RETHINKING "NON-ARBITRARINESS"

Shankar Narayanan*

This paper examines the relationship between non-arbitrariness and Article 14 of the Constitution. It contends that the traditional test of reasonable classification incorporates a component of non-arbitrariness which has been overlooked in academic literature and case law. The paper argues that the test of reasonable classification should be revisited and recalibrated to meet the normative demands of Article 14. Finally, the paper attempts to demarcate the scope of non-arbitrariness review under Article 14 with respect to the nature of state action.

I. Introduction

Indian constitutional law has an ambivalent relationship with non-arbitrariness. The doctrine is extremely popular amongst lawyers and equally unpopular amongst scholars. As any lawyer who has spent more than a week in a writ court in India would know, a claim of arbitrariness is the simplest argument to build in any challenge that even remotely involves the State.[1] That perhaps explains the doctrine's popularity amongst lawyers.

The reasons for its unpopularity among scholars are also equally clear. Apart from forceful prose in the vein of arbitrariness being a *sworn enemy* of *equality*[2] which in turn cannot be *cribbed, cabined, or defined*,[3] the Supreme Court has not articulated any principled argument in support of the doctrine. Further, as it is not textually connected to Article 14 in any direct way, over the years, it has assumed the form of a vague super law as some feared.[4]

In this paper, I consider the relationship between non-arbitrariness and Article 14 and contend that the test of reasonable classification incorporates a component of non-arbitrariness. In the second and third sections, I point out that this link which has often been overlooked in

* Senior Resident Fellow, Vidhi Centre for Legal Policy.

1 Upendra Baxi, 'The Myth and Reality of Indian Administrative Law' in Massey (ed), *Administrative Law* (8th edn, 2012), xxviii.

2 *E P Royappa v State of Tamil Nadu* (1974) 4 SCC 3 [85].

3 ibid.

4 M P Singh, 'The Constitutional Principle of Reasonableness', (1987) 3 SCC Jour 31.

commentaries and judgments, could help us resolve certain conceptual issues that have arisen in judicial review of state action under Article 14.

The "staggering"[5] output of the Supreme Court on Article 14 precludes the application of the conventional method of studying all decisions on a point and then deriving a principle. Such a method could easily end up merely describing a number of decisions of the Court without identifying any clear principle. In a bid to avoid this pitfall, I proceed straight away to construct the argument, weaving in precedent as and when necessary.

II. Article 14 and Non-Arbitrariness

It is both logical and intuitive to start with the text of Article 14.

> 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 earliest decisions of the Court had a fairly consistent view of Article 14.[6] The first part of the article which speaks of equality is commonly accepted to be a guarantee that no person is above the law.[7] This guarantee is made effective by its corollary in the second part which offers to persons the equal protection of the laws. How are these interconnected guarantees made effective? To quote from the minority opinion of Shastri J from *State of West Bengal v. Anwar Ali Sarkar:*

> The second part which is a corollary of the first and is based on the last clause of the first section of the Fourteenth Amendment of the American Constitution, enjoins that equal protection shall be secured to all such persons in the enjoyment of their rights and liberties without discrimination or favouritism, or as an American Judge put it 'it is a pledge of the protection of equal laws' (Yick Wo v. Hopkins [118 US 356, 369]), that is*, laws that operate alike on all persons under like circumstances*. And as the prohibition under the article is directed against the State, which is defined in Article 12 as including not only the legislatures but also the Governments in the country, Article 14 secures all persons within the territories of India *against arbitrary laws as well as arbitrary application of laws***.** This is further made clear by defining "law" in Article 13 (which renders void any law which

5 Tarunabh Khaitan, 'Equality: Legislative Review under Article 14' in Choudhry, Khosla, Mehta, (eds), *The Oxford Handbook of The Indian Constitution* (OUP 2016) 701.

6 *Chiranjit Lal v Union of India* AIR 1951 SC 41; *State of West Bengal v Anwar Ali Sarkar* 1952 SCR 284; *Kathi Raning Rawat v State of Saurashtra* 1952 SCR 435; *Kedarnath Bajoria v State of West Bengal* 1954 SCR 30; *Jyoti Pershad v Administrator of Delhi* (1962) 2 SCR 125; The last decision contains a useful summary of the position of law which is extracted from *Ramkrishna Dalmia v Justice Tendolkar* (1959) SCR 279, 299-301.

7 M P Jain, *Constitutional Law of India*, (5th edn, Lexis Nexis 2008) 856; *Sri Srinivasa Theatre v Government of Tamil Nadu* AIR 1992 SC 1004.

> takes away or abridges the rights conferred by Part III) as including, among other things, any "order" or "notification", so that even executive orders or notifications must not infringe Article 14. This trilogy of articles thus ensures non-discrimination in State action both in the *legislative and the administrative spheres* in the democratic republic of India.[8]

Contrary to the belief that arbitrariness was discovered in the seventies, it is clear from the above paragraph from 1952 that Article 14 has, from the very outset, been interpreted as a guarantee against arbitrary action. Second, the guarantee with respect to legislation is not merely on the grounds that the law must distinguish between the like and the unlike, but that it must also operate alike within the class to which it applies. Third, it is made clear that it is not merely legislative action that must not be arbitrary but also executive action, which interestingly, is correlated to Articles 12 and 13. As I will argue later, this simple exposition is sufficient to explain large parts of the Court's jurisprudence of review of state action.

Let us consider the first point. For this we must consider the meaning of the term "arbitrary." It is not necessary to delve into any philosophical or jurisprudential meanings at this point. A standard dictionary defines arbitrary as action based on 'random choice or personal whim, rather than any reason or system'.[9] Applying this meaning to the paragraph quoted above, it then means that for State action to be equal (be it legislative, executive or administrative), it must not be based on any random choice or personal whim, rather it must be based on reasons or a system. Why is the guarantee of equality in Article 14 couched as a guarantee against arbitrary state action?

This can be derived as follows:

1. Let us start with the assumption that all persons are equal.[10]
2. People though equal, differ in some characteristics. This, again, is not a problematic statement as we know that people, though fundamentally equal, have different physical and mental attributes.
3. In light of these differing characteristics, and the infinite variety of human relations,[11] State action can rarely be universal. Therefore, by necessity, the State must then differentiate between people based on these differing characteristics.
4. The guarantee that equality offers in the face of this necessary classification is that only

8 *Anwar Ali Sarkar* (n 6) [8].

9 Oxford English Dictionary, <https://en.oxforddictionaries.com/definition/arbitrary> accessed 30 March 2017.

10 Some commentators such as Seervai form the opposite proposition that people are fundamentally unequal. This is not an acceptable understanding of equality today. H M Seervai, *Constitutional Law of India*, (vol 1, 4th edn, Universal 2002) 439.

11 *Ameerunnissa Begum v Mahboob Begum* 1953 SCR 404.

> justifiable reasons can be the basis of classification. Some unjustifiable reasons such as caste, race, religion and place of birth are enumerated in the Constitution itself.[12]

The presumption that people are fundamentally equal is a strong moral principle[13] which is the anchor of this understanding of equality. However, in addition to this moral principle, it also incorporates a rule of rationality.[14] Any exception to equality is permissible only if the State has justifiable reasons for treating people differently. The validity of state action thus depends on an evaluation of the reasons behind state action. This is the essential link between equality and rationality in Article 14. The absence of such rationality would render State action arbitrary. This link between Article 14 and arbitrariness is crucial to the review of state action, which is discussed in the next section.

III. The Test of Reasonable Classification and Non-Arbitrariness

The standard formulation for review of state action under Article 14 is that one must test for reasonable classification.[15] The form of the test is well known with its components of "intelligible differentia" and a "rational nexus". At the core of the test, what it checks is whether the law makes an arbitrary classification by evaluating the reasons based on which persons are treated differently. Thus, the test incorporates both the moral principle of all people being fundamentally equal and the rule of rationality that the State is bound to provide reasons for any classification.

This point is often overlooked in the debate on the review of legislation under Article 14 ever since the central question in the debate was formulated by Seervai as a choice between a test of classification or a test of arbitrariness. In response to the Supreme Court's claim in E.P. Royappa[16] of having discovered a new dimension of equality based on non-arbitrariness, Seervai asserted that the traditional test does not involve a finding that the law is "arbitrary".[17] Seervai's assertion overlooked the component of rationality in the traditional test, which is borne out clearly by judgments of the Supreme Court. As an example, consider the following paragraph from Mukherjea J, in *Charanjit Lal Chowdhury v. Union of India*,[18] possibly the first case on the point:

> The legislature undoubtedly has a wide field of choice in determining and classifying the subject of its laws, and if the law deals alike with all of a

12 Constitution of India, arts 15 and 16.
13 See Stefan Gosepath, 'Equality' (The Stanford Encyclopedia of Philosophy, Spring 2011 edn) [2.4] <https://plato.stanford.edu/entries/equality/#PreEqu>.
14 On how equality incorporates a rule of rationality, see Isiah Berlin, 'Equality', <http://berlin.wolf.ox.ac.uk/published_works/cc/equality.pdf>.
15 For a list of cases see MP Jain, *Indian Constitutional Law* (6th edn, Lexis Nexis 2010) 1233.
16 *E P Royappa v State of Tamil Nadu* (1974) 4 SCC 3.
17 Seervai (n 10) 441.
18 1950 SCR 869.

> certain class, it is normally not obnoxious to the charge of denial of equal protection; but the classification should never be **arbitrary**.

A superficial search reveals that there are more than a dozen relevant references to "arbitrary" in *Chiranjit Lal* alone. Das J who differed from the majority in Chiranjit Lal, emphatically concluded in paragraph 90:

> Therefore, this Act, ex facie, is nothing but an **arbitrary** selection of this particular company and its shareholders for discriminating and hostile treatment and read by itself is palpably an infringement of Article 14 of the Constitution.

The delinking of the reasonable classification test from arbitrariness has caused considerable confusion. It is now widely believed that there are two distinct, mutually exclusive lines of enquiry that can be adopted in any challenge to state action under Article 14. The choice, it seems, is between the 'new' doctrine of arbitrariness and the 'old' doctrine of classification. This differentiation overlooks the area of intersection between the two tests. This is perhaps best illustrated through decided cases. First, in the controversial decision of *Mardia Chemicals*,[19] Section 17 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interests Act, 2002 was held to be arbitrary and unconstitutional. The kernel of the Court's reasoning is contained in in paragraph 64 of Brajesh Kumar J's judgment which reads as follows:

> The condition of pre-deposit in the present case is bad rendering the remedy illusory on the grounds that: (i) it is imposed while approaching the adjudicating authority of the first instance, not in appeal, (ii) there is no determination of the amount due as yet, (iii) the secured assets or their management with transferable interest is already taken over and under control of the secured creditor, (iv) no special reason for double security in respect of an amount yet to be determined and settled, (v) 75% of the amount claimed by no means would be a meagre amount, and (vi) it will leave the borrower in a position where it would not be possible for him to raise any funds to make deposit of 75% of the undetermined demand. Such conditions are not alone onerous and oppressive but also unreasonable and arbitrary. Therefore, in our view, sub-section (2) of Section 17 of the Act is unreasonable, **arbitrary** and violative of Article 14 of the Constitution.

This is supposedly an application of the new doctrine of arbitrariness. The Court did not apply the traditional test of classification and proceeded to conclude, rather abruptly, that Section 17 (2) was arbitrary. But the same argument can be reformulated by treating

19 *Mardia Chemicals Ltd v Union of India* (2004) 4 SCC 311.

borrowers as a well-defined class for the purposes of first instance civil action.[20] A civil remedy is made available to this class only on a pre-deposit of 75% of the claimed amount. Are there justifiable reasons for treating borrowers as a class for imposition of onerous conditions for a first instance civil remedy? The analysis would then focus on at least some of the reasons cited by Brajesh Kumar J in the paragraph quoted above.

The inverse is true of a recent decision in *Rajbala v. State of Haryana*[21] which prefers the "old" to the "new". Chelameshwar J upheld the classification of five categories of persons who were barred from contesting panchayat elections finding that the classification is reasonable. After rejecting the "new" doctrine of arbitrariness, in paragraph 80, he notes:

> The impugned provision creates two classes of voters — those who are qualified by virtue of their educational accomplishment to contest the elections to the panchayats and those who are not. The proclaimed object of such classification is to ensure that those who seek election to panchayats have some basic education which enables them to more effectively discharge various duties which befall the elected representatives of the panchayats. The object sought to be achieved cannot be said to be *irrational or illegal or unconnected* with the scheme and purpose of the Act or provisions of Part IX of the Constitution.

The Court then upheld the rationality of the classification. The case again demonstrates the link between arbitrariness and the test of reasonable classification. Once we identify classifications made by the State, and check for under-inclusion or over-inclusion, the next step in the "old" doctrine is to check the *rationality* of classification. Legally and semantically, rationality is the opposite of arbitrariness.[22] Thus, even after rejecting the test of arbitrariness, eventually, Chelameshwar J returns to evaluate the reasons behind the legislation.

A third example worth examining is Andhyarujina's example in which it is claimed that dismissing red haired students from school is arbitrary and unequal while dismissing all students from a school is only arbitrary and not unequal.[23] The second part of the argument is simply not true! First, if all students in a school (which is 'State' under Article 12) are dismissed, the immediate question that would arise is why not students of other such schools. This example demonstrates how State action necessarily classifies persons and cannot address

20 ibid [62].

21 (2016) 2 SCC 445.

22 Rationality is defined as "The quality of being based on or in accordance with reason or logic." Oxford English Dictionary, <https://en.oxforddictionaries.com/definition/rationality> accessed 30 March 2017.

23 Tehmtan Andhyarujina, 'The Evolution of Due Process of Law by the Supreme Court', in BN Kirpal and others (eds), *Supreme But Not Infallible: Essays in Honour of the Supreme Court of India* (OUP 2004) 207

the entire "universe of discourse" which Andhyarujina speaks of.Second, even under the old doctrine, all students in a school would then constitute a class, in comparison to other such schools, which the State would be required to show bears a rational nexus to the object of the State action of dismissing them. If there aren't good reasons, the action would be unequal even under the doctrine he prefers. These questions merely lie hidden in this hypothetical example.

This is not to claim that the two doctrines are identical in scope. They merely share an area of overlap. There is, however, a key distinction. If the new doctrine is a test of arbitrariness with no further prescription, it is truly formless and structure-less. It is incapable of controlling judicial decision-making in any meaningful way, as pointed out by Jeevan Reddy J in *Mc Dowell*.[24]

> In other words, say, if an enactment is challenged as violative of Article 14, it can be struck down only if it is found that it is violative of the equality clause/equal protection clause enshrined therein. Similarly, if an enactment is challenged as violative of any of the fundamental rights guaranteed by clauses (a) to (g) of Article 19(1), it can be struck down only if it is found not saved by any of the clauses (2) to (6) of Article 19 and so on. No enactment can be struck down by just saying that it is arbitrary or unreasonable.

The above is not true of the test of reasonable classification, which with its precise formulations focusses the attention of the Court to factors relevant to equality. Even while reviewing the rationality of a law, the Court is limited to the connection between the object of the Act and the classification. This, perhaps, is the key distinction between the analysis of Chelameshwar J in *Rajbala*[25] and Brajesh Kumar J in *Mardia.*[26] There is much to commend the former approach to the latter. The test of reasonable classification restricts the non-arbitrariness review of reasons behind state action in such circumstances to those relevant to equality.As I have pointed out earlier, the normative anchor of Article 14 is the presumption that people are fundamentally equal. Where the state action in question deviates from this presumption, judicial review of state action must focus on the reasons for the deviation. In other words, the Court is entitled to conduct a review of suitable intensity of the reasons for selection of a particular class. At the same time, the Court must confine itself to the reasons for deviation from the principle that people are fundamentally equal as Article 14 does not offer any normative justification for review of other reasons behind the state action in question.

There is a further significant distinction. The differentiation into the old and the new, and the period in which it occurred has rendered the test of classification a formal, "deferential"[27]

24 *State of AP v McDowell & Co,* (1996) 3 SCC 709 [43].
25 (2016) 2 SCC 445.
26 *Mardia Chemicals Ltd v Union of India*, (2004) 4 SCC 311.
27 Khaitan (n 5) 704.

test in comparison with its activist counterpart. However, this ought not to be the case. Once it is clear that the range of reasons which the Court can review is restricted to the connection between classification and the object of the legislation, the Court can engage in review of suitable intensity of these reasons. This is where, perhaps, Chelameshwar J's analysis in *Rajbala* is inadequate. Having correctly identified that only reasons relevant to classification can be reviewed, the Court failed to adequately scrutinise the reasons offered by the State. In creating a class of people who cannot contest panchayat elections, the State had brazenly departed from the principle that people are fundamentally equal. The State was bound to satisfy the Court fully that there were convincing reasons for the deviation. This was not the case as is betrayed by language in which the Court expressed its conclusion:[28]

> It is only education which gives a human being the power to discriminate between right and wrong, good and bad. Therefore, prescription of an educational qualification is not irrelevant for better administration of the panchayats. The classification in our view cannot be said to be either based on no intelligible differentia unreasonable or without a reasonable nexus with the object sought to be achieved.

To justify the egregious classification made by the law, the State was required to furnish reasons that were relevant and compelling and not merely reasons which were not "irrelevant" or "unreasonable". By contrast, the burden on the State is accurately described by Nariman J in *Hiral P. Harsora v. Kusum Narottamdas Harsora*[29] where the Court struck down a classification in the Protection of Women from Domestic Violence Act, 2005:

> In holding the date discriminatory and arbitrary and striking it down, this Court went into the doctrine of classification, and cited from *Special Courts Bill, 1978, In re* [(1979) 1 SCC 380] and Maneka Gandhi v. Union of India [(1978) 1 SCC 248] and went on to hold that the burden to affirmatively satisfy the court that the twin tests of intelligible differentia having a rational relation to the object sought to be achieved by the Act would lie on the State, once it has been established that a particular piece of legislation is on its face unequal.

The Court held that there was no rational link between the definition of 'respondent' in Section 2(q) and the object of the Act.[30] The Court was of the view that the section which required a respondent to be an "adult male", overlooked domestic violence perpetrated by women and minors and thus, was contrary to the object of the Act.[31] The decision is an example

28 (2016) 2 SCC 445 [80].
29 (2016) 10 SCC 165 [34].
30 ibid [39].
31 The Act, it seems, was deliberately designed to avoid a situation where a woman is proceeded against for domestic violence- a provision which could be misused in India, possibly even against

of the high intensity review that the reasonable classification test is capable of.

Thus, when compared to the formless new doctrine, the traditional test has two advantages. First, it focuses judicial review to reasons relevant to equality.Second, it is capable of being calibrated to conduct suitably intense reviews of state action depending on the departure from equality that confronts the court.

IV. Non-Arbitrariness and "Equal Protection of the Laws"

In the previous section, I dealt with the requirement of reasonable classification under Article 14. However, this has never been thought to be a sufficient condition for the guarantee of equality. This is clear from principles which had been crystallised as early as 1959 in *Ramkrishna Dalmia v. Justice Tendolkar*[32]:

1. Where a statute itself makes the classification and the Court finds that the classification satisfies the test of reasonable classification, the court will uphold the validity of the law.
2. In cases where the statute does not make any classification but leaves it to the discretion of the Government to select and classify persons or things to whom its provisions are to apply, the statute must be shown to contain the principles that guide this discretion. If the law fails in this regard, the court will strike down both the law as well as the executive action taken under such law.
3. Lastly, where the statute lays down such principles, but the executive action fails to adhere to these principles, the executive action but not the statute should be condemned as unconstitutional.

The guarantee of equality as is clear from the above, is not exhausted by a mere declaration of validity of the classification. If the executive fails to act as per the law, Article 14 renders such actions unconstitutional by its express words. This is the effect of the clause "equal protection of the laws" in Article 14. In other words, under Article 14, a law is required to be non-arbitrary and thereafter, every person is entitled to the fullest protection of the law in its implementation. It is in this sense that every executive action or administrative action pursuant to a law must not be arbitrary. This is the import of the statement of Mukherjea J when he observed that 'it appears to be an accepted doctrine of American courts that the purpose of the equal protection clause is to secure every person within the States against arbitrary discrimination, whether occasioned by the express terms of the statute or *by their*

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a survivor of domestic violence. This reason was not considered by the Court. See Sanjay Ghose, A Gender-Neutral Domestic Violence Law Harms Rather Than Protects Women, <https://thewire.in/77445/a-gender-neutral-domestic-violence-law-harms-rather-than-protects-women/> accessed 4 September 2007.

32 (1959) SCR 279 [12].

improper application through duly constituted agents.'[33]

Earlier in this essay, I have pointed out that non-arbitrariness was not discovered by the Supreme Court in the seventies as is believed. But there were two other developments around that time which had a significant impact on equality. First, until *A.K. Kraipak v. Union of India*,[34] our constitutional courts, following their English counterparts, would not ordinarily issue writs of certiorari against administrative action. Second, until *Rajasthan State Electricity Board v. Mohan Lal*,[35] the term "State" under Article 12 had been understood narrowly. This decision set the precedent for broadening the field of entities that are subject to the jurisdiction of writ courts for violation of fundamental rights.

Following these developments, there existed considerable scope for a coherent textual basis for the expanded review of executive and administrative action. Early opinions of the Supreme Court such as Shastri J's (extracted earlier in this essay) linking Articles 12, 13 and 14 provide a full justification for such an argument. This opportunity was however lost as the Supreme Court did not offer any principled argument in this regard.

Nevertheless, one can set out the complete argument.

1. For a law to be valid under Article 14, it must make clear the rational basis for its application to persons who are subject to it. The law may or may not make the classification itself.
2. Every subsequent action under the law is controlled by the rationality expressed in the law, as each person within the class to which the law applies, is entitled to "the equal protection of the law."

This interpretation can accommodate all three grounds of judicial review enumerated in *Tata Cellular*,[36] i.e. procedural impropriety, illegality and irrationality. For instance, consider a town-planning law which classifies people by prescribing eligibility conditions for a license to set up a factory within the area to which the law applies. Once these conditions of eligibility are found to be fair under Article 14, the operation of the law within the class of people to whom it applies is in the hands of the administrator who considers the grant of license in terms of the law.[37] The guarantee of equal protection would be mean that every applicant is entitled to a fair and equal process of consideration of her application. Second, "protection of the law" would mean that the administrator is bound strictly by the terms of the law in

33 *Anwar Ali Sarkar* (n 6) [51].
34 *A K Kraipak v Union of India* (1969) 2 SCC 262.
35 (1967) 3 SCR 377.
36 *Tata Cellular v Union of India* (1994) 6 SCC 651 [77].
37 *State of A P v Nalla Raja Reddy* (1967) 3 SCR 28 [24] – It is perhaps in this context that Subba Rao J warns that administrative arbitrariness is more subversive of equality as the official wand of arbitrariness can wave in any direction.

granting or refusing to grant the license. Third, in the rare circumstance of the administrator applying the law fairly and yet arriving at an illogical and irrational result, the guarantee of 'protection of the law' can be a ground to claim that the intent of the law having regard to its object, was never to arrive at such an outcome. Thus, judicial review of administrative action on the ground of non-arbitrariness, both procedural and substantive, to a large extent, can be accommodated by such an interpretation.

Combined with the conclusions from the previous section, we now have a complete argument demarcating the scope of non-arbitrariness review under Article 14. When faced with an instance of classification which deviates from the fundamental principle of equality, the objective must be to judge state action for reasons for the deviation. The test of reasonable classification is best equipped to do the job as there is no normative justification for review of any other reason behind the state action.In such a case, judicial review, in so far as non-arbitrariness is concerned, is restricted to the reasons supporting the classification.Where, however, judicial review is concerned with an instance of application of a law or an executive policy within a class of people to whom it applies, the Court is entitled to review such state action fully to ensure that the person concerned has the fullest protection of the law. Here, the nature of review is different in that the object of the review is to ensure that implementation of a law or policy is in fact in terms of the law or policy as the case may be. This is the proper province of full spectrum non-arbitrariness review in the context of equality. Such an interpretation avoids the danger of creating a freestanding test of arbitrariness under which the Court freely reviews policy making.[38]

V. Conclusion: Rethinking Non-Arbitrariness

In this article, I have endeavoured to demonstrate that the test of reasonable classification has a component of non-arbitrariness which permits review of state action to ensure that it is non-arbitrary from the perspective of equality. I have argued that the debate surrounding the choice between the old doctrine of reasonable classification and the new doctrine of non-arbitrariness overlooks the fact that the traditional test of equality has a component of non-arbitrariness.

Second, I put forward an interpretation of Article 14 which resolves some of the conceptual difficulties in understanding the scope of non-arbitrariness review under Article 14. I argue that when faced with state action which classifies people, judicial review must be limited to the reasons behind the classification. This test accommodates non-arbitrariness review to the extent demanded by equality under Article 14. However, when faced with an instance of an application of a law within a class to which it applies, the full spectrum judicial review is permissible, as a person is entitled to the full protection of the rationality of the law.

38 For an instance of such review, see *Centre for Public Interest Litigation v Union of India* (2012) 3 SCC 1.