the Limitation Act²³ is not unconstitutional in view of the fact that if the claim of the government is barred by limitation, the loss falls on the public and that governmental machinery does not move as quickly as in the case of individuals (*Nav Rattanmal v. Rajsthan*).²⁴ But where the object of the law was to ameliorate the condition of the Jagirdars (whose capacity to pay the debt had been reduced by the resumption of Jagirs under another law) by reduction of debts, there is no rationale for excluding the debts due to the government or the local authorities from the purview of the law and the law so far as it excludes debts due to the government or the local authority from the definition of 'debt' is unconstitutional (*Rajsthan v. Mukan Cand*).²⁵

4. Completeness of Law:

Generally, no one is above the limitation or criticism, like that legislature is not beyond this exposition. The legislature has no notion about the matters which may arise in future that's why it is unable to include all possible circumstances within its purview. The legislature is always trying to make laws to tackle the present circumstances based on previous experiences as it has no knowledge about the future possible events. A law will not be unconstitutional merely if it is not addressing and does not cover all factors within its ambit. The legislature is free to acknowledge or recognize the degrees of harm and may confine its restriction to those cases where the need is deemed to be the clearest (*Nasreen Fatema v. Bangladesh*).²⁶ It may even regulate only the aggravated form of a mischief. It may choose to introduce a reform gradually by applying the law, in the first instance, to some institutions or objects or areas according to the exigency of the situation (*LN Mishra Institute v. Bihar*).²⁷ The equality clause does not require that a law should cover the entire field of proper legislation. (*A.P. v. Mc Dowell & Co.*).²⁸

5. Classification of single person

Selecting a single person for differential treatment is not necessarily discriminatory and will be constitutional if it can be shown that such a single person forms a class by himself because of traits peculiar to him which distinguishes him from the rest. A law made to put an end to protracted litigation which arose on the death of a rich landowner allowing claims of some and rejecting the claims of others was found unconstitutional. Protracted litigation between rival claimants to the property of an individual is not an unusual or exceptional circumstance so as to render a particular case a class by itself justifying the legislature to differentiate it from the rest of the cases (*Ameerunnessa v. Mahboob Begum*)²⁹. A large cotton textile mill of a company employing a large number of laborers was closed down due to mismanagement. Parliament made a law authorizing the government to appoint its own directors to take over the management and control of the company and its assets. A shareholder of the company challenged the law as discriminatory on the ground that the company had been singled out for discriminatory treatment. In the case of *Chiranjit Lal v. India*,³⁰ the court held that "the facts with regard to the company were of extraordinary character and Parliament was justified in treating the company as a class by itself."

19 AIR 1954 SC 728

20 AIR 1989 SC 2054

21 AIR 1954 SC 153

22 ACT NO. IX OF 1908

23 AIR 1961 SC 1704

24 AIR 1964 SC 1633

25 (1997) 49 DLR 542

26 AIR 1988 SC 1136

27 AIR 1996 SC 1627

A special law for a particular temple which held unique position amongst the Hindu temples was also found valid

(Bira Kishore Deb v. Orissa).³¹ Special provisions can be made for each of the Universities of the country as each University forms a separate class by itself. When special procedure in respect of the rights of the victims of the Bhopal gas disaster was provided by law, it was found to be non-discriminatory inasmuch as the enormity of the disaster and other factors rendered those victims a class by themselves (Mittal v. India).³² But the equality clause was held violated where the petitioner's companies were singled out for adverse treatment leaving many others of the same class and standing on the same footing and no rationale can be found for the classification (Hamidul huq Chowdhury v. Bangladesh).³³

6. Presumption of constitutionality

Classification is basically a function of Parliament being deeply connected with enactment of laws and from this stem the presumption of constitutionality of statutes. In the case of *Ram Krisna Dalmia v. Justice Tendulkar*,³⁴ it was held that "in order to sustain the presumption of constitutionality the court may take into consideration matters of common knowledge, matters of common report, the history of the times and may assume every state of facts which can be conceived existing at the time of legislation". No objection can be taken to the judges taking notice of the facts and circumstances prevailing in the society (*Nasreen Fatema v. Bangladesh*).³⁵ One who attacks a statute as being violative of the equality clause carries the burden of clearly establishing the invalidity of the statute and a claim of violation of the equality clause cannot be upheld on mere speculation or conjecture (*Hodge Drive-It- Yourself Co. v. Cincinnati*).³⁶ A person challenging the validity of a law must come out with a pleading clearly demonstrating that the differentia of the classification contained in the law have no reasonable nexus with any legitimate governmental objective and must adduce evidence in support of the pleading.

Even though a law enacted by the legislature is entitled to great regard in respect of validity, a still greater deference has to be accorded to the constitutional mandate and the presumption of validity cannot prevail where no reason whatever is discoverable for an attempted discrimination. Once a person challenging a law succeeds in showing discrimination by the law, it becomes obligatory for the persons vouching the validity to come out with facts showing that the classification is logically correct and is reasonable in the sense that it sub-serves a legitimate governmental objective. The presumption of constitutionality is of no avail when a law is discriminatory on the face of it and it is clear that the legislature made no attempt to make any classification at all or that there is no reasonable nexus between the differentia of the classification and the governmental objective sought to be achieved (*Grag v. India*).³⁷ In the case of *Bachan Singh v. Punjab*,³⁸ it was held that "there may conceivably be cases where having regard to the nature and character of legislation, the importance of the right affected and the gravity of the injury caused by it and the moral and social issues involved in the determination, the court may refuse to proceed on the basis of the presumption of constitutionality and demand from the State, justification of the legislation with a view to establishing that it is not arbitrary or discriminatory."

7. Bases of classification:

Classification may be made on different bases, but it is not possible to describe fully the different bases of classification. Whatever be the base of classification, it must have a rational relationship with the object of the law which prescribes the differential treatment of persons, things, occupations, business or property. Some of the important bases of classification which were the subject of judicial scrutiny from the point of view of equal protection of law are described below:

28 AIR 1953 SC 91

29 AIR 1951 SC 41

30 AIR 1964 SC 1501

31 AIR 1983 SC 1, 40

32 (1982) 34 DLR 190.

33 AIR 1958 SC 538

34 (1997) 49 DLR 542

7.1 Personal traits or attributes:

Reasonable classification is often made upon the traits, attributes or characteristics of persons sought to be dealt

with by a particular legislation. A classification is unreasonable which is based on such mere physical characteristics as height, weight, complexion, mentality or other personal attributes which pertain solely to the particular person and not to any relation that person may bear to others in human conduct and activity. When such traits, attributes or characteristics have rational relationship with the objects of the supreme law of the land, such classification is held to be valid. Personal qualifications on which classification is sought to be made are many and include race, caste, religion, color, sex, place of birth, age, marital or family status, fitness, literacy, alienage, military service, labor union membership, residence, property ownership and wealth and poverty. Classification has often been made on the basis of personal characteristics such as insanity or illegitimacy. Benefit given to widows in respect of eviction of tenants is permissible as the widows per se form a class different from others (*Malhotra v. Prakash Mehra*).³⁹ Individuals cannot be accorded discriminatory treatment because of their social or political attitudes. In case of committed felons, a law denying the right to vote has been upheld. A law making a classification between offenders and habitual offenders in imposing restriction on the right of free movement was upheld as being reasonable because of the purpose behind such restriction. But in the case of *Deodat Rai v. State*,⁴⁰ the court found a further classification between a habitual criminal having acquired a bad reputation and a habitual criminal having not acquired a bad reputation to be discriminatory as having no rational relationship with the object of the law.

7.2 Race, caste or religion:

Explicit provisions have been mentioned in Art. 28 of the Constitution⁴¹ regarding the non-discrimination on grounds of religion, race, caste or place of birth etc. This is the responsibility of the state to treat the citizens equally as in Art.28 (1) directs that “The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex or place of birth.” Art.28 (3) forbids the state agencies not to discriminate the citizens, in order to ensure the prohibition, it provides that “no citizen shall, on grounds only of religion, race, caste, sex or place of birth be subjected to any disability, liability, restriction or condition with regard to access to any place of public entertainment or resort, or admission to any educational institution.”

An obligation has been created by this article not only over the state but also over all the state agencies not to discriminate the citizens on the above grounds. Classification on the basis of race, caste, religion, sex or place of birth is generally suspected and will be found invalid unless it can be shown that it subs serves a legitimate governmental objective. However, in view of differences in the matter of faith and religious practices the equality clause is not violated by the legislature providing for the constitution of Boards for the superintendence of Hindu and Jain religious endowments differently (*Moti Das v. S.P. Sahi*).⁴² Fixing the age of retirement of stewards and stewardesses to the disadvantage of the stewardesses is discriminatory. Circular issued specifying certain functions of the City Corporation to be performed by the elected commissioners from general seats and excluding commissioner from the reserved seats for women was found to be discriminatory (*Shamima Sultana v. Bangladesh*).⁴³ Indian Supreme Court referring to its earlier decision in *John Vellamatton v. India*,⁴⁴ held that prohibition on employment of women in hotels and bars serving liquors is discriminatory as personal freedom cannot be compromised on round of security of women. The court held-

“Changed social psyche and expectations are important factors to be considered in the upkeep of law. Decision on relevance will be more often a function of time we are operating in primacy to such transformation in constitutional rights analysis should not be out of place”.

35 (1931) 284 US 335

36 AIR 1981 SC 2138

37 AIR 1982 SC 1325

38 AIR 1991 SC 99

39 AIR 1951 All 718,

40 AIR 1959 SC 942

In *Khodeja Begum v. Sadeq Sarker*,⁴⁵ a Single Bench of the High Court Division held that the law relating to

restitution of conjugal rights is a violation of liberty, freedom, equality and social justice and is therefore void. Apart from expressing his opinion, the learned Judge did not advance any reason relevant in a decision on equality clause and did not at all discuss the issues involved in the matter, and the decision, and more than that, the manner of arriving at the conclusion, is open to exception.

7.3 Marital relationship or Family status:

Family status or marital relationship cannot be considered as a basis for classification. The right to build a family is an important part of the liberty guaranteed by Art.31 of the Constitution⁴⁶ and unless there is any compelling State interest in making a classification on the basis of marital or family status, a law providing for differential treatment on the basis of marital or family status will be unconstitutional. In respect of employment rights and benefits, differential treatment based on marital or family status and policies and practices directed against married women, pregnant women and women with small children are violative of Art.27 (Air India v. Nergesh Meerza)⁴⁷. But school and university regulations distinguishing between married and single students have been generally held constitutional (Prostrollo v. University of South Dakota).⁴⁸

7.4 Personal Fitness:

Personal fitness is one of the important factors for classification of persons in their respective working sectors. In fact, physical fitness is required in every sphere of our life. Without physical fitness, no one can discharge his duties to the family, to the society, even to the country properly. A law which is set down qualifications or personal fitness required for any specific job, business or occupation will not be unconstitutional because it is the demand of the equality clause that proper person should be posted in proper place. If a layman is appointed to a post, for which he has no qualification, training or experience or he is physically unfit for that post, it will be a gross injustice to him as well to the remedy seekers. Because he is neither to understand the nature of the specified job nor to serves the people properly. Personal fitness is an important criterion in the requirement of the law enforcing agencies not only in Bangladesh but also all over the world, it will not be discriminatory because this is an important platform to serve the nations and it will not be possible without a group of qualified, physically fitted, well trained up and experienced persons and this is also the expectation of the equality clause. But a statute which permits the members of a company to pursue a particular calling without a license provided any member of the company has procured a license is unconstitutional as it does not operate equally upon all of a class pursuing the calling under like circumstances. Qualifications set down by law, in order to be valid, must have a rational relationship with the fitness required for the specific job, business or occupation. Educational qualification is a reasonable basis of classification (PK Chandra vathi v. CK Saji).⁴⁹

7.5 Based on Age:

Classification on the basis of age is permissible provided it is not arbitrary or unreasonable. Thus, a minimum and maximum age may be fixed as a qualification for public as well as private employment as also for voting rights. The protection of the equality clause applies both to young and old and yet minors, requiring the protection of law, constitute a class apart and the legislature may make special provisions for them for their safety, health, morals and general welfare (Gopeswar Prasad v. Bihar).⁵⁰ The legislature may classify persons by age for the purpose of determining punishment for crimes and such a classification will not be unconstitutional if it has reasonable relationship with the object of the law. Criminal responsibility may vary from person to person on the

41 (2005) 57 DLR 201

42 (2003) 6 SCC 611

43 (1998) 50 DLR 181

44 ibid

45 AIR 1981 SC 1829

46 507 F. 2d 775

47 AIR 2004 SC 2717

basis of the age of the accused. Sections 82 of the Penal Code, 1860⁵¹ provides that “nothing is an offence which is done by a child under nine years of age.” And section 83 also prescribes that “nothing is an offence which is done by a child above nine years of age and under twelve, who has not attained sufficient maturity of

understanding to judge of the nature and consequences of his conduct on that occasion.”. Criminal liabilities of the persons of certain age have been determined by these sections and it will not be treated as unconstitutional because it has a reasonable relationship with the object of the law, the object of the penal laws is to not only punish the offenders but also to protect the innocents. These provisions have been made to protect those who are child or the persons have not attained sufficient maturity of understanding to judge of the nature and consequences of their conducts. Conversely it will be unconstitutional as well as discriminatory if any benefit is taken away from a person only on the ground of age without any reasonable justification. In the case of *Indian Council of Legal Aid v. Bar Council*,⁵² the court held that “a provision in law debarring persons above the age of 45 years from being enrolled as advocate may be discriminatory.”

7.6 Based on Time:

There is a maxim in equity that “where the equities are equal, the first in time shall prevail.” The maxim expresses the priority of a person to satisfy the claim of interest first in comparison to others. Time may form a basis for valid classification and the equality clause is not violated simply by application of a law from a certain date and thereby discriminating between the right of an earlier time and later time (*Califano v. Webster*).⁵³ Persons appointed before and after a particular date may be differently treated in respect of their appointment, dismissal etc. when they form a separable class in relation to the object of the law and there is a rational basis for the selection of the date (*Udayasankaran v. India*).⁵⁴ In the case of *Mohiuddin Ahmed v. Bangladesh*, it was held that “classification between ad hoc appointees who qualified in the first available examination for regularization and other ad hoc appointees who did not has a reasonable basis for giving benefit of the service as ad hoc appointee in counting seniority.”⁵⁵ But for the purpose of determining inter se seniority, classification of employees selected for appointment at the same time pursuant to the same advertisement on the basis of the time of completion of training in different batches was found invalid being arbitrary. Classification of buildings for the purpose of fixation of standard rent on the basis of the date of construction is valid (*Roshan Lal v. Ishwar Dass*).⁵⁶ Statutes are often made effective from a particular date without applying it to previously established conditions and such statutes are found valid. It is a matter exclusively for the legislature to decide from what date a civil law should be made operative and the law cannot be challenged as discriminatory for not affecting prior transactions or pending proceedings if it applies equally to all persons coming within its ambit from the date on which it becomes operative. But in extinguishing or modifying the rights of a natural class of persons, the legislature cannot select an arbitrary date having no rational relation with the necessity for such extinction or modification so as to split the class into two having different rights and liabilities without any reasonable grounds for such differential treatment (*Jalan Trading Co. v. Mill Mazadoor Sabha*).⁵⁷ A law prohibiting sale of foodstuff on pushcarts in certain areas of a city, but exempting the vendors who have operated continually in the same locality for 8 years prior to the effective date of the law is not violative of the equality clause on the ground that it accorded discriminatory treatment to vendors who operated for less than 8 years. Classification on the basis of number of years of service for compulsory retirement of public servants has been found valid (*Shivacharana v. Mysore*).⁵⁸ But classification on the basis of time will be unconstitutional if it has no rational relationship with the object of the legislation. When the object of pension rules is to permit retired public servants live free from penury, different rates of

48 AIR 1951 Pat 570

49 Act No. XLV OF 1860

50 AIR 1995 SC 691

51 (1977) 430 US 313

52 AIR (1996) SC 1901

53 (1997) 49 DLR 353

54 AIR 1962 SC 646

55 AIR 1967 SC 691

56 AIR 1965 SC 280

pension for persons retiring on different dates is discriminatory as the time of retirement has no rational connection with the object of the pension rules, increase in the cost of living hitting all pensioners alike (*D.S. Nakara v. India*).⁵⁹

7.7 Wealth and poverty:

Generally, mere presence of wealth or lack of it in an individual citizen cannot be the basis of a valid classification. Denying an indigent prisoner access to the courts to defend a civil suit, while free persons and prisoners possessing the means to hire counsel retain such access, constitutes *prima facie* a violation of the equality clause (*Payne v. Superior Court of Los Angeles*).⁶⁰ Similarly, a person may not be denied, on the basis of wealth, the right to vote or to become a candidate for a public office (*Lubin v. Panish*).⁶¹ But it does not mean that legislation cannot be made on the basis of economic position where such a position has a rational relationship with the object of the legislation. It is always a legitimate governmental interest to ameliorate the condition of the poor, and when the removal of social and economic inequality is one of the fundamental principles of State policy. Parliament may legislate on the basis of financial condition to grant some privilege to the poor which is denied to the rich. The government's decision to allow first class government servants who have been promoted from fourth class and third class to purchase the abandoned houses allotted to them earlier as third and fourth class government servants at a stipulated price is not unconstitutional discrimination against other first class and second class government servants in view of the fact that the government intended to confer the benefit on those who were not in sound financial position and were not capable of purchasing otherwise an abandoned property (*Afia Khatun v. Secretary, Ministry of Works*).⁶² The legislature may validly tax an economically stronger class leaving out economically weaker class from the tax net or may impose a greater tax burden on the persons having greater means. Thus, income tax imposed at progressive or graduated rates, increasing according to the amount of tax payer's income, is not violative of the equality clause. A distinction made amongst the tax-payers, for an annuity deposit scheme, between those belonging to upper income groups and those belonging to lower income groups and requiring only the former to pay annuity deposits is a reasonable classification (*Hari Krishna v. India*).⁶³ A school financing system authorizing *ad valorem* tax is not unconstitutional on the ground that the burdens or benefits of a state measure fall unevenly depending on the relative wealth of the political subdivision in which the citizens live (*San Antonio Independent School District v. Rodriguez*).⁶⁴

7.8 Size, amount or quantity

Size, amount, quantity or number may be an important ground for reasonable classification. In the case of *Afil Jute Mills Pvt. Ltd v. Bangladesh*,⁶⁵ it was held that, "size, amount, quantity or number may be properly used as a basis for reasonable classification for different treatment for the large or the small since the legislature is competent to determine that control of the smaller manifestations of a particular evil would not appreciably remove the evil whereas the regulation of large manifestations would." Where size is an index to the evil at which the law is directed, discrimination between the large and the small is permissible. For public benefit the legislature may grant some privilege to smaller undertakings which is denied to larger undertakings. The legislature may prescribe different treatment on the basis of largeness or smallness in respect of immovable property, earnings, rental value, volume of capital, volume of sale or export, loans, population or taxes. Criminal offences may also be classified into grades for different punishment according to the distinction of amount involved. But the law cannot differentiate between the large and the small where size or quantity is not an index to the problem dealt with. Although the mere factor of number cannot be a reasonable basis for classification and discrimination based

57 AIR 1983 SC 130

58 17 Cal 3d 908

59 (1974) 415 US 709

60 (1992) 44 DLR 225

66 AIR 1955 SC 795

67 AIR 1967 SC 212

68 AIR 1964 SC 370

solely upon numbers is invalid, a classification based on number is not necessarily unconstitutional and may be found valid if it has a rational relationship with the object of the legislation (*Fox v. Standard Oil Co.*).⁶⁶ Classifications in various regulations of occupations based on the quantity of persons employed are valid provided

that such basis must not arbitrary or unreasonable (*Middleton v. Taxes Power & Light Co.*).⁶⁷

7.9 Locality or territory:

Locality or territory shall not form a basis for reasonable classification and that's why no one shall be entitled or disentitled to any benefits, opportunities or imposing liabilities only on the ground of locality or territory. The equal protection clause relates to equality between persons rather than between areas, and territorial uniformity in operation of laws is not constitutionally mandated. The legislature is free to determine whether a law should extend to the whole of the territory or be limited to particular areas provided that the classification made has a rational relationship with the object of the law (*Kishan Singh v. Rajasthan*).⁶⁸ The equality clause does not prevent the State from applying different laws to different parts of the country according to the local circumstances (*Nagaland v. Ratan Singh*).⁶⁹ The legislature may empower the government to declare an area as a dangerously disturbed area and provide for a different procedure for the trial of offences or a different forum. It may also different standards for different areas in a law directed against adulteration of food according to the differing conditions of different areas. In the same way, different prices may be fixed for different areas in consideration of differences in cost of production in different areas. Special treatment given to the industries in the backward areas on the basis of a rational policy does not violate the equality clause. Local authorities may be authorized to levy taxes at different rates in different areas (*Gopal Narain v UP*).⁷⁰ A geographical classification based on historical reasons subjecting persons of one locality of the State to a particular tax is not unconstitutional. The zonal or territorial division of the State for the purpose of implementing a scheme of nationalized motor transport according to the circumstances prevailing in different localities is not unconstitutional (*Ram Chandra v. Orissa*).⁷¹ But classification by districts or otherwise for the purpose of prescribing regulations that in effect impose different burdens upon some of the citizens of the State from those imposed upon other citizens under similar conditions, with conceivably no just basis for the classification, constitutes a denial of equal protection (*Caldwell v. Mann*).⁷²

8. Classification of occupations and business:

The legislature has power to classify on the basis of differences in occupation, business and pursuits and such classification is valid so long as it has a reasonable basis and is not merely an arbitrary selection without any real difference between the subjects included in and omitted from purview of the law. Classification of sponsors and directors of private sector banks and financial institutions and the members of their families from the rest of the people for imposition of restriction on their becoming sponsors or directors of insurance companies to prevent monopoly in the money market is not unreasonable (*Nasreen Fatema v. Bangladesh*).⁷³ Every business forms a distinct class and it is not unreasonable for the legislature to place a particular business in a single class in order to attain the objective of the law. Imposition of serviced tax on services rendered by goods transport operators and clearing and forwarding agents without imposing such tax on similar other service renderers was found valid (*Gujarat Ambuja Cement Ltd v. India*).⁷⁴ The equality clause does not require all occupations or businesses to be treated in the same way. It is for the legislature to select the kind of business which shall be the subject of regulation and in this regard the legislature has a wide discretion. The classification of businesses may be based

69 AIR 1956 SC 298

70 157 Fla 633

71 (1997) 49 DLR 542

72 AIR 2005 SC 3020

73 (1908) 211 US 539

74 265 US 371

75 (1932) 288 US 517

upon such factors as location, time and number of persons employed. A classification of borrowers based on the nature of the institution from which they borrow to fight the default culture in financial institutions is not discriminatory as the classification is logically permissible and sub serves the objective of the legislation. The

wide power of classification is, however, subject to the limitation to the extent that it does not permit discrimination by which persons engaged in the same business are subjected to different restrictions or are held entitled to different privileges under the same conditions. It is opposed to the philosophy of equal protection of law where the State regulates one who does much business without regulating another in the same enterprise doing less business (*Mc Leans v. Arkansas*).⁷⁵ There are dangerous or hazardous callings or businesses which may be classified for different treatment and such legislations are generally held to be constitutional unless the differential treatment *ex facie* appears to be arbitrary or unreasonable (*R.E. Sheehan Co. v. Shuler*).⁷⁶

9. Classification among companies, individuals and partnership:

Companies are legal entities and the legislature may divide companies into different classes and confer upon them such rights, capacities and powers and impose such burdens as it may deem fit. No complaint about unequal treatment can be made so long as the differential treatment has a rational relationship with the object of the law and so long as the legal provisions are applicable to all companies similarly situated. In many situations distinction has been drawn between companies and individuals and different treatment has been prescribed by the legislature. The inherent difference between companies and natural persons is sufficient to sustain a classification between individuals and companies. But a law which is directed solely to companies but eliminates individuals from its operation without any basis for such differential treatment is violation of the equality clause (*Luis K. Ligett Co. v. Lee*).⁷⁷ The legislature may differentiate between individuals and partnerships, provided the differentiation has a rational relationship with the object of the law. It is not an unconstitutional discrimination to require a license for the sale of partnership securities when none is required for the sale of securities issued by individuals (*People v. Simonsen*).⁷⁸

10. Classification of commodities and things:

The legislature may make classifications between commodities and things for differential treatment and may require license to be obtained for trading in or manufacturing specified commodities and things without requiring such license in respect of other commodities and things and such classifications are upheld when not arbitrary or unreasonable. In this field, the power of the legislature is so wide and the courts defer so much to the wisdom of the legislature that the very fact of classification justifies the classification (*Daruka & Co. v. India*).⁷⁹ Apart from the general classification usually made, classification is made of the commodities which are identified as essential or hazardous, qualifying those commodities for different treatment. Classification of goods shipped and not shipped for the purpose of giving retrospective effect to a change in import policy and exempting the goods shipped before the change was made is found reasonable (*Darshan Oils Pvt. Ltd v. India*).⁸⁰ Though classification of tenancies can be made to allow greater rights in respect of tenancies of commercial premises, such a classification between commercial and residential premises cannot be made in the matter of eviction of tenants (*Asoka Marketing Ltd v. Punjab National Bank*).⁸¹

Trades and businesses are often sought to be regulated upon classification based on the kind and the technique of trading. It is generally held that legislation providing for classification based upon the type of trading done by persons sought to be regulated by it is constitutional if the particular mode of trading so classified is substantially different from other trading and forms a rational basis for the legislative distinction and if all persons so engaged

76 64 Cal App.97

77 AIR 1973 SC 2711

78 AIR 1995 SC 55

79 AIR 1991 SC 855

80 AIR 1960 SC 430

81 (1996) 48 DLR 1

and regulated are treated alike. The differences between manufacturers and dealers, regular dealers or merchants and transients like peddlers, hawkers and itinerant vendors, between retailers and wholesalers and between sellers for cash and sellers on credit are substantial and may form the basis of reasonable classification (*Narendra Kumar*

v. India).⁸²

11. Equality clause and arbitrariness:

Equality and arbitrariness both are contradictory with each other and they cannot be run parallelly because where there is arbitrary action there will not be equality on the other hand where there is equality there will not be arbitrary action. Arbitrariness means doing any act based on random choice or personal whim or preference rather than by any law or any reasonable causes or rationality. Every legislation imposes classification between persons, things, occupations and so on for differential treatment but that classification shall not be based on any arbitrariness. Reasonable classification makes the path of the natural justice spacious but where it is done by arbitrary the door of justice will be closed. In the case of *Aftab Uddin v. Bangladesh*,⁸³ the High Court Division said that, “if an executive or a legislative act is found to be arbitrary and it such arbitrary act adversely affects a person it must be held that such arbitrary act adversely affecting a person hit at the very root of the equality clause.” Therefore, it is the demand of the natural justice that the activities of executive or legislative must be rational as well as people oriented and must not be arbitrary. If the executive or legislative body acts arbitrary, the Supreme Court of Bangladesh as a guardian of the Constitution as well as justice of the peace can declare those activities as illegal by applying the judicial review for the sake of maintaining equality.

11.1 Test of arbitrariness:

Test means a critical examination, observation, or trial specifically. It's a procedure of submitting a statement to such conditions or operations as will lead to its proof or disproof or to its acceptance or rejection. Where a question is arisen as to whether an impugned act is arbitrary or not, the facts and circumstances of given case must be taken into consideration to answer the question. It was held that in the case of *Ram Krishna Dalmia v. Justice S.R. Tendolkar*,⁸⁴ “a law is constitutional even if it relates to an individual person on account of some specific circumstances which is applicable to him and not to others. That individual person can be treated as a class.” It must be assumed that the legislature properly recognizes and feels the necessities of its own people that the law is directed to the problem made manifest by involvement and that its discrimination is based on adequate or reasonable grounds. However, the legislature is permitted to comprehend the degrees of harm and may restrict itself to those situations and cases where the need is considered to be the clearest. Generally, every statute will be presumed as constitutional and the burden shall lie upon the party who brings an allegation about the unreasonableness and arbitrariness of the statute. Such presumption may be disproved in certain cases by showing the fact that there is no order and no distinction peculiar to any individual or class and not applicable to any other individual or class, and yet the law hits a specific individual or class. In order to maintain the presumption of constitutionality the court may take into consideration the historical background of the time, matters of basic knowledge, matters of report, and may expect each condition of facts which can be conceived existing at the time of the enactment. Undoubtedly a law is unconstitutional if it violates the standards set down by the constitution or against the principle of natural justice, equity or oppose to public policy.

11.2 Burden of proof of arbitrariness:

The term ‘burden of proof’ is also known as ‘onus of proof’. The phrase *burden of proof* refers to the obligation of a party to prove or disprove a disputed fact. Generally, the burden of proof lies on that person who brings the allegation of arbitrariness against the concerned authority. It is not sufficient for a person to bring an allegation of arbitrariness only but he has to take the responsibility to prove the allegation before the competent authority. In

82 AIR 1958

83 ACT NO. I OF 1872

84 PLD 1965 Lah. 575

85 (1998) 50 DLR (AD) 194

this regard sections. 101-114 of the Evidence Act, 1872⁸⁵ describe the guidelines for different circumstances where a person would be bound to prove the fact and narrate some situations where burden of proof shifts from one to another. Burden of proof, sometimes may shift from one party to another party. In the case of *Safia Begum*

v Malkani,⁸⁶ it was held that “the party asserting affirmatively is not always under the obligation to prove it. Where a rebuttable presumption exists in favor of a party asserting affirmatively the onus lies on the other side to rebut the same.” Speaking about the burden of proof of arbitrariness, in the case of *Bangladesh Krishi Bank v. Meghna Enterprise*,⁸⁷ it was held that, “No doubt, it is for the person alleging arbitrariness who has to prove it. This can be done by showing in the first instance that the impugned State action is uninformed by reason inasmuch as there is no discernible principle on which it is based or it is contrary to the prescribed mode of exercise of the power or is unreasonable. If this is shown, then the burden is shifted to the State to repel the attack by disclosing material and reasons which led to the action being taken in order to show that it was an informed decision which was reasonable.”

12. Conclusion:

I would like to conclude the discussion by mentioning the quotation of famous Greek Philosopher Aristotle, he said that “the worst form of inequality is to try to make unequal things equal.” For the advancement of civilization, a reasonable classification is necessary but the classification must be done among the equal subjects based on the principles of justice, equity and fairness as well. In a welfare State, Government is the regulator and dispenser of different services and provider of a large number of benefits to its citizens. It will not be reasonable for the government to say that public opportunities like jobs, licenses or quotas will be given only in favor of those people who are white or black in color or who have grey hair or belonging to a particular political party or religion. The Government has discretionary powers in the matter of granting the public opportunities but the discretionary powers must be confined and regulated by rational, justified, relevant and non-discriminatory standard or norm. Deviation from such standard or norm in any particular case or cases, the action of the Government will be treated arbitrarily as well as violation of equality clause and the same will be liable to be struck down. Therefore, it can be said that where there is no equality, there is no equity. Hence the doctrine of reasonable classification is necessary for ensuring the proper application of equality among the equals otherwise equity cannot be assured.

References:

1. The Constitution of the People's Republic of Bangladesh.
2. ILO, 'Equality and discrimination in Bangladesh' < <https://www.ilo.org/dhaka/Areasofwork/equality-and-discrimination/lang-en/index.htm>> accessed on 17 January 2022.
3. Gaze, B., & Smith, B. (2016). 'Equality and Discrimination Law in Australia: An Introduction.' Cambridge: Cambridge University Press. doi:10.1017/9781139923811
4. "Equality and Non-Discrimination" in Feldman, David (ed.) "English Public Law", Oxford University Press, Oxford, 2004
5. "Constitutional Law: Reasonable Classification." (1930). Michigan Law Review, 28(6), 759–761. <https://doi.org/10.2307/1279205> Accessed on February 13, 2022.
6. Narain, Jagat. (1966) "Equal Protection Guarantee and the Right of Property Under the Indian Constitution." International and Comparative Law Quarterly, Vol. 15, Issue. 1, pp.199–230.
7. Motiwal, Om Prakash (1969) "Right of Equal Opportunity of Civil Servants." Journal of the Indian Law Institute, Vol.11, Issue. 3, pp-328-343. Accessed on May 13, 2022. www.jstor.org/stable/43950032.
8. Singh, Parmanand (1976) 'Equal Opportunity' And 'Compensatory Discrimination': Constitutional Policy and Judicial Control." Journal of the Indian Law Institute, Vol. 18, Issue. 2, pp.300-319. Accessed on January 13, 2022. www.jstor.org/stable/43952974.
9. India, legal. (2020) "Right to Equality- A Fundamental Right". Legal services india.Com. <http://www.legalservicesindia.com/article/1688/Right-To-Equality-A-Fundamental-Right.html>.
10. Lauchlan, Chipman (1981) "Equality, Law and Non-Discrimination - A Comment". Bull. Austl. Soc. Leg. Phil. 138, 144.
11. R.E. Flathman (1967) 'Equality and Generalization, a Formal Analysis' in J.R.Pennock

and J.W. Chapman, eds., Equality, New York, Atherton Press, p. 42.

12. Staff Correspondent, 'Quota circular issued amid protests' The Daily Star (Dhaka, October 5, 2018) <<https://www.thedailystar.net/country/quota-system-in-bangladesh-scrapped-officially-1642534>> accessed on 18 February 2022

13. Chakma Parban (2021), 'Why quota reservation is significant for ethnic minorities' The Daily Star (Dhaka, August 3, 2021) <<https://www.thedailystar.net/law-our-rights/news/why-quota-reservation-significant-ethnic-minorities-2143736>> accessed on 18 February 2022

14. Anju Sayeeda (2011) 'A Study on Positive Discrimination of Women in Laws of Bangladesh' Journal of the Indian Law Institute, Vol. 53, Issue.3, p-491.

15. Sophia Moreau (2020) 'Equality and Discrimination' in John Tasioulas (ed), The Cambridge Companion to the Philosophy of Law, Cambridge University Press.

16. Seo-Young Cho (2014), 'International Women's Convention, Democracy, and Gender Equality' Social Science Quarterly Vol. 95, Issue 9, p-719.

17. Tasneem Tayeb (2021) 'Positive discrimination needed to protect women's rights' The Daily Star (Dhaka, September 3, 2021) < <https://www.thedailystar.net/opinion/closer-look/news/positive-discrimination-needed-protect-womens-rights-2167126>> accessed on 18 February 2022

18. Huda, Dr. Shahnaz (2019) 'Positive discrimination can ensure gender balance' The Daily Star (Dhaka, March 12, 2019) <<https://www.thedailystar.net/law-our-rights/law-interview/news/positive-discrimination-can-ensure-gender-balance-1713619>> accessed on 20 February 2022.

19. Farrior, S. (2015). "Equality and Non-Discrimination under International Law". Available at SSRN: <https://ssrn.com/abstract=2578279> accessed on 10 February 2022.

20. Grant, Evader (2007) "Dignity and Equality", Human Rights Law Review, Vol. 7, No.2, p. 300.

21. Mc Crudden, Christopher (2004) "Equality and Non-Discrimination" in Feldman, David (ed.) "English Public Law", Oxford University Press, Oxford, pp.581–668.

22. Holtmaat, Rikki (2004) "The Concept of Discrimination", Academy of European Law Conference Paper, p.2, available at:

http://www.era.int/web/en/resources/5_1095_2953_file_en.4193.pdf. accessed on 20 February 2022.

23. "The right to equality and non-discrimination" available at:

<http://www.humanrights.is/en/human-rights-education-project/human-rights-concepts-ideas-and-fora/substantive-human-rights/the-right-to-equality-and-non-discrimination>, accessed on 09 January 2022.