BLOGS

The New Concept of Equality – A Discussion

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.docxpressoPlugin { font-size: 83.35%; } .h5p_layout { box-sizing: content-box !important; } .h5p_layout *{ float: none; text-align: initial; box-sizing: border-box; } /*to make sure that floating elements are always inside the document bounds*/ .h5p_layout:after { content: " "; display: block; height: 0; clear: both; visibility: hidden; } /* a default layout for documents without maste styles */ .h5p_default_layout { margin-top: 3.6rem; margin-left: 8.50464rem; margin-bottom: 3.6rem; margin-right: 8.50464rem; writing-mode: lr-tb; } /*hack for IE */ wbr:after { content: "\00200B"; } /*hack to get some extra top margin for anchors if needed*/ .h5p_layout span[id^="_Toc"]{ padding-top: 10px; margin-top: -10px; } /* Remove unwanted numbering styles */ .h5p_layout .removeNumbering:before{ content: initial !important; display: none; all: initial !important; } /* give zero default top and bottom paddings for paragraphs*/ .h5p_layout p { color: #000000; line-height: 1; margin-top: 0; margin-bottom: 0; } .h5p_layout span { color: #000000; font-weight: normal; } .h5p_layout span.dropcap { color: inherit; font-family: inherit !important; } .h5p_layout h1, .h5p_layout h2, .h5p_layout h3, .h5p_layout h4, .h5p_layout h5, .h5p_layout h6 { margin-top: 0; margin-bottom: 0; font-family: inherit; font-weight: 500; line-height: 1; color: inherit; } /* give zero default top and bottom paddings for paragraphs in tables*/ .h5p_layout table p { margin-top: 0; margin-bottom: 0; } .h5p_layout ul, .h5p_layout ol { list-style-type: none; margin-top: 0; margin-bottom: 0.5em; padding-left: 0; } .h5p_layout ul li, .h5p_layout ol li { list-style-type: none; margin-top: 0; margin-bottom: 0.5em; } .h5p_layout li p { margin-top: 0; margin-bottom: 0; } .h5p_layout table { border: none; } .h5p_layout td { vertical-align: top; border: none; } .h5p_layout th { vertical-align: top; border: none; } .h5p_layout div { margin-bottom: 10pt; } .h5p_layout img { margin: 0; padding: 0; } .h5p_layout ul ul { margin-top: 0; margin-bottom: 0; } .h5p_layout li { margin-top: 0; margin-bottom: 0; list-style-type: none !important; } .h5p_layout ul, .h5p_layout ol { list-style-type: none !important; } .h5p_layout td[data-sorting] p:before, .h5p_layout th[data-sorting] p:before { content: ' '; padding-right: 16px; background: url(background-position: left center; background-repeat: no-repeat; } .sortDecorator { border-bottom: 3px solid #b70000 !important; } /* This is a spacial class designed to remove unwanted bullets when a li has ul as its first child*/ .h5p_layout .removeBullet:before { content: none !important; }

/*responsive tables*/ .h5p_layout div.dxoResponsiveTable{ margin: 0 !important; padding: 0 !important; overflow-x: auto !important; overflow-y: hidden; } /* chart tooltips */ .c3-tooltip-container td.name { white-space: nowrap; } /* External services*/ .h5p_layout iframe { resize: vertical; border: 1px solid #fff; } .h5p_layout div.youtube { position:relative; padding-bottom:56.25%; height:0; overflow:hidden; background-color: transparent; } .h5p_layout div.youtube iframe { resize: none; position:absolute; top:0; left:0; width:100%; height:100%; } div#h5p_6a7bf47daf462 p.P1 {break-before: page !important;text-align: justify !important;line-height: 1.5 !important;font-size: 11pt;} div#h5p_6a7bf47daf462 span.T2 {font-family: Times New Roman !important;font-size: 12pt !important;language: en !important;country: US !important;} div#h5p_6a7bf47daf462 span.T3 {font-family: Times New Roman !important;font-weight: bold !important;font-style: italic !important;font-size: 12pt !important;language: en !important;country: US !important;} div#h5p_6a7bf47daf462 span.T4 {font-family: Times New Roman !important;font-size: 12pt !important;language: en !important;country: US !important;} div#h5p_6a7bf47daf462 span.T5 {font-family: Times New Roman !important;font-weight: bold !important;font-style: italic !important;font-size: 12pt !important;language: en !important;country: US !important;} div#h5p_6a7bf47daf462 span.T6 {font-family: Times New Roman !important;font-size: 12pt !important;language: en !important;country: US !important;} div#h5p_6a7bf47daf462 span.T7 {font-family: Times New Roman !important;font-size: 12pt !important;language: en !important;country: US !important;} div#h5p_6a7bf47daf462 span.T8 {font-family: Times New Roman !important;font-size: 12pt !important;language: en !important;country: US !important;} div#h5p_6a7bf47daf462 p.P9 {text-align: justify !important;line-height: 1.5 !important;font-size: 11pt;} div#h5p_6a7bf47daf462 p.P9 span {hyphenate: false;font-family: Times New Roman;font-size: 12pt;language: en;country: US;} div#h5p_6a7bf47daf462 p.P10 {text-align: justify !important;line-height: 1.5 !important;font-size: 11pt;} div#h5p_6a7bf47daf462 p.P10 span {hyphenate: false;font-family: Times New Roman;font-size: 12pt;language: en;country: US;} div#h5p_6a7bf47daf462 p.P11 {text-align: justify !important;line-height: 1.5 !important;font-size: 11pt;} div#h5p_6a7bf47daf462 p.P11 span {hyphenate: false;font-family: Times New Roman;font-weight: bold;font-style: italic;font-size: 12pt;language: en;country: US;} div#h5p_6a7bf47daf462 p.P12 {text-align: justify !important;line-height: 1.5 !important;font-size: 11pt;} div#h5p_6a7bf47daf462 p.P12 span {hyphenate: false;font-family: Times New Roman;font-size: 12pt;language: en;country: US;} div#h5p_6a7bf47daf462 p.P13 {text-align: justify !important;line-height: 1.5 !important;font-size: 11pt;} div#h5p_6a7bf47daf462 p.P13 span {hyphenate: false;font-family: Times New Roman;font-

size: 12pt;language: en;country: US;} div#h5p_6a7bf47daf462 p.P14 {text-align: justify !important;line-height: 1.5 !important;font-size: 11pt;} div#h5p_6a7bf47daf462 p.P14 span {hyphenate: false;font-family: Times New Roman;font-size: 12pt;language: en;country: US;} div#h5p_6a7bf47daf462 p.P15 {text-align: justify !important;line-height: 1.5 !important;font-size: 11pt;} div#h5p_6a7bf47daf462 p.P15 span {hyphenate: false;font-family: Times New Roman;font-weight: bold;font-style: italic;font-size: 12pt;language: en;country: US;} div#h5p_6a7bf47daf462 p.P16 {text-align: justify !important;line-height: 1.5 !important;font-size: 11pt;} div#h5p_6a7bf47daf462 p.P16 span {hyphenate: false;font-family: Times New Roman;font-size: 12pt;language: en;country: US;} div#h5p_6a7bf47daf462 p.P17 {text-align: justify !important;line-height: 1.5 !important;font-size: 11pt;} div#h5p_6a7bf47daf462 p.P17 span {hyphenate: false;font-family: Times New Roman;font-weight: bold;font-style: italic;font-size: 12pt;language: en;country: US;} div#h5p_6a7bf47daf462 p.P18 {text-align: justify !important;line-height: 1.5 !important;font-size: 11pt;} div#h5p_6a7bf47daf462 p.P18 span {hyphenate: false;font-family: Times New Roman;font-size: 12pt;language: en;country: US;} div#h5p_6a7bf47daf462 p.P19 {text-align: justify !important;line-height: 1.5 !important;font-size: 11pt;} div#h5p_6a7bf47daf462 p.P19 span {hyphenate: false;font-family: Times New Roman;font-size: 12pt;language: en;country: US;} div#h5p_6a7bf47daf462 p.Normal {font-size: 11pt;} div#h5p_6a7bf47daf462 p.Normal span {hyphenate: false;font-size: 11pt;} div#h5p_6a7bf47daf462 span.DefaultParagraphFont {font-size: 11pt;} div#h5p_6a7bf47daf462 div {font-size: 11pt;} div#h5p_6a7bf47daf462 p.P1 span {hyphenate: false;hyphenate: false;font-size: 11pt;} div#h5p_6a7bf47daf462 table {margin-left: 0in;border-collapse: collapse;writing-mode: lr-tb;font-size: 11pt;} div#h5p_6a7bf47daf462 table tr {height: 0in;keep-together: auto;font-size: 11pt;} div#h5p_6a7bf47daf462 table td, table th {background-color: transparent;vertical-align: top;wrap-option: wrap;font-size: 11pt;} div#h5p_6a7bf47daf462 p {keep-with-next: auto;keep-together: auto;widows: 2;orphans: 2;break-before: auto;border: none;text-align: left;writing-mode: lr-tb;margin-bottom: 0.1111in;line-height: 1.07;background-color: transparent;font-size: 11pt;} div#h5p_6a7bf47daf462 p span {font-family: Calibri;font-weight: normal;font-style: normal;text-transform: none;font-variant: normal;letter-spacing: normal;font-size: 11pt;background-color: transparent;text-decoration: none;text-decoration-color: font-color;language: en;country: IN;hyphenate: true;}

Before Kesavananda Bharti case, R C Cooper v Union of India (1970 (SC) and MadhaoRao Scindia v Union of India (1971) (SC), there was the concept of Parliamentary Supremacy which mean that Parliament is supreme and cannot make any bad law. The only test for Article 14 was the

reasonableness of the clarification made. But after Kesavananda Bharti case and other two cases, it was realized that the Constitution has its own essential spirit and in circumstance that spirit can be violated. Reasonableness, justice, equality, fairness, non-arbitrariness are the essential dimensions of law and these elements cannot be violated by any law as these elements are parts of essential spirit of the Constitution and it is not Parliamentary Supremacy rather it is Constitutional Supremacy.The entire perception towards Constitutional and legal interpretation changed and the interpretation of Constitution and any law became purposive interpretation in light of the essential Constitutional purpose and the essential inviable spirit of the Constitution. Now, the essential test was not just reasonable classification rather, the first test now became whether law violates the essential spirit of the Constitution or not. Once that test is passed, then comes the test of reasonable classification. This change of approach toward interpretation of Article 14 is what is called ‘New Concept of Equality’.E P Royappa v State of Tamil Nadu (1974) (SC)In Para 85 of the judgement, Justice Bhagwati made a statement:“The basic principle that forms the part of Article 14 is the great equalizing principle. Positivist approach to equality shows that equality is antithetic to arbitrariness. Equality and arbitrariness are sworn enemies.”He explained that the moment the law is arbitrary, it will per se be violative of equality.Maneka Gandhi v Union of India (1978) (SC)“No attempt should be made to the truncate Article 14 of its all-embracing scope as to do so, would be robbing it of its essential vitality.”Ajay Hasia v Khalid Mujib Sehravardy (1981) (SC)Justice P N Bhagwati delivered the majority judgment. It was held that now reasonable classification is not the end of equality rather it is one tool for equality and now the real test is not mere technical test rather it is to examine he essence of the law and essence of the Constitution and if any law provides for unreasonable and arbitrary powers, the law will per se be struck down on the face of it even if it makes reasonable classification. (function($) { //footnotes $('.defaultNote').children(":first").css('cursor', 'pointer'); $('.defaultNote').children(":first").click(function(){ var gotoID = '#' + $(this).parent().attr('id'); $('html, body').animate({ scrollTop: $('a[href="' + gotoID + '"]').offset().top - 60, }, 250, 'linear') }); }(jQuery)); var numFormat = ",."; (function($) { "use strict"; //do some cleaning on load var sortCells = $('td[data-sorting], th[data-sorting]'); sortCells.each(function(){ var first = $(this).text().trim().charAt(0); if (first == '@'){ var oldHTML = $(this).html(); var newHTML = oldHTML.replace('@', ''); $(this).html(newHTML); } }); function sortingTable(node, pos, ordBy){ var rows = node.children('tbody').children('tr').get(); rows.sort(function(a, b) { var X = $(a).children('td').eq(pos).text().toUpperCase(); var Y = $(b).children('td').eq(pos).text().toUpperCase(); if (numFormat != '.,'){ //we are dealing with a

different locale and we need to do some //transformation in numbers X = convert2number(X); Y = convert2number(Y); } else { X = X.replace(/,/g, '').replace(/ /g, ''); Y = Y.replace(/,/g, '').replace(/ /g, ''); } var currencies = ['$', '¥', '£', '€']; var arrayLength = currencies.length; var XX = X; var YY = Y; for (var i = 0; i < arrayLength; i++) { XX = XX.replace(currencies[i], ''); YY = YY.replace(currencies[i], ''); } if (!isNaN(XX) && !isNaN(YY)){ var floatXX = parseFloat(XX); var floatYY = parseFloat(YY); return -(floatYY-floatXX) * ordBy; } else if (!isNaN(XX) && isNaN(YY)){ return -1 * ordBy; } else if (isNaN(XX) && !isNaN(YY)){ return ordBy; } else { if(X < Y) { return -1 * ordBy; } if(X > Y) { return 1 * ordBy; } return 0; } }); $.each(rows, function(index, row) { node.children('tbody').append(row); }); } function removeTableCellDecoration() { $("td[data-sorting], th[data-sorting]").removeClass('sortDecorator'); } //unbind the click event just in case we are loading more than one document $("td[data-sorting], th[data-sorting]").off('click'); $("td[data-sorting], th[data-sorting]").click(function(){ removeTableCellDecoration(); $(this).addClass('sortDecorator'); //get desired ordering var ordering = $(this).attr('data-sortOrdering'); if (ordering == 'ASC'){ var ordBy = -1; $(this).attr('data-sortOrdering', 'DESC'); } else { var ordBy = 1; $(this).attr('data-sortOrdering', 'ASC'); } var cellPosition = $(this).prevAll().length; var table = $(this).parents('table:first'); sortingTable(table, cellPosition, ordBy); }); function convert2number(str) { str = str.trim(); if (str.match(/^\d+/)) { //we have to take special care when the thousand separators are '.' var result_0 = str.replace(/\./g, '_@_'); var result_1 = result_0.replace(window.numFormat[0], '.'); var result = result_1.replace(/_@_/g, ''); result .replace(/ /g, ''); return result; } else { return str; } } }(jQuery));

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