Equality before the law

What does it mean for all people to be equal before the law?

Equality before the law means that every person is treated the same by the legal system, regardless of their wealth, age, gender, race, religion, or social status. It ensures that no one is above the law, including government officials, and that all similar cases are treated alike to enable consistency in the treatment of parties to a matter before the courts and their outcomes. This principle is symbolised by Lady Justice wearing a blindfold representing fairness and impartiality.

Elements of Equality Before the Law

1. Equal Benefit of the Law

Everyone has the right to access justice and receive the same legal protections. This includes the right to a fair trial, legal representation, the ability to challenge laws or decisions in court and the right to appeal decisions of the court to higher courts.

2. Equally Subject to the Law

All individuals, including those in power, must follow the law. All are equally accountable for their actions and are subject to penalties when laws are broken, just as all are equally protected by the law.

3. Equal Substance of the Law

The content of the law itself must be fair and general, not targeting or favouring specific individuals or groups. Laws should be written and applied in a way that ensures predictability and fairness for everyone.

Differences and Equality Before the Law

Sometimes, it's fair for the law to treat people differently if their situations or circumstances are truly different.

When the law treats people differently, it should be for a clear and specific reason, and only for as long as that reason applies. The differentiation must respect and consider the human rights of all those impacted by the law.

An example of this would be child offenders. As Lord Bingham wrote in his book on the Rule of Law: "We would also accept that some categories of people should be treated differently because their position is in some important respects different. Children are the most obvious example. Children are, by definition, less mature than a normal adult, and should not be treated as a normal adult would expect to be treated. Thus, they are not liable to be prosecuted for a crime below a certain age."

Equality Before the Law in Australia

The Universal Declaration of Human Rights affirms that "all human beings are born free and equal in dignity and rights." These rights are not granted by laws or authorities; they are inherent to all people simply because we are human. They are inherent, inalienable birthrights. While it may seem like human rights originate from laws, treaties, or organisations like the UN, these legal instruments often merely express and protect rights we already possess.

Australia's Constitution does not explicitly guarantee equality before the law, nor is there a national law that directly does so. Instead, equality is embedded within the broader principle of the rule of law, the foundation of our legal system, where no one is above the law.

Australia is party to international human rights treaties, such as the International Covenant on Civil and Political Rights. However, only some treaty provisions have been implemented domestically, for example through the Racial Discrimination Act 1975 (Cth). Victoria, the ACT, and Queensland have introduced their own human rights laws that explicitly outline rights like equality before the law.

The strongest protection of equality before the law lies in a culture that values and defends the rights of all people.

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Answer Key For Equality Before The Law

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